

Item-61. 30-01-2024

MAT 68 of 2024
CAN 1 of 2024

sg Ct. 8

Sk. Kamaluddin @ Hafiz Nooruddin Kamal
Versus
The State of West Bengal & Ors.

Mr. Avishek Prasad, Adv.
Mr. Sourodeep Singha, Adv.
...for the appellant
Sk. Md. Galib, Adv.
Ms. Taniwishree, Adv.
...for the Board of Wakaff
Mr. Suman Sengupta, Adv.
Mr. Sambuddha Dutta, Adv.
...for the State

1. The affidavit of service filed in Court today is taken on record.
2. The appeal is arising out of an order dated 11th December, 2023 passed by the learned Single Judge in a writ petition in which the appellant claimed that he was appointed under the Hazrat Data Mehboob Shah Wali (Patharchapuri) Wakf Estate that was under the control and management of Auqaf Board of West Bengal.
3. The grievance of the petitioner is that the learned Single Judge, without considering his claim to continue as an employee of the Wakf Estate, directed the petitioner to approach the Industrial Tribunal for raising his grievance in accordance with law.
4. Mr. Avishek Prasad, learned Counsel for the appellant has submitted that the learned Single Judge has disregarded the letter of appointment as also the subsequent notification by which he was allowed to work until he

became physically fit.

5. It appears that the petitioner was allowed to work in terms of the Circular dated 16th September, 2011 but certain casual employees were allowed to function until the age of 60 years against a fixed pay and sum of Rs.1,00,000/- upon retirement. The said amount was revised from time to time. However, the petitioner comes under the category of a workman as the nomenclature of his work was that of a Khadem.
6. It is submitted on behalf of the petitioner that there was no allegation of any overdrawal at the instance of the writ petitioner about during the contractual period nor any charge was leveled against the writ petitioner about defalcation of any funds or misappropriation. The writ petition is no way responsible for drawing and disbursing the amount he is entitled to receive under the Circular dated 16th September, 2011 as revised from time to time.
7. The learned Single Judge has also relied upon the decision over the Auqaf Tribunal in OA 11 of 2020, which was disposed of on 16th September, 2022 recording that there was no provision for engagement of contractual staff by the Board of Auqaf or the Executive Officer of Auqaf Estate.
8. The claim with regard to over-payment by the Wakf Board shall also form subject matter of the proceeding that may be initiated before the Industrial Tribunal.
9. In such factual backdrop, we do not find any infirmity in the order dated 11th December, 2023 passed by the learned

Single Judge.

10. The appeal fails. However, there shall be no order as to costs.
11. In view of the fact that the matter is required to be decided by the Tribunal, all these issues are left open and can be raised and decided by the Tribunal.
12. The appeal and the application are, accordingly, dismissed.
13. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)