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MAT 30 of 2024
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IA No.: CAN No. 1 of 2024
Prantosh Nandi
– *Versus* –
State of West Bengal & Others

Mr. Dilip Kumar Samanta,
Mr. Biswapriya Samanta
... for the Appellant.

Mr. Rajarshi Basu,
Mr. K. M. Hossain
... for the State/Respondents.

Affidavit-of-service, as filed, be kept on record.

The present appeal has been preferred challenging an order dated 5th December, 2023 passed by the learned single Judge in the writ petition, being WPA 5681 of 2006.

Mr. Samanta, learned advocate appearing for the writ petitioner/appellant submits that the appellant is rendering service in the Burdwan C.M.S. High School (hereinafter referred to as the said school) with effect from 1st September, 1983 as a Class – IV staff. In spite of several representations submitted, the authorities did not consider his claim for regularization in the said post. Aggrieved thereby, the appellant initially preferred a writ petition which was dismissed on 5th July, 2000. However, a Class – IV staff vacancy occurred in the said school on 1st August, 1998 due to the retirement of one Debkanta Misra. Even after dismissal of the earlier writ petition, he has been retained in the sanctioned post and as such the

school requires his service. The appellant accordingly submitted representations for absorption but in vain. Aggrieved thereby, the appellant again preferred the writ petition, being WPA 5681 of 2006 which had been dismissed by the order impugned in the present appeal.

Mr. Samanta argues that the appellant is discharging continuous service in the concerned post since 1st September, 1983. His initial entry in service was not illegal but at best could have been termed as an irregular appointment. Since 1998 he is serving in a sanctioned post and not under cover of any order of the Court and as such his claim needs to be considered in the light of the observations made by the Hon'ble Supreme Court in the case of *Secretary, State of Karnataka and Others Vs. Umadevi (3) and Others*, reported in (2006)4 SCC 1. Such argument, as advanced, was glossed over by the learned single Judge and no finding was returned on the said issue. Such infirmity warrants interference in the present appeal.

Per contra, Mr. Basu, learned advocate appearing for the State respondents submits that the appellant's claim was considered in a writ petition preferred by the appellant which was finally decided on 5th July, 2000. The prayers made in the said writ petition are similar to the prayers made in the writ petition dismissed by the order impugned in the present appeal. In view thereof, the learned single Judge rightly rejected the appellant's claim as the same was barred by the principles of *res judicata*.

He further submits that mere rendition of service for a particular period on temporary basis does not confer any legal right upon the appellant towards regularization and the grant of the relief, as prayed for, would reinvigorate a claim towards regularization which has been set at rest by several judgments.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

The appellant preferred a writ petition earlier which was dismissed by an order dated 5th July, 2000. We have perused the order passed in the said writ petition as quoted in the order impugned in the present appeal. The issue that the appellant had been retained as a Class – IV staff in the said school in the sanctioned vacancy which occurred in the year 1998 was considered in the said order dated 5th July, 2000 and the appellant's prayer was refused. Taking into consideration the said fact the learned single Judge in the subsequent writ petition rightly observed that the *res* has been *adjudicated upon* between the parties by a co-ordinate Bench earlier and recorded that no appeal was carried out from the said judgment dated 5th July, 2000.

Mere continuance of service on temporary basis does not entitle the appellant to seek regularization. The appellant's initial entry was not in accordance with the recruitment rules and accordingly such prayer was rightly turned down.

We do not find any infirmity in the order impugned warranting interference in appeal. Accordingly, the appeal and the connected application are dismissed.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)