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FMA 109 of 2025
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IA No.: CAN No. 1 of 2025
Calcutta State Transport Corporation
– *Versus* –
Subrata Banik & Others

Mr. Amal Kumar Sen,
Ms. Sahina Sumi
... for the Appellant.

Mr. Manas Kumar Ghosh,
Ms. Susmsita Dey (Basu)
... for the Writ Petitioner/
Respondent No.1.

Affidavit-of-service, as filed, be kept on record.

The present appeal has been preferred challenging an order dated 5th October, 2024 passed by the learned single Judge in the writ petition, being WPA 12429 of 2023, which was filed the respondent no.1/writ petitioner, namely, Subrata Banik (in short, Subrata) praying for issuance of necessary direction upon the respondents therein to give effect to his regularisation from 2003 when his contemporaries were regularised or from 2009 when 276 employees, who were appointed on compassionate ground, were regularised as per the memorandum issued by the Transport Department of the Government of West Bengal *vide* memo dated 29th October, 2009.

By the order impugned in the present appeal, the learned single Judge allowed the writ petition directing the respondents therein to give effect to the

regularisation of Subrata from the year 2009 in conformity with the notification dated 29th October, 2009 within a period of eight weeks from the date of communication of the order.

Mr. Sen, learned advocate appearing for the Calcutta State Transport Corporation (in short, the said Corporation) / the appellant herein argues that earlier Subrata preferred a writ petition being WP 3762 (W) of 2016 challenging an order of the Managing Director of the said Corporation dated 9th March, 2015. Upon detailed consideration of the facts and the arguments, as advanced, the learned single Judge disposed of the writ petition on 29th July, 2016 directing the Managing Director of the said Corporation to regularise the service of Subrata. In the said order it was also directed that Subrata *'shall be entitled to all benefits of a permanent employee since regularization in terms of this order'*. As the direction towards entitlement of all benefits was stated to be *'in terms of this order'*, such regularisation ought to have been, at best, from the date of issuance of the order on 29th July, 2016. Such direction was affirmed in the appeal carried against the said order by the said Corporation and its functionaries, being MAT 1781 of 2016. Upon affirmation of such finding and in compliance of the order of the Hon'ble Appeal Court, Subrata was appointed on regular basis with effect from 25th July, 2017, as would be explicit from the memo

dated 22nd November, 2017 issued by the Deputy Managing Director (Estt.) of the said Corporation.

Mr. Sen contends that Subrata consciously accepted the appointment with effect from 25th September, 2017 and subsequent thereto, he also availed promotion to the post of cashier, as would be explicit from the memo dated 12th July, 2021 issued by the Depot Manager, Garia Depot. Having accepted the order of appointment with effect from 25th September, 2017, Subrata cannot turn back and claim regularisation with effect from 29th October, 2009 by filing a writ petition in the year 2023. Such arguments, as urged, were glossed over by the learned single Judge and no finding was returned on the same. Such infirmity warrants interference in the present appeal.

Mr. Ghosh, learned advocate appearing for Subrata / respondent no.1 herein, however, denies and disputes the contention of Mr. Sen and submits that it would be explicit from the order dated 29th July, 2016 passed in WP 3762 (W) of 2016 and the order dated 16th August, 2017 passed in MAT 1781 of 2016 that both the said orders were passed taking into consideration the notification dated 29th October, 2009. The Hon'ble Appeal Court even rejected the contention of Mr. Sen that the order of the learned single Judge was passed misconstruing the contents of the notification dated 29th October, 2009. The finding of the Hon'ble Appeal Court

was that having extended the benefits of the said notification to the incumbents similarly situated with Subrata, the appellants therein cannot deny regularisation to Subrata since, according to the Court, *'it would be inequitable to mete out dissimilar treatment to similarly placed persons'*.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The argument of Mr. Sen that after accepting the pay scale and other benefits with effect from 25th September, 2017, in compliance of the order dated 16th August, 2017, Subrata cannot turn back and claim regularisation in terms of the notification dated 29th October, 2009 was, in our opinion, rightly discounted by the learned single Judge since in both the orders dated 29th July, 2016 and 16th August, 2017 the notification dated 29th October, 2009 was considered and a specific finding was arrived at that Subrata was similarly situated with all the 276 employees who were regularised on the basis of the said notification. Thus, grant of appointment with effect from 25th September, 2017, in our opinion, is not in consonance with the directives issued by the Hon'ble Appeal Court in the earlier round of litigation. It is well-settled that any order passed in derogation to an order of the Hon'ble Court would be a nullity. In view thereof, it cannot be

argued at this stage that having accepted appointment with effect from 25th September, 2017, Subrata cannot be granted the benefit of regularisation in conformity with the notification dated 29th October, 2009.

An appellate power interferes not when the order appealed is not right but when it is clearly wrong. In our opinion, the learned single Judge upon considering the orders passed in the earlier rounds of litigation has rightly directed the said Corporation and its functionaries to give effect to the regularisation of Subrata in conformity with the notification dated 29th October, 2009. Upon dealing with all the factual issues, the learned single Judge arrived at specific findings and we do not find any error, least to say any patent error of law in the order impugned, warranting interference of this Court.

Accordingly, the appeal and the connected application are dismissed.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Reetobroto Kumar Mitra, J.) (Tapabrata Chakraborty, J.)