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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/301/2023
IA NO: GA/1/2023
VIJAY KUMAR GUPTA
VS
UNION OF INDIA AND ORS.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 13TH OCTOBER, 2023

Appearance :
Mr. Somnath Ganguly, Adv.
Mr. T.K. Mitra, Adv.
Mr. Sukalpa Seal, Adv.
Mr. Prottyush Chatterjee, Adv.
Ms. Priyanka Singh, Adv.
...for petitioner
Mr. Vipul Kundalia, Adv.
Mr. S.K. Tiwari, Adv.
...for respondent

The Court : - This intra-Court appeal has been filed by the writ petitioner challenging the order dated 16.8.23 by which the application filed to restore the restoration application which was dismissed for default on 3.7.23 by the impugned order dated 16.8.23. As could be seen from the impugned order that this is not the first occasion the application was dismissed. There were two earlier occasions the application for restoration were dismissed. We note from the order dated 7.11.2019 the writ petition was restored to the file on condition that petitioner appellant pays a cost of Rs.10,000/- to the State Legal Services Authority. The appellant had complied with the condition and the amount was remitted on 18.11.2019 as could be seen from the receipt issued by the State

Legal Services Authority. However, when the matter came up on 7.9.2022 but none appeared for the petitioner and there was nothing on record to show that the cost has been remitted. Therefore, the Court has recorded that no cost was remitted on the said date, as per the earlier order and in the absence of the parties, the writ petition was dismissed for default. Subsequently, the application for restoration was filed which was adjourned from time to time for filing affidavit in opposition. Thereafter the combined monthly list for July 23 was published and it was notified that the same will be with effect from 6.7.23. However, the application for restoration of the writ petition was listed on 3.7.23 and on the said date since none appeared for the petitioner the application for restoration was dismissed. To satisfy such order dated 3.7.23, the appellant had filed the application, which has been dismissed by the impugned order. The order impugned in the writ petition is a notification issued by the Government of India dated 28.1.2004 and the petitioner's contention is that the benefit of such notification should be extended to the petitioner and consequently they will be entitled to certain monetary benefits. Till date, respondents have not filed their affidavit in opposition. Considering the facts and circumstances of the case and that the matter was taken up on 3.7.23 though it was notified to be taken up from 6.7.23, this Court is of the view that the writ petition can be restored to the file of the learned Single Bench so that the matter can be heard and disposed of on merits.

For the above reasons, the appeal is allowed and the impugned order dated 16.8.23 is set aside and the application for restoration, being GA No. 4 of 2023 is restored and the same is allowed.

Consequently, the order dismissing the writ petition is set aside and the writ petition is restored to the file of the learned Single Bench of this Court. The respondents are directed to file their affidavit in opposition not later than 15.12.2023. Reply, if any, within 22.12.2023.

Let the matter appear in the combined monthly list of January 2024. In order to facilitate the filing of affidavit in opposition by the respondents the learned Advocate for the petitioner shall furnish one set of papers to the learned Advocate for the respondents within one week from date.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)