

Court No. 22
03.10.2023
(Item No. 14)
(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side
W.P.A. 25333 of 2014
+
CAN 1 of 2015

Dr. Kalipada Ghorai
VS
The State of West Bengal & Ors.

Mr. Piyush Chaturvedi
Mr. Bhagbat Chaudhuri
Mr. Saikat Ghosh
Mr. Mahbub Asfakul Zinna
Mr. Subrata Mukherjee
.... For the petitioner
Dr. Sutanu Kumar Patra
Ms. Supriya Dubey
.... For WBCSSC
Mr. Supriyo Chattopadhyay
Mr. Bhaskar Prasad Vaisya
Mr. Ranjan Saha
Ms. Sayantanee Bhattacharjee
.... For respondent Nos. 1, 2, 3 & 4

The previous order speaks for itself.

Today, the writ petition appeared under the heading **“For Dismissal”**.

This is a hearing matter.

The office report dated March 15, 2023 suggests that, despite direction made by a co-ordinate bench dated August 22, 2022 no affidavit-in-opposition was filed.

Mr. Piyush Chaturvedi, learned counsel appears for the petitioner.

Mr. Supriyo Chattopadhyay, learned Additional Government Pleader appears for respondent Nos. 1 to 4.

Mr. Sutanu Kumar Patra, learned counsel appears for respondent Nos. 5 and 6.

The parties have agreed to proceed with the writ petition for its disposal. This writ petition was filed in 2014 assailing the order of the respondent No. 2 dated **June 16, 2014, Annexure P-23** at **page 85** to the writ petition. A co-ordinate bench by its order dated **September 18, 2014, Annexure - D** at **page 26** to **CAN 1 of 2015** directed the petitioner to submit a fresh representation and the respondent No. 2 was directed to decide the issue on such representation. The petitioner submitted its representation dated **September 26, 2014, Annexure - E** at **page 31** to **CAN 1 of 2015**.

The respondent No. 2 then on such representation passed its order dated **February 25, 2015, Annexure - F** at **page 39** to **CAN 1 of 2015**.

By filing the said interlocutory application being **CAN 1 of 2015** the petitioner has assailed the said order dated **February 25, 2015** passed by the respondent No. 2.

Mr. Piyush Chaturvedi, learned counsel appearing for the petitioner submits that, the claim of the petitioner was negated by the respondent No. 2 through the said impugned order dated **February 25, 2015** on the basis of two Government Memos bearing **No. 1071-Edn(S) dated August 19, 1977** and **Memo No. 477-Edn(S) dated June 18, 1980**. Referring to

the said memoranda learned counsel for the petitioner submits that, those memoranda relates to an individual who has suffered some proceeding under **Defence of India Rules or under MISA** but the petitioner has no such history. Therefore, he submits that, two memoranda will not apply in the facts situation of this case. He submits that, on the face of it the respondent No. 2 has acted with a closed mind without appreciating the proper and applicable materials and passed the impugned order and therefore the impugned order dated **February 25, 2015** on the face of it is perverse and is liable to be set aside.

Considering the submissions made on behalf of the parties and considering the materials on record and on a close scrutiny of the said impugned order dated **February 25, 2015**, this Court proceeds to decide the writ petition finally as no fruitful purpose shall be served by keeping the writ petition pending any further.

The moment the co-ordinate bench passed its order dated **September 18, 2014** with an observation that, the petitioner shall be at liberty to file a fresh representation on the self-same issue and the respondent No. 2 was directed to consider the self-same issue afresh, this Court is of the firm view that, the first impugned order dated **June 16, 2014**,

Annexure P-23 at **page 85** to the writ petition had lost its force and existence.

Accordingly, the said impugned order dated **June 16, 2014, Annexure P-23** at **page 85** to the writ petition stands **quashed and set aside**.

In so far as, the second impugned order dated **February 25, 2015, Annexure – F** at **page 39** to **CAN 1 of 2015** is concerned, it appears to this Court that, the respondent No. 2 shall revisit the issue by giving a clear finding as to how and why the said two memoranda as referred to above, should apply or should not apply. In as much as, the respondent No. 2 shall also take into account of the facts and figures already on record before him on the basis whereof the said impugned order dated **February 25, 2015** was passed.

In view of the above, the said impugned order dated **February 25, 2015, Annexure - F** at **page 39** to **CAN 1 of 2015** also stands **set aside and quashed**.

Upon issuing a prior hearing notice of at least seven days to the petitioner, the respondent No. 2 shall decide and re-visit the issue on the basis of the representation of the petitioner dated **September 26, 2014, Annexure – E** at **page 31** to **CAN 1 of 2015** after granting an opportunity of hearing to the petitioner and/or its duly authorized representative

and then shall pass its reasoned order in accordance with law.

The respondent No. 2 shall decide the issue on the basis of the available materials before him on the basis whereof the impugned order dated **February 25, 2015** was passed. The petitioner shall be at liberty to file its written notes before the respondent No. 2 **but the same shall not travel beyond the scope and ambit of its said representation dated September 26, 2014.**

The entire exercise shall be carried out and completed by the respondent No. 2 positively within a period of **six weeks** from the date of communication of this order and the respondent No. 2 then shall communicate its reasoned order to the petitioner within a further period of **two weeks** from the date of the said reasoned order to be passed.

In the event, the reasoned order goes in favour of the petitioner, the respondent No. 2 shall take all necessary and consequential steps to give effect to the said reasoned order strictly in accordance with law.

It is made clear that, this Court has not gone into the merits of the claim of the petitioner in this writ petition.

It is made clear that, this order shall not create any equity or right in favour of the petitioner if, the petitioner is not eligible to receive his claim strictly in accordance with law.

With the above observations and directions, this writ petition being **WPA 25333 of 2014 and CAN 1 of 2015** stand disposed of.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)