

17.05.2024
Item Nos.20-21
gd/ssd

RVW/292/2023
CAN/1/2023, CAN/2/2023
STATE OF WEST BENGAL
VS
DR. JHARNA SOM AND ORS.
IN
WPA/36137/2013
CAN/3/2023, CAN/4/2023
JHARNA SOM
VS
CENTRE FOR RURAL &
CRYOGENIC TECHNOLOGIES & ORS.
WITH
CPAN/364/2023
DR. JHARNA SOM
VS
DR. SWAPAN CHANDRA SARKAR,
DIRECTOR OF CENTRE FOR RURAL &
CRYOGENIC TECHNOLOGIES & ORS.

Mr. Tapan Kumar Mukherjee
..Review Applicant.

Mr. Satadal Chatterjee,
Mr. Nemai Chandra Betal,
Mr. Suresh Kumar Sahoo
..for the Respondent No.1.

Mr. Subrata Mukherjee,
Ms. Basabi Roy Chowdhury,
Ms. Kakali Dutta
..for the Respondent Nos.2 and 3.

After hearing the learned advocates for the parties and upon considering the averments made in the application, the delay in filing the application is condoned.

The application being CAN 1 of 2023 is disposed of.

The application for review is taken up for hearing.

The State has filed this memorandum of review praying for review of the order dated August 30, 2022.

By the said order, direction was passed upon the State of West Bengal to release all retirement benefits to the writ petitioner including pension and gratuity as she has obtained the clearance certificate in the meantime.

Mr. Mukherjee, learned Additional Government Pleader submits that the employees of the Institute is not entitled to any pensionary benefits. He submits that this court without deciding the issue as to whether the employee of the Institute is entitled to any pensionary benefit directed the State to release pensionary benefit in favour of the writ petitioner. He, therefore, submits that the judgment under review suffers from error apparent on the face of the record.

Mr. Chatterjee, learned advocate appearing for the respondent no.1 in the review application submits that the writ petitioner prayed for release of all retirement benefits including pension and gratuity and this court after taking into consideration all materials on record directed the State to release pensionary benefit. He, therefore, submits that the review applicant cannot argue the issue as to

entitlement of the petitioner to get the pensionary benefit in a review application as the same would amount to a re-hearing of the matter on merits.

In support of his submission that a review cannot be an appeal in disguise, Mr. Chatterjee referred to a decision delivered on February 24, 2023 in Civil Appeal Nos.1167-1170 of 2023 in S. Murali Sundaram v. Jyotibi Tandon & Ors. He also submits that the issue as to whether the employees of the Institute are entitled to pensionary benefit has already been decided by a Coordinate Bench in a writ petition being WP 4321(W) of 2010.

Mr. Mukhopadhyay, learned senior counsel representing the Institute submits that the issue as to entitlement of pensionary benefit cannot be raised in the review application as the same would amount to re-hearing of the matter. He submits that the writ petitioner specifically prayed for release of pensionary benefit as well as gratuity and since this court has directed release of pensionary benefit and gratuity, it goes without saying that the issue of entitlement of gratuity and pension has been decided by this court in favour of the writ petitioner.

Heard the learned advocates for the parties and perused the materials placed.

It would be relevant to take note of the order dated 4th August, 2022 wherein Mr. Mukherjee, learned

Additional Government Pleader submitted that the writ petitioner was directed to obtain clearance certificate from the Finance Department of the Centre concerned and there is nothing on record to indicate that such clearance certificate was obtained by the writ petitioner and submitted to the competent authority thereafter.

In reply to the said submission of Mr. Mukherjee, the learned advocate for the petitioner sought for some accommodation to take specific instruction from his client on that aspect and to revert back on the next occasion.

The matter was directed to appear in the list on August 11, 2022 under the heading "For Orders". Thereafter the writ petition was taken up on August 30, 2022 and the submission of the learned advocate for the petitioner that the Director of Centre concerned has issued clearance certificate dated August 22, 2022 was noted. It was further recorded in the order that it is evident from the clearance certificate that there are no dues or liabilities in the name of the petitioner which is to be recovered as per the records maintained by the said Centre. The court after taking note of the fact that the clearance certificate has been issued by the Centre passed directions for release of all retirement benefit to the petitioner including pension and gratuity as she has obtained the clearance certificate in the meantime.

After going through the order dated August 30, 2022 this court finds that the issue as to entitlement of the petitioner to pensionary benefit was not decided. The said direction to release retirement benefits including pension and gratuity was passed only taking note of the relief claimed by the petitioner in the writ petition. The Hon'ble Supreme Court in *S. Murali Sundaram (supra)* reiterated the settled proposition of law that under the guise of review the petitioner cannot be permitted to re-agitate and re-argue questions which have already been addressed and decided. It was further observed therein that an error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of record justifying the court to exercise its powers of review under Order 47 Rule 1 of the Code of Civil Procedure.

As already observed hereinbefore that the issue with regard to the entitlement of the petitioner to pensionary benefit was neither addressed nor decided by this court while passing the order dated August 30, 2022.

This court is, therefore, of the considered view that the order directing release of pensionary benefit without deciding the issue as to the entitlement of the petitioner to pensionary benefit suffers from an error apparent on the face of the record.

This court is, therefore, inclined to allow the prayer for review of the order dated August 30, 2022.

Accordingly, the order dated August 30, 2022 is recalled. The writ petition is restored to its original file and number.

As jointly prayed by the learned advocates for the parties, list this matter immediately after reopening of this court after Summer Vacation.

The review application being RVW 292 of 2023 is allowed.

Consequently, the application being CAN 2 of 2023 is disposed of.

In view of the order passed by this court, the application for contempt being CPAN 364 of 2023 stands disposed of.

(HIRANMAY BHATTACHARYYA, J.)