

22.07.2025
Court No.13
Item No.5
AP

FMA 4312 of 2014
With
CAN 2 of 2024
With
CAN 3 of 2024

Kolkata Police Cooperative Bank Ltd and Anr.
Vs.
Swapan Kumar Samanta and Ors.

Mr. Malay Kumar Roy
Ms. Sumita Shaw
Mr. Soumen Chatterjee

.... For the Appellants.

Mr. Kapil Guha

..For the Respondent No.1.

Mr. Ankit Sureka
Mr. Biplob Das

..For the Respondent No.3.

Re.: CAN 2 of 2024

1. CAN 2 of 2024 is an application for condonation of delay in filing CAN 3 of 2024.
2. Sufficient grounds are available to explain the delay. Given the gross impropriety in the impugned order, this Court finds that there is need for condoning long delay. Hence, the delay is condoned.
3. Accordingly, CAN 2 of 2024 is allowed.

Re.: CAN 3 of 2024

4. Sufficient grounds are available to explain the absence of the appellant and his advocates on 3rd February, 2016.
5. The order dated 3rd February, 2016 is recalled.

6. The appeal and the connected application are, hence, restored to its original file and number.

7. Accordingly, CAN 3 of 2024 is allowed.

Re. FMA 4312 of 2014

8. The appeal is directed against a judgement and/or order dated 16th April, 2014 passed by a Single Bench of this Court. By the impugned order, the Court directed payment of gratuity to the writ petitioner/respondent contrary to the rules applicable. The judgement is even otherwise per incuriam in view of a binding decision of a Division Bench of this Court in FMA 303 of 2010 that was disposed of by an order of a Coordinate Bench dated 5th July, 2011. The text of this order is as follows:-

“05.07.11
13/skp.

F.M.A. 303 of 2010

Mr. L.C. Bihani,
Mr. Tanuta Guray ... for the appellant.

Mr. Narayan Bhattacharyya,
Mrs. Sujata Ghosh ... for the State
Respondents.

Mr. Bikash Ranjan Neogi,
Mr. Tapan Sarkar,
Mr. Angshumoy Guha ... for the
respondents/ writ petitioners.

This appeal is directed against the judgment and order dated 23rd July, 2009 whereby and whereunder a learned Judge of this Court disposed of the writ petition upon holding that the writ petitioners will be governed by the West Bengal Service Rules and not by the West Bengal Cooperative Societies Rules, 1987.

It is not in dispute that the writ petitioners were appointed under the West Bengal Service Rules and have been enjoying the service benefits all through

under the aforesaid West Bengal Service Rules. Furthermore, the said writ petitioners also exercised their options for being guided and governed under the West Bengal Service Rules.

Mr. Bihani, learned senior Counsel representing the appellant submits that Clause 69 (1) of the Bye-laws of the Calcutta Police Cooperative Bank Ltd. has been amended with effect from 18th February, 2005 to the following effect :

“69. (1) The condition of service of employees of this bank shall be as enunciated in the appendix to chapter-vi of the WBCS rule 1987 including provision to rule 69(3).”

The aforesaid amendment cannot have any effect on the members of the writ petitioner no. 1 who were employed in the concerned Cooperative Bank before the aforesaid amendment of the Bye-laws and the said members will be entitled to enjoy the service benefits under the West Bengal Service Rules since the aforesaid amendment can not have any retrospective effect.

Therefore, the learned Single Judge was right in holding that the writ petitioners will be governed by the West Bengal Service Rules and not under the West Bengal Cooperative Societies Rules, 1987.

However, the members of the respondent no. 1, who were appointed or will be appointed subsequent to the amendment of Clause 69(1) of the Bye-laws cannot be governed under the provisions of the West Bengal Service Rules or claim any service benefits under the aforesaid West Bengal Service Rules since they will be governed by the amended provisions of the Bye-laws of the Calcutta Police Cooperative Bank Ltd.

The members of the respondent/writ petitioner no.1 Association, who exercised options for being guided and governed by the West Bengal Service Rules formed a separate class and they cannot be equated with those who were appointed after the amendment of Clause 69(1) of the Bye-laws.

Therefore, the members of the respondent/writ petitioner no. 1, who exercised options for being governed and guided under the West Bengal Service Rules before the amendment of the Bye-laws 69(1), will enjoy the service benefits under the West Bengal Service Rules and the other employees including the members of the respondent/writ petitioner no. 1 who did not

exercise options or joined in the service after amendment of the aforesaid Bye-laws will be guided under the amended provisions of the Bye-laws and not under the provisions of the West Bengal Service Rules.

With the aforesaid observations, we modify the impugned judgement and order under appeal passed by the learned Single Judge and dispose of this appeal without awarding any costs.

Let urgent Xerox certified copy of this order, if applied for, be given to the parties as early as possible.

(Pranab Kumar Chattopadhyay, J.)

[Shukla Kabir (Sinha), J.]

9. Having regard to the above finding of the Division Bench, which we completely approve of, the payment of gratuity to the petitioner and all other similarly situated employees in the cooperative bank concerned shall be governed by the aforesaid order.

10. With the aforesaid observations, FMA 4312 of 2014 is disposed of. Consequently all connected pending application, if any, is also disposed of.

11. There shall be no order as to costs.

12. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)