

# SUPREME COURT OF INDIA

Swapan Dhar

Vs.

State of W.B.

(S.B. Sinha and H.S. Bedi JJ.)

08.10.2007

## JUDGMENT:

**S.B. SINHA, J.**

1. Leave granted.

2. Appellants herein were working as temporary pump operator in Calcutta Metropolitan Development Authority. They were transferred to the Calcutta Municipal Corporation (hereinafter referred to as "the Corporation"). They were asked to join by June 15, 1978 on the post of Turn Cock which according to them was a lower post. A writ petition came to be filed by the appellants, inter alia, stating that they had a legitimate claim of being appointed as a Fitter Driver. By judgment and order dated 11.7.1986, a learned Single Judge of the High Court disposed of the said petition by directing the respondent-authorities to consider the case of the appellants from all aspects including the question of seniority and offer them suitable posts equivalent to the posts which they had been holding under the CMDA prior to their services being transferred to the Corporation.

3. It is alleged that the Deputy Municipal Commissioner (personnel) rejected the claim of the appellants by mis-interpreting the order dated 11.7.1986 passed by the High Court. Appellants filed another writ petition before the High Court. The said writ petition was allowed by a learned Single Judge of the Calcutta High Court by an order dated 8.1.1992 directing as under:

"Proper reading of the order dated June 8, 1978 is warranted. The order is itself a ground for setting aside the order impugned in the writ application. Further more, the affidavit-in-opposition affirmed on September 17, 1991 by Sunil Kumar Banerjee, Assistant Administrative Officer of the Calcutta Metropolitan Development Authority supported the case of the petitioner to the extent indicated above. It is also very unfortunate that the respondents never cared to consider the materials on record as also the noting of the officer prepared for consideration of the higher authorities. In those circumstances, I set aside the impugned order. I hold that the petitioners were entitled to be treated in employment and equalization of posts. The petitioners shall be accorded all the service benefits. The petitioners shall be accorded service benefits from the date of presentation of the writ application and not from any earlier date. The writ petition succeeds with the direction made hereinabove. This order shall be implemented within a period of three months from the date of communication of this order." (emphasis supplied)

4. Appellants did not prefer any appeal against the said order whereas the Calcutta Municipal Corporation did. The Division Bench of the Calcutta High Court by a judgment dated 24.8.1993

while dismissing the appeal preferred by the Corporation, observed as under:

"We do not find any reason to treat the writ petitioners opposite parties as Turn Cock and consequently, whether the post of fitter driver promotional or not, wholly immaterial in this case. If the writ petitioners opposite parties substantively appointed in the post of Turn Cock in that event it could have been contended that they cannot lay their hands to the post of fitter driver which was promotional post except by way of promotion. Considering all the facts and circumstances of the case we are clearly of the view that the learned trial Judge was right in holding that they were to be treated as fitter driver with effect from the date of their transfer of service. We do not find any ground and/or reason to interfere with the order passed by the learned trial judge." 5 A Special Leave Petition preferred against the said judgment was dismissed by this Court by an order dated 25.2.1994.

6 Relying on or on the basis of the observations made by the Division Bench of the High Court, Appellants filed an application for initiation of proceedings for contempt under the Contempt of Courts Act against the officers of the respondents. The said contempt application was disposed of by the Division Bench by an order dated 29.6.1995 in the following terms:

"It is ordered that the respondents authority above named do treat the said petitioners re-designated as Fitter Driver, grade II with effect from the eight day of June, one thousand nine hundred and seventy eight and not with effect from the twenty first day of December one thousand nine hundred and seventy nine and as Fitter driver grade I with effect from the twenty nine day of June one thousand nine hundred and eight five as is evident from the order of the trial court dated the eight day of January one thousand nine hundred and ninety two and not with effect from the twenty third day of February one thousand nine hundred and eight seven and this order is made as this court is of view that the respondents above named might not have understood the purport of this order made by the trial court which was confirmed by the Division Bench. And it is further ordered that this Rule nisi be and the same is hereby discharged and the application on which the said Rule nisi was issued do stand disposed of with the forgoing directions. And it is further ordered that the parties are to act on a copy of the dictated order counter signed by an officer of this Court being produced before them."

7 Pursuant to or in furtherance of the said directions, the observations made by the Calcutta High Court both in the writ petition as also the Contempt Proceedings, an order was passed by the Corporation on 28.9.1995 on the following terms: "1 That you are treated as Fitter Driver Grade II w.e.f. 8.6.78 and the necessary correction to this effect in service book will be made accordingly.

2. That you will get service benefit w.e.f. 23.2.87 i.e. the date of presentation of writ application.

3. That the period of joining i.e. 21.12.79 till the date of judgment of the trial court be counted as terminal benefit.

4. You will be treated as Fitter Driver Grade- I w.e.f. 29.6.85."

8 Appellants were not satisfied with the said office order dated 28.9.1995. Their contention was that the Corporation having posted them on the post of Fitter Driver Grade-II w.e.f. 8.6.1978 and Fitter Driver Grade I w.e.f. 29.6.1985 should not have confined the grant of consequential benefits w.e.f. 23.2.1987 as was observed by the learned Single Judge. In view of the said order dated 23.9.1995,

another contempt petition was filed before the Calcutta High Court and by reason of order dated 12.2.1998, the same was not entertained, giving liberty to the appellants to file a separate writ petition.

9 A writ petition filed by the appellants pursuant to the said observations has been dismissed both by the learned Single Judge as also by the Division Bench. The appellants are, thus, before us.

10 Mr. Pradip Ghosh, learned senior counsel appearing for appellants would submit that the High Court committed a manifest error in passing the impugned judgment dated 24.8.1993 as it failed to consider the observations made by another Division Bench of the said Court in an earlier proceedings. It was submitted that the writ petition filed by the appellants herein could not be dismissed only because they did not challenge the order of the learned Single Judge dated 8.1.1992.

11 Mr. Tapash Ray, learned senior counsel appearing for the respondents, however, supported the impugned judgement. The learned counsel contended that a writ court in exercise of its discretionary jurisdiction while determining the right of an aggrieved party is entitled to grant consequential service benefits from a particular date. In other words, it is open to a court exercising writ jurisdiction to deny service benefits to an employee for a particular period.

12. As would be evident from the order dated 8.1.1992 passed by the learned Single Judge that it was categorically directed therein that the appellants were to be granted service benefits from the date of presentation of the writ application and not from any earlier date. Appellants accepted the said judgment. They did not prefer any appeal against the said order. Having allowed the said part of the order to attain finality, in our opinion, the appellants, at a subsequent stage, could not have claimed a new relief only relying on or on the basis of the observations made by the Division Bench. The doctrine of merger as propounded by the learned counsel for the appellants could have been held to be applicable provided the Division Bench had said the same expressly even though no appeal was taken by the appellants from the order of the learned Single Judge. The observations made by the Division Bench was only with regard to the determination of their right to be posted in Calcutta Municipal Corporation as Fitter Driver, Grades-I and II from a particular date. As mentioned hereinbefore, the judgment of the learned Single Judge was allowed to attain finality and in that view of of the matter, it is difficult for us to accept the submissions of Mr. Ghosh that by applying doctrine of merger or otherwise the Division Bench could give any higher benefits to the appellants although no appeal was preferred by them.

13. For the reasons aforesaid, we do not see any merit in this appeal. The appeal is, accordingly, dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs.