

06.02.2024
Item no.9.
Court No.6.
AB

**M.A.T. 2326 of 2023
With
IA CAN 1 of 2023**

**Sri Krishna Chandra Das
Vs
The State of West Bengal & Others**

Mr. Saikat Chatterjee,
Mr. Puranjan Paulfor the Appellant.

Mr. Sandipan Banerjee,
Mr. Arijeet Bhattacharyafor the Birbhum
Zilla Parishad.

Mr. Suman Dey,
Mr. Aniruddha Senfor the State.

By the impugned judgment and order dated October 10, 2023, the appellant's writ petition being WPA 14271 of 2023 was dismissed by a learned Judge of this Court.

The appellant/writ petitioner claims to have worked with the Birbhum Zilla Parishad as a daily rated worker till the year 2010. However, the Additional District Magistrate, Birbhum, at a hearing given to the appellant, came to a finding that the appellant was released from Birbhum Zilla Parishad on December 30, 1989. A dispute arose on that front. The appellant was wanting re-engagement. A representation was made by the appellant to the appropriate Authority. Since the representation was pending disposal, the appellant, in an earlier round of litigation, approached a learned Single Judge of this

Court by filing WPA 20736 of 2022. That writ petition was disposed of by the learned Judge by a judgment and order dated September 14, 2022, observing that if the petitioner can provide necessary documents as directed by the Additional District Magistrate, Birbhum, in support of his claim, his case of re-engagement as a daily rated worker under the Birbhum Zilla Parishad may be considered in accordance with law if the Authority deems it fit and proper.

It appears that subsequently, the Additional District Magistrate, Birbhum passed an order dated December 14, 2022, rejecting the representation of the appellant. Challenging such rejection order, the appellant approached the learned Single Judge in the present round of litigation.

The learned Judge dismissed the writ petition with the following observations and directions:

“The petitioner submits that there are other documents which the petitioner failed to produce before the authority at the time of hearing.

On a perusal of the order passed by the Court on 14th September, 2022, it appears that the Court was of the observation that disputed question of facts cannot be decided in the writ petition.

The petitioner claims that he is in service from 2010 and in support of the said submission the petitioner relies upon a certificate issued by the Adhyaksha of the Zilla Parishad on 19th May, 2010.

The Court is of the opinion that as the said certificate of the Adhyaksha was not produced at the time of consideration of this case accordingly the petitioner

cannot be permitted to rely upon documents in phases and thereafter seek reconsideration of his prayer.

In view of the above, the impugned order is not interfered with."

Being aggrieved, the writ petitioner is before us by way of this appeal.

At the outset, Mr. Chatterjee, learned Advocate for the appellant, in his usual fairness, says that this is a mercy appeal. At the hearing before the Additional District Magistrate, Birbhum, the appellant had produced certain documents but he did not obtain receipt thereof and, therefore, he has no evidence that he produced such documents. If such documents are considered, a decision may be taken in favour of the appellant. The appellant only prays for leave to go back to the concerned Authority with such documents for re-consideration of his prayer.

In particular, Mr. Chatterjee points out a document at page 67 of the stay petition, which is a communication dated May 19, 2010 from the Adhyaksha, District Council, Birbhum Zilla Parishad to the District Magistrate, Birbhum. Mr. Chatterjee says that this document along with related documents may be allowed to be submitted before the Additional District Magistrate, who may then pass an order, which the appellant shall accept as final.

Mr. Banerjee, learned Advocate appearing for the Zilla Parishad says that disputed questions of fact are

involved as noted by the learned Single Judge. The appellant has been granted sufficient opportunity of making his submission before the concerned Authority. He should not be allowed to reopen the matter once again.

Taking a lenient view of the matter and since the appellant candidly says that this is a mercy petition, we permit the appellant to make a final representation to the Additional District Magistrate, Birbhum annexing the document at page 67 of the stay petition and any connected document relevant to the present point, within a fortnight from date. If such representation is made, the District Magistrate, Birbhum shall dispose of the same by a reasoned order, in accordance with law, within a period of 12 weeks from the date of receipt of the representation, after granting an opportunity of hearing to the appellant or his authorized representative. The order so passed shall be communicated to the appellant within a week from the date of the order.

We make it clear that it is only on humanitarian and sympathetic ground that we are granting this opportunity to the appellant. He shall accept the order to be passed on the representation to be made by him as final.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

MAT No.2326 of 2023 stands disposed of along with IA CAN 1 of 2023.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)