

Item-1. 22-03-2024

sg Ct. 8

MAT 175 of 2020

Bapi Sen
Versus
The State of West Bengal & Ors.

Ms. Ananya Neogi, Adv.

...for the appellant

Mr. Ayan Banerjee, Adv.

Ms. Debasree Dhamali, Adv.

Ms. Riya Ghosh, Adv.

...for S.B.S.T.C.

1. This matter is assigned to the Bench presided over by one of us (Soumen Sen, J.) by the Hon'ble the Chief Justice on 16th March, 2024 and is listed today.
2. We have heard the learned Counsel for the parties on merits.
3. In view of the fact that a coordinate Bench directed the matter to be heard on merits and parties have exchanged their affidavits, it is not required at this stage to decide the maintainability of the writ petition as it is an admitted position that the appellant is an employee of a statutory Corporation and the distinction between public law remedy and private law remedy over a period of time has now been largely diluted. The petitioner is governed by statutory rules.
4. The learned Counsel for the parties have made submissions on merits of the matter.
5. It is not in dispute that disciplinary proceedings was initiated against the petitioner from time to time and last of such was concluded in the year 2006 culminating in an order of 'censor' vide an order dated 3rd January, 2006.

Thereafter, he became eligible for being considered under the Career Advancement Scheme (in short CAS).

6. The Corporation has admitted that for the purpose of extending the benefits for CAS, periodic assessment which was initially for three years has now been reduced to one year and accordingly, the petitioner would become eligible to get benefit of CAS provided for the last one year.
7. Before he became eligible, no punishment was imposed on the employee. In view of the decision of the Board of the Corporation on 18th March, 2008 by which the eligibility criteria was reduced to one year punishment free record, the petitioner was entitled to be considered for CAS in 2009 onwards. The Corporation appears to have denied such benefit on the basis of a communication received from the Deputy Inspector General of Police, Intelligence Branch, West Bengal that the petitioner is found to be unsuitable for employment to the post of Driver due to wrong information document supplied to the authority for the purpose of getting the employment. However, no disciplinary proceeding was initiated against the petitioner after 31st March, 2009 nor the benefit of CAS was extended to him.
8. It was in view of the denial of such benefit, he filed a writ petition in or around June 2017 in which the impugned order dated 15th June, 2017 was passed. Having regard to the fact that no disciplinary proceeding was initiated against the petitioner, it is to be presumed that the

Corporation did not agree with the finding of the Deputy Inspector General of Police, Intelligence Branch and allowed the petitioner to continue as Driver.

9. The petitioner is going to retire within eleven months from this date as submitted by the learned Counsel for the appellant on instruction. A disciplinary proceeding at the fag end of his career is also not permissible.
10. In view thereof, we set aside the impugned order and direct the authority concerned to decide the benefits under CAS within two weeks from the date of communication of this order and in the event the petitioner is entitled to benefits under the CAS in accordance with the decision of the Board dated 18th March, 2008 or any subsequent decision.
11. In the event he found to be eligible, the Corporation shall release the benefits under the Career Advancement Scheme within two weeks from the date of the order. In the event the Corporation is of the view that the petitioner is not entitled to such benefits, an opportunity of hearing should be given to the petitioner.
12. The appeal and the application, are accordingly, disposed of. However, there shall be no order as to costs.
13. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Uday Kumar, J.)