

19.03.2025
Court No.13
Item No. 2

sp

RVW 242 of 2016
With
CAN 1 of 2016
In
FMA 3262 of 2016
Ambika Prasanna Saha
Vs.
The State of West Bengal & Ors.

Mr. Kallol Basu,
Mr. Suman Banerjee

..for the appellant

1. Review is sought in the order dated 6th May, 2016 passed by a Co-ordinate Bench of this Court in MAT 357 of 2016.
2. The matter has a chequered history. This is a second review application and forth round of litigation by the petitioner.
3. The first writ petition was filed by the petitioner being WP 792 (W) of 2009, seeking mandamus on the College Service Commission to recommend the petitioner to a college upon being selected and empanelled as the first candidate. The College Service Commission stated that they had not received any request from any college and were hence not in a position to recommend the petitioner for any appointment.

4. Finding that the petitioner had no enforceable right to seek mandamus, a Single Bench of this Court by order dated 10th September, 2009 dismissed the writ petition being WP 792 (W) of 2009.

5. An appeal was carried therefrom to a Division Bench in FMA 333 of 2010. By order dated 16th April, 2010, the Division Bench confirmed the order of the Single Bench and found that since there was no request from any college to the Commission for filling up any post, the petitioner did not have any right of being appointed and hence could not seek mandamus.

6. The petitioner applied for review of the order of the Co-ordinate Bench dated 16th April, 2010 in RVW 235 of 2012. The principal ground for review was that the petitioner came across a request from one Dum Dum Motijheel College for a professor in Molecular Biology. The Co-ordinate Bench allowed the review of the Court's order dated 16th April, 2010 on the basis of the new facts were brought on record hitherto unknown to the petitioner. The petitioner was directed to be appointed to the Dum Dum Motijheel College vide order dated 2nd August, 2013.

7. The petitioner joined the said college on 23rd September, 2013 without demur or protest. Even in

the order of review dated 2nd August, 2013, the Court did not deem it fit or necessary to allow any notional retrospective benefit of length of service from the date of empanelment of the petitioner by the College Service Commission, i.e., from 2008.

8. After joining the college, the petitioner filed WP 30438 (W) of 2015 that was dismissed of by a Single Bench of this Court vide order dated 7th January, 2018 holding that the petitioner could not claim any retrospective benefit of his appointment from 2008 even notionally since he had joined the college pursuant to the order dated 2nd August, 2013 (supra) on 23rd September, 2013 without demur or protest. The order dated 2nd August, 2013 did not allow any retrospective benefit to the petitioner from the date of original empanelment by the Commission.

9. An appeal was carried from the said order dated 7th January, 2016 to a Co-ordinate Bench in MAT 357 of 2016. The said appeal was dismissed by an order dated 6th May, 2016 whereby the Division Bench found the reasons supplied by the Single Bench in the order dismissing the writ petition dated 7th January, 2016 to be sound.

10. The Division Bench also found that at no point of time in the earlier proceedings had the writ

petitioner claim appointment from the date of first recommendation by the College Service Commission in the year 2008.

11. This Court is of the view that the ground urged by Mr. Kallol Basu, learned counsel for the appellant that the Commission had perpetrated fraud on Court by suppressing the factum of the request of the Dum Dum Motijheel College unacceptable. The provisions of Order 43 of the Code of Civil Procedure, 1908 are, therefore, not attracted. By reason of allowing the petitioner to join the Dum Dum Motijheel College and directing cancellation of any process of appointment of professor of Molecular Biology in the said college undertaken prior thereto, the Division Bench has granted all reliefs as prayed for by the petitioner.

12. The writ petitioner not having pressed for his appointment to be taken even notionally from the date of first empanelment by the College Service Commission in 2008, cannot be allowed to do so in the instant proceeding which commenced with WP 30438 (W) of 2015. The reliefs must either have been waived or must be deemed as refused by this Court in the earlier round of proceedings which culminated in the order dated 2nd August, 2013 (supra) passed in the earlier review application being

RVW 235 of 2012. The prayer may also be barred by the principle of constructive Res judicata.

13. No new facts or error apparent on the face of record has been committed by the earlier Division Bench in its order dated 6th May, 2016.

14. In those circumstances, RVW 242 of 2016 fails and is hereby dismissed.

15. In view of the above, CAN 1 of 2016 shall stand disposed of.

16. Interim orders, if any, shall stand vacated.

17. There shall be no order as to costs.

18. 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.)