

15 **08.02.**
2023
Ct. No. 04

Ab

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.

WP.CT 126 of 2022

Union of India and others
Vs.
Mrs. Medha Moitra and others.

Ms. Chandreyi Alam,
Mr. Shaunak Ghosh.
... for the petitioners.

Mr. Kallol Basu,
Mr. Suman Banerjee.
... for the respondents.

The writ petitioners are not aggrieved by an ultimate decision passed by the Tribunal in the impugned order but felt aggrieved by the observations made in paragraph 15 thereof, which, according to the writ petitioners, has quashed the corrigendum dated 17th December 2021 and 22nd December 2021 issued by the office of the Principal Chief Commissioner of Income Tax, West Bengal and Sikkim Region.

According to the writ petitioners, the Tribunal exceeded the jurisdiction in impinging upon the corrigendum treating the same as an order and further direction to consider the case in the light of the judgment of the Tribunal situated at Chandigarh is contradictory and mutually destructive.

At the outset it is submitted that the judgment rendered by the Chandigarh Bench of the Tribunal has no applicability in the instant case and further took a plea that the Tribunal ought not to have quashed the aforesaid corrigendums by which the marks obtained by the respective candidates were revised and/or rectified.

The respondents' Counsel vociferously submits that

the writ petition is not maintainable as the order was passed on consent and in view of an embargo created by a judicial precedence, the consent order is not amenable to be challenged.

On the other hand, the Counsel for the writ petitioners submits that there was no consent given before the Tribunal and even otherwise the impugned order can be segregated into two parts; one in relation to a finding returned by the Tribunal pertaining to the action of the authorities in publishing the corrigendums and second component relates to the reconsideration of the claim of the respondents on the basis of the judgment of the Tribunal passed by the Chandigarh Bench. It is, thus, submitted that the first compartment of the order, which virtually decides the rights of the parties, can very well be assailed and challenged by filing a writ petition and if this Court interferes with the said part of the judgment, the other part of the order being dependent and/or consequential thereupon would automatically fall on its own.

Such being the stand taken by the respective Counsels, an interesting point is raised by both the Counsels on the meaning and interpretation of the words and/or the expressions used by the Tribunal, more particularly, in paragraph 15 thereof. The aforesaid observations are quoted as under:

“In the aforesaid backdrop, it is felt that the impugned orders deserve to be quashed and the matter could have been remitted back for a fresh consideration.

However, all the counsels agree in unison that the matters may be disposed of by this Bench with a liberty to the applicant to seek benefit of the order passed by the Chandigarh Bench (supra) and seek withdrawal of the impugned orders in the light of the said decision, and upon the respondents to reconsider their prayer for retention in the same post, in the light of the decisions

supra, particularly the Chandigarh Bench where under similar circumstances the promote STAs whose selections were found defective, have been allowed to continue in the same post upon relaxation of provisions. There is no allegation that they failed to discharge their duties efficiently as STAs.”

According to the writ petitioners, the language used in the above quoted paragraph leads no ambiguity in the mind of the authorities that the aforesaid corrigendums have been quashed and set aside by the Tribunal and the matter was relegated to the authorities for consideration afresh.

Par contra, Counsel for the respondents construed and interpreted the language employed in the said paragraph to the extent that though the Tribunal was of tentative opinion about the veracity of the corrigendums but, in fact, did not proceed to quash the same otherwise the expression “deserve to be quashed” without any qualifying expressions suffixing the same would be rendered meaningless.

The cumulative effect of the submissions advanced by both the Counsels appears to us that the grievance of the writ petitioners perceived by understanding the language used in the said paragraph has been sufficiently taken care of on the basis of the stand of the respondents.

The moment the parties being the beneficiaries of the order of the Tribunal have construed and perceived the tenet thereof, in such a manner, which would remove the cloud or erase the troublesome factors playing in the mind of the writ petitioners, there is no necessity of adopting any other construction except the same.

The resultant effect from the respective stands appears to be such that those corrigendums/orders have not been quashed and set aside, but such observation

was a prelude to such course of action, which does not achieve the ultimate result. The moment those corrigendums/orders are survived or alive, the apprehension of the writ petitioners cannot remain nor such expression should be perceived otherwise than what has been interpreted and/or understood by the respondents.

With these observations, the writ petition is disposed of.

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

(Harish Tandon, J.)

(Prasenjit Biswas, J.)