

09.01.2025
sayandeep
Sl. No. 06
Ct. No. 08

MAT 1628 of 2024
With
CAN 1 of 2024, CAN 2 of 2024

The State of West Bengal & ors.
Vs.
Pijush Bandopadhyay & anr.

Mr. Somnath Ganguli, Id. AGP
Ms. Kalpita Paul

.... for the appellants

Mr. Pijush Bandopadhyay

.... Respondent no. 1
appearing in-person

Mr. Biswasbrata Basu Mallick
Mr. Biman Halder

.... for the DPSC, Hooghly

In Re: CAN 1 of 2024

Despite the direction on 23rd December, 2024, permitting the respondent No. 1 to file affidavit-in-opposition to an application for condonation of delay, the said respondent chose not to file affidavit-in-opposition.

We had an occasion to peruse the averments made in the said application wherefrom it appears that after the order was passed, the steps which are required to be taken was undertaken by the State but because of the procedural hassles, the delay has occasioned. Furthermore, the respondent No. 1 has not disputed the averments made therein and, therefore, the doctrine of non-traverse gets attracted. We find that the appellant was prevented by a sufficient case in not preferring the instant appeal within the period of limitation provided therefor. The delay in filing the instant appeal is hereby condoned.

The application being CAN 1 of 2024 is disposed of. The Office is directed to regularize the appeal.

In Re: MAT 1628 of 2024

The appeal is directed against a judgment and order dated 22nd April, 2024 passed by the Single Bench in WPA 26486 of 2023 by which the writ petition filed by the respondent was disposed of directing the concerned authorities to take appropriate steps for disbursement of the pensionary benefit to the said respondent. It is undisputed that the respondent felt perturbed with the behaviour and the conduct of the co-teachers and decided to discontinue in service. The application was filed to resign way back in 2015 but there was no conscious decision taken by the authority. Ultimately, further application was made in the year 2017 and the authorities activated the process and accepted the earlier application from the prospective date, i.e., 1st April, 2017. Though the gratuity and the provident fund were paid but according to the respondent No. 1 is not in conformity with the provisions of law. According to the respondent No. 1, he has been unreasonably harassed by the authorities concerned not only in disbursement of the retiral dues but also the pension.

It appears that a writ petition being WP 11614 (w) of 2018 was filed before this Court by the respondent No. 1 and a direction was passed upon the authority to take a conscious decision which was duly complied with and the petitioner was permitted to retire from service with effect from 1st May, 2017. Subsequently, another writ petition being WP 4367 (w) of 2019 was filed when there was no disbursement of the retiral dues as well as other benefits attached to the said service and by an order dated 10th June, 2019, the same was disposed of in the following:

“It is, however, made clear that as per the order of the Chairman, Hooghly District Primary School Council, the petitioner will be treated to have retired from his service on and from May 1, 2017

and the retiral benefits will be calculated on the basis thereof.

All the respondents should cooperate in the matter and finalise the issue so that the retiral dues of the petitioner are given to him after adjustment of any salary, which may have been paid to the petitioner after April 31, 2017.”

Despite the same, there was no response from the respondents which constrained the petitioner to file another writ petition being WPA 4661 of 2023 before this Court. The said writ petition was entertained and by an order dated 31st March, 2023, the opportunity was given to the respondent authorities to file their affidavits. After taking into account that the provident fund and gratuity had already been paid, subsequently, the said writ petition got disposed of on 23.08.2023 noting that there has been discrepancies in the stand of the respondent so far as the payment of the provident fund and gratuity are concerned as well as the pensionary benefits and directed the District Inspector of Schools (Primary Education), Hooghly to permit the respondent No. 1 to produce all relevant documents and to decide the issue after giving an opportunity of hearing. Pursuant to the said order, the authority rejected the claim of the petitioner on 16.10.2023. The said order dated 16th October, 2023 is challenged by the respondent No. 1 by filing a writ petition being WPA 26486 of 2023 which is disposed of by the impugned order.

The point which emerged in course of hearing is whether the person who has resigned, is entitled to a pensionary benefit or the other benefits. It appears that while accepting the letter, the authority decided to make the petitioner retire from 1st May, 2017 and precisely for such reason, the learned Single Judge was of the view

that it is not a case of a resignation but the case of retirement. If the authorities have chosen to retire prematurely, it does not take away the other rights available to a retiree under the law. Precisely, for such reason, the order dated 10th June, 2019 was passed in WP 4367 (w) of 2019 wherein the authorities were directed to treat the respondent No. 1 to have retired from service. Meaning thereby, the stand of the State that the petitioner in fact has resigned was not found to be factually correct. Even the direction was passed in a subsequent writ petition upon the concerned authority to take a decision.

It is undesirable that the administrative authority would take a decision contrary to the Judgment of the Court. The order dated 10th June, 2019 has not been challenged by the respondent authorities and, therefore, attained finality. The moment, the Court has declared that the particular fact exists or emanates from the record, it is not open to the administrative authority to take a contrary view as it would undermine the majesty and the sanctity of the Court and would also percolate the sense of uncertainty into a system. The authorities are bound by the Judgment rendered by the Court and any action *per se* taken contrary to the mandate of the Court is susceptible to be interfered with and, therefore, the authorities are reminded to act and obey the decision of the Court. The Single Bench has found that the order dated 16.10.2023 passed by the authority runs diametrically opposite to the decision of the High Court taken on 10th June, 2019 in WP 4367 (w) of 2019 and, therefore, proceeded to set aside the order.

In view of the facts as disclosed above, we do not find any infirmity and/or illegality in the impugned order.

The appeal is hereby dismissed without any order as to costs.

In view of the dismissal of the appeal itself, the connected application being CAN 2 of 2024 also stands dismissed.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)