

S/L 20
19.06.2026
Court No.04
B.K.N

F.M.A. 993 of 2022
With
CAN 1 of 2022
Bimal Debnath
Vs.
The State of West Bengal & Anr.

Mr. Samaresh Ch. Dhara

...for the Appellant.

*Ms. Chandreyi Alam, Ld. AGP,
Ms. Kakali Dutta*

...for the State.

1. Heard the learned advocate for the appellant.
2. The present Intra Court Appeal arises out of a judgment dated 23.02.2022 passed in writ proceeding dismissing the writ petitioner.
3. The brief background is that pursuant to order passed in W.P. No. 18293(W) of 2010 wherein the present appellant was writ petitioner, his services against Group-D post in the school was approved. The judgment of the Writ Court is dated 24.12.2010.
4. The authorities thereafter discovered that the Writ Court passed the said order dated 24.12.2010 relying upon decision of the Hon'ble Supreme Court of India in the case of ***U.P. State Electricity Board –Vs.- Pooran Chandra Pandey and Others*** reported in ***2007 (11) SCC 92***. Prior to passing of the order by the Writ Court on 24.12.2010, the said judgment of the Hon'ble Supreme Court of India was held to be obiter and bad law by the Hon'ble Apex Court in the case of ***Official Liquidator –Vs.- Dayanand and Others***

reported in **(2008) 10 SCC 1**. The authorities, therefore, made an application for recalling of the order dated 24.12.2010 whereby and whereunder the petitioner's claim for approval for service was allowed. The Hon'ble Single Judge recalled the order dated 24.12.2010 passed in W.P. No. 18293(W) of 2010 by an order dated 04.02.2020 passed in CAN 3930 of 2018. Pursuant to such order, the petitioner stopped getting any benefit of the service in light of the earlier order dated 24.12.2010 passed in W.P. No. 18293(W) of 2010.

5. The present writ petition was filed in 2021 wherein a prayer was made for release of money claiming that the petitioner continues to serve in the school. The respondents took a stand that in view of the order passed in CAN 3930 of 2018 on 04.02.2020 there was no question of the petitioner claiming to be in service or to be entitled to any payment in lieu of services. The Hon'ble Single Judge has accepted such plea of the State authorities.
6. We made a specific query from the learned advocate for the appellant whether the recall order dated 04.02.2020 passed in CAN 3930 of 2018 was ever put to challenge by the appellant in any proceeding. The learned advocate fairly submits that the order was not put to challenge by the writ petitioner. He submits that the order was passed without giving him an opportunity of hearing and behind his back. Such submission, in our opinion, cannot be made the basis of ignoring the order

dated 04.02.2020 passed in CAN 3930 of 2018 recalling the order dated 24.12.2010 in the petitioner's earlier writ proceeding. Whether the petitioner was heard or not and whether the order passed in CAN 3930 of 2018 was sustainable or not is an issue which may have been considered if the order dated 04.02.2020 passed in 3930 of 2018 was ever put to challenge by the writ petitioner/appellant, which he has chosen not to do. Therefore, there is no occasion for the petitioner to allege that any wrong was committed by the authorities in complying with the order passed in CAN 3930 of 2018.

7. The Hon'ble Single Judge, in our opinion, therefore, has rightly refused to entertain the petitioner's plea for grant of benefits in recognition of his service on a Group-D (non teaching post). The judgment of the Hon'ble Single Judge does not suffer from any infirmity and requires no interference in this Intra Court Appeal.
8. The appeal is dismissed. Pending application is also dismissed.
9. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Madhuresh Prasad, J.)

(Prasenjit Biswas, J.)