

M.A.T. No. 150 of 2020
With
CAN 3 of 2020 (Old No. CAN 2007 of 2020)

State of West Bengal & Ors.

Vs.

Rani Kisku
(ASSIGNED)

Mr. Suman Singh

...for the Appellants

Mr. Saikat Banerjee, Sr. Adv.,

Mr. Kalyan Kumar Panda,

Mr. Uttam Kumar Roy

...for the Respondent

1. Heard the learned counsel for the appellants as well as the learned counsel representing the respondent/writ petitioner.
2. The intra-court appeal has been filed by the State assailing the order passed in the writ proceedings directing condonation of 26 days deficiency in qualifying service of one year, for extending benefit of the DCRB to the living spouse of the deceased.
3. The learned counsel for the State submits that the deceased government employee died when there was a deficiency of 26 days in completing one year of his service. There being a deficiency in qualifying service, he was not entitled to any benefits under the DCRB in terms of Memo. dated 01.11.2010. He further submits that the direction of the Hon'ble Single Judge if allowed to sustain would open a floodgate of similar claims.
4. The learned counsel for the writ petitioner/respondent on the other hand submits

that the facts of the present case are unique inasmuch as in the earlier writ petition filed by the writ petitioner bearing W.P. No. 14131 (W) of 2014 this Court by an order dated 08.05.2014 had already directed to extend the benefit of the Death-cum-Retirement Benefits Scheme to the writ petitioner. In spite of such direction when the authorities refused to grant the said benefit, the second writ petition was filed.

5. The order of the writ court dated 08.05.2014 passed in W.P. No. 14131 (W) of 2014 reads :

“...Accordingly, the writ petition is disposed of with a direction upon the respondent authorities to extend the benefit of the Death-cum-Retirement Benefit Scheme, 1981, to the writ petitioner within a period of six weeks from date. It is, however, made clear that the benefit of the said Scheme shall accrue in favour of the writ petitioner strictly in terms of memo. No. 883/SL/5S-61/10 (part) dated 12th July, 2011, issued by the School Education Department, Government of West Bengal.”

6. Having regard to the earlier order passed in the earlier writ proceedings, the Hon’ble Single Judge was of the view that it was a case where the authorities had failed to perform their duty and extend the benefit in compliance with the order passed in W.P. No. 14131 (W) of 2014. In these peculiar circumstances, the Hon’ble Single Judge was of the view that it was a fit case for issuance

of a positive direction to the authorities to perform the duty which they were otherwise obliged to perform, and had failed to perform. There being no appeal against an order passed in earlier W.P. No. 14131 (W) of 2014.

7. It is trite law that normally a writ Court exercising jurisdiction under Article 226/227 of the Constitution of India should remand the matter to the authority concerned for deciding the issue afresh. However, in a case like the present one where there is no dispute that an obligation to perform a particular duty is cast upon the authorities, and they are already bound by an earlier order to extend the benefit of DCRB, then nothing prevented the Hon'ble Single Judge from issuing a positive direction. Our conclusion is fortified by decision of the Apex Court in the case of **State of Bihar vs. Dr.Braj Kumar Mishra and Others** reported in **(1999) 9 SCC 546**:

“7. It is true that normally the court, in exercise of its power under Articles 226/227 of the Constitution of India, after quashing the impugned order should remand the matter to the authority concerned particularly when such authority consists of experts for deciding the issue afresh in accordance with the directions issued and the law laid down by it but in specified cases, as the instant case, nothing prevented the Court from issuing directions when all the facts were admitted regarding the eligibility of Respondent 1 and his possessing the requisite qualifications.

Remand to the authorities would have been merely a ritual and ceremonial. Keeping in mind the lapses attributable to the Commission which had failed to take appropriate action despite recommendation made in favour of Respondent 1, the learned Single Judge as also the Division Bench of the High Court felt it necessary to declare Respondent 1 promoter with effect from 1-2-1985. We do not find any illegality or error of jurisdiction. Learned counsel appearing for the appellants were apprehensive that if the impugned judgment is not set aside, it may become precedent and in other cases pertaining to the University, such directions may be issued in future also preventing the authorities and the State Government from exercising their statutory powers. The apprehension is misconceived and without any substance. To allay even such apprehension we deem it appropriate to clarify that the impugned judgment has been passed under peculiar circumstances of the case and is no precedent with respect to the subject regarding which the appellants have conceived an apprehension.”

8. The order of the Hon'ble Single Judge, in the peculiar circumstances, in our opinion does not require any interference since the admitted position that emerges on account of non-filing of any appeal against the order dated 08.05.2014 passed in W.P. No. 14131 (W) of 2014 is that the said order was binding *inter partes*. The issue of condonation of 26 days is otherwise also sustainable under provisions in the DCRB Rules, allowing for condonation up to period of 6 months.

Therefore, also in view of the rule position there is no obstacle coming in the way of grant of such relief to the writ petitioner.

9. Insofar as the floodgate argument is concerned, we are not impressed by such argument. In this connection, we refer to decision of a co-ordinate Bench in the case of ***Subhas Chandra Chakraborty Vs. State of West Bengal & Ors.*** reported in ***2012 SCC OnLine Cal 9059***, which has been placed by the learned counsel representing the writ petitioner/respondent wherein a similar argument was raised and rejected by the Division Bench by observing that a valuable right of a citizen cannot be interfered with merely because there is an apprehension in the mind of the State authorities that allowing such relief to continue would open a floodgate of litigation. The argument is, therefore, rejected.
10. Since we have relied upon decision of the Apex Court in the case of ***Braj Kumar Mishra (Dr.)*** (*supra*), extracted above, such apprehension, in our opinion is without any basis.
11. We find no merit in the intra-court appeal and the same is hereby dismissed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)