

08.04.2024

MONDAY

Court : 04
Item : 01
Matter : MAT
Status : DISMISSED
Bench ID : 266218
Transcriber : NANDY

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

MAT 1675 of 2023

with

CAN 1 of 2023

CAN 2 of 2023

The State of West Bengal & Ors.

Vs.

Chinmoy Kumar Mondal & Ors.

Mr. Bhaskar Prasad Vaisya, Advocate

Mr. Sagnik Chatterjee, Advocate

.....for the Appellant/State

1. Learned Counsel for the Appellant/State is present. However, there is no representation on behalf of the Respondents.
2. Learned Counsel for the appellant, however, submits that the urgent determination is based on the motion made by the learned Counsel for the Respondents.
3. Be that as it may, since the matter is listed today as an urgent determination, we proceeded to consider the same on merits.

CAN 1 of 2023

4. This is an application seeking condonation of delay of 87 days in preferring the instant appeal. Copy of the same has been duly served on the learned Counsel for the Respondents and in support of such submission; an affidavit of service has also been filed by the appellants.
5. From averments made in the application seeking condonation of delay and the submission advanced in support thereof, we find that though the Appellant/State was diligent in taking up the issue, some delay has occurred in the process of preparation of the appeal since the initial Counsel who was approached had withdrawn himself from

filing of the appeal.

6. The cause shown in the application, we find to constitute sufficient cause for condoning the delay. The delay is hereby condoned.
7. The appeal be registered/assigned a number.
8. The application for condonation of delay being **CAN 1 of 2023** is accordingly **disposed of**.

MAT 1675 of 2023

9. Shorn off unnecessary details, the crux of the matter is that the Appellant/State in the instant appeal is questioning the order of the Hon'ble Single Judge in as much as the same has granted relief to the petitioner/respondent no. 1 herein, so as to enable counting of his services with effect from 08.05.1991. The other relief which the petitioner had prayed for including grant of further benefits as per the order of the Hon'ble Single Judge was not opposed by the appellant.
10. Learned Counsel for the appellants has made multiple submissions questioning the legitimacy of the petitioner's induction in service by the Managing Committee and existence therein prior to approval of the staffing pattern and other ancillary issues. It is submitted that the final approval of the petitioner's services as a teacher in the School has been accorded on 06.02.2017.
11. The action of the authorities manifest from the said order is *bona fide* inasmuch as the date of appointment has been taken as 01.01.2014 i.e. the date of upgradation as a High School.
12. It is submitted that the directions of the Hon'ble Single Judge to the extent that services be counted with effect from 08.05.1991 are legally unsustainable.

13. We have given our anxious consideration to the various approvals including upgradation of the School as a Junior School in 01.03.2010 and the subsequent upgradation as a High School on 01.01.2014 as well as the Government Order dated 06.02.2017.
14. We have further been taken to an order dated 24.12.2010 passed on the earlier writ-petition filed by the present writ-petitioner/respondent, bearing no. WP 14073 (W) of 2010. Having regard to the fact that the petitioner had been working as Assistant Teacher since 1991, he had approached the Court in the said proceeding seeking recognition of his services by the Government.
15. Such relief which was claimed by the petitioner was not disputed by the School, who was party to the said proceeding. The State was also duly represented in the said proceeding wherein the Writ Court had been pleased to pass a specific positive direction to recognize the petitioner's services keeping in view the fact that he had been serving since 1991. The District Inspector of School was directed to approve the appointment within a period of four weeks from the date of communication of the order. Consequential, monetary benefits, however, had been made prospective.
16. The petitioner's past services since 1991 were made the basis of such direction, which was not disputed in the said proceeding by any of the parties. In fact, the order specifically records that the School Authority which received the services of the petitioner did not oppose the writ-petition on merit. The State Authorities also did not appear to have opposed the prayer as is evident from bare perusal

of the order dated 24.12.2010 in the earlier writ proceeding.

17. The specific direction of the Court to accord approval within four weeks, however, was not complied within the time specified in the order.
18. We find that a belated attempt has been made for review of the said order, whereafter the same has also been assailed in an appeal being MAT 1308 of 2015 which also stood dismissed on 03.12.2015. The State Authorities, however, have taken another two years to finally implement the directions of this Court dated 24.12.2010 passed in WP 14073 (W) of 2010 and the order approving the petitioner's services finally came to be issued on 06.02.2017. The date of appointment in the said order has been shown as 01.01.2014 which as per the learned Counsel for the appellant/State is the date of upgradation of the School as High School.
19. The Notification, in our opinion, seeks to ignore the directions issued in favour of the petitioner on 24.12.2010 in the earlier writ proceeding which as noted-above, was without any resistance or dispute in the said writ proceeding. We consider it apposite to record the order passed in WP 14073 (W) of 2010 is of reference:-

"Since it appears that the petitioners have been serving the institution in question since 1991, 1996 etc. as Assistant Teacher and non-teaching staffs the appointments of the petitioners should permanently be recognized by the concerned District Inspector of Schools simply by virtue of their long length of service. The School authority concerned who has received the services of the petitioners for all these years does not oppose the writ petition on merits.

In view of the above, I am of the opinion that the District Inspector of Schools concerned should

immediately approve the appointments of the petitioners made by the Managing Committee of the school way back in the year 1991 onwards being to the petition appearing at page 89 thereof. The Distinct Inspector of Schools concerned is, therefore, directed to approve the appointments of the petitioners within a period of four weeks from the date of communication of this order and once the appointments are approved, the petitioners will be entitled to receive salary and other benefits month by month without any interruption.

The writ-petition is disposed of without any order as to costs.

In passing the above order the decision of the Supreme Court cited in support of the case of the writ-petitioner, namely U.P. State Electricity Board Vs. Purna Chandra Pandey & Ors., reported in (2008) 1 CLJ (SC) is taken into account together with the earlier decisions of this Court.

For the sake of convenience, urgency and communication, let a Xerox Plain copy of this order duly countersigned by the Assistant Registrar (Court) or the Assistant Court Officer be given to the learned Advocates for the petitioners on usual undertakings."

20. The issue, therefore, today before us is whether the authorities can now be permitted to resile from the position which crystallized way back in the year 2010 as noticed above. We consider the answer in the negative. It is not open for the Appellant/State to now fix a date of the petitioner's approval in Government Services from any date contrary to or in violation of the order passed in WP 14073 (W) of 2010, which has attained finality and binding inter partes.
21. We, therefore, find no justification for fixing 01.01.2014 as the date of appointment of the petitioner, as the Writ Court as far back as in December 2010 has directed for its approval by the

State Authorities. The order passed in the writ proceeding is clear in its intent that it is in recognition and acknowledgment of service rendered by the petitioner since 1991 which is an indisputable position.

22. We, therefore, find no merit in the appeal filed by the State Authorities and affirm the directions of the Hon'ble Single Judge passed in the writ-proceeding.
23. The appeal being **MAT 1675 of 2023** and the application being **CAN 2 of 2023** accordingly stands **dismissed**.

(Madhuresh Prasad, J.)

(Partha Sarathi Chatterjee, J)