

01.08.2024

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Sl. No. 43

Ct. No. 08

FMA 669 of 2015

Sri Samir Bhattacharjee

Vs.

The State of West Bengal & ors.

Mr. Partha Sarathi Bhattacharya

Mr. Bidyut Baran Biswas

... for the appellants

Mr. Tapan Kr. Mukherjee

Mr. Somnath Naskar

Mr. A. Banerjee

..... for the State

This is a second round of litigation before this Court at the behest of the appellant. The first writ petition was filed in the year 1997 i.e., WP 27045 (w) of 1997 challenging the appointment of one Manabendra Ghosh on the score that he was neither a sponsored candidate nor was eligible to participate in the said recruitment process. The said writ petition was allowed holding that the appointment of Manabendra Ghosh is patently illegal and in contravention to the law declared by the Supreme Court. The matter was carried to the Division Bench in an intra Court appeal being FMA 2337 of 2004 with FMA 2338 of 2004 and by an order dated 03.09.2007, the Division Bench directed the District Inspector of Schools (SE), Nadia to approve the appointment of the appellant in the post of a clerk after receiving the relevant papers and documents from the school authority at an early date but positively within a

period of two weeks from the date of receipt of such papers.

As a corollary effect, the Division Bench also found that the appointment of Manabendra Ghosh to such post is illegal and the appellant is entitled to be appointed to such post. Pursuant to the said order, the District Inspector of Schools (SE), Nadia issued a memo dated 17.07.1998 withdrawing the approval of the said Manabendra Ghosh to the post of a clerk in the said school and directed the issuance of the appointment letter to the appellant immediately. The aforesaid memo was issued when the appeal filed by the said Manabendra Ghosh was pending before the Division Bench. Obviously the effect could not be given as the matter was sub-judice but immediately after disposal of the said appeal on 03.09.2007, the appointment letter was issued to the appellant and it is not in dispute that the appellant discharged his duty in such capacity until the date of his superannuation i.e., 31st May, 2021.

It is also not in dispute that the appellant has been provided pension in terms of ROPA, 2009. However, after the receipt of the letter of appointment, the appellant found that the appointment has been shown from a particular date of the year, 2007. The writ petition was filed seeking a mandamus upon the authorities to treat such appointment from the date of notification dated 19.07.1998 and to provide the notional benefits. The Trial Court did not find any

justification in the stand as the appellant did not serve the organization before the date of appointment and the instant intra Court appeal has been filed renewing the said prayer.

As the facts unfold above, would indicate that despite the order of the Single Bench directing the cancellation of the appointment of the Manabendra Ghosh, the matter was rolled into a Division Bench which was ultimately disposed of on 03.09.2007. Despite the fact that the authorities issued a letter of cancellation of the approval granted to the Manabendra Ghosh on 17.07.1998 but the matter being sub-judice before the Division Bench, the authorities were of the view that the issuance of the appointment letter may cause adversity and immediately issued the letter of appointment after the disposal of the mandamus appeal.

But for the purpose of computation of the continuous service relating to the determination of the quantum of pension to be awarded, ordinarily it should commence from the date of an appointment till the incumbent attains the age of superannuation. There is no fetter on the part of the Court to grant notional benefits preponing the date of appointment provided the Court finds justifiable reasons and pass the order in this regard. The memo dated 17.07.1998 was within the knowledge of the parties when the earlier intra Court appeal was pending before this Court and if such

point which was available to them having not taken or if brought to the notice of the Court but no directions passed in this regard, it is not open to take shelter under the aforesaid memo that the moment the authorities decided to issue appointment letter with immediate effect, it would invite exceptional situation where the date of appointment should be reckoned from the date of the said memo.

We thus do not find any infirmity and/or illegality in the order.

Accordingly, the appeal is hereby dismissed without any order as to costs.

(Harish Tandon, J.)

(Shampa Dutt (Paul), J.)