

(2005) 01 CAL CK 0026**Calcutta High Court****Case No:** Writ Petition No. 9832 (W) of 2004

Sankar Kumar Ghosh and

Another

APPELLANT

Vs

Kolkata Metropolitan

Development Authority and

Others

RESPONDENT

Date of Decision: Jan. 24, 2005**Citation:** 109 CWN 445**Hon'ble Judges:** Ashim Kumar Banerjee, J**Bench:** Single Bench**Advocate:** Debjani Sengupta, for the Appellant; Partha Sarathi Basu and A. Bagchi, for the Respondent

Judgement

Ashim Kumar Banerjee, J.

The short question involved in this writ petition is whether identical benefits given to other batch of writ petitioners can be extended to the present one in view of the decision of this court in an other proceeding where finality was reached on the issue because of the dismissal of a Special Leave Petition. The writ petitioners are employees of Kolkata Metropolitan Development Authority (hereinafter referred to as "KMDA"). They were demanding higher initial start. Another group of employees being similarly circumstance earlier approached this court on the selfsame grievance. The writ petition was allowed. KNDA did not prefer any appeal and thereby accepted the decision. As it would involve a huge financial burden on the state, state preferred an appeal after about six months from the stipulated day and also filed an application for condonation of delay. A Division of this court while hearing the application for condonation of delay considered the merits of the matter as well and ultimately dismissed the application for condonation of delay on the ground that there was no merit in the appeal. The said order dated February 7, 2001 passed by the Division Bench is appearing at pages 63 to 66 of the present writ petition.

2. A SLP was initially filed before the Supreme Court and it was dismissed as withdrawn. Liberty was, however, given to the State to apply afresh before the Division Bench for clarification. Such liberty was never availed of either by the state or by KMDA. Ultimately, the respondents implemented the said order under a threat of contempt.

3. The present writ petitioners are similar circumstanced and this fact was not disputed by KMDA as appears from paragraph 14 of their affidavit.

4. Mr. Partha Sarathi Basu, the learned counsel appearing for KMDA, submits that the earlier case was not properly handled by the authority and the petitioners therein, according to him, were not entitled to such benefits. However, the authority had no option but to extend such benefits under a threat of contempt. Mr. Basu further submits that dismissal of the SLP by the Apex Court itself would not preclude KMDA to argue on merits in the instant writ petition. Mr. Basu in support of his contention relied on two decisions of the Apex Court reported in AIR 1986, SC 1780 (Indian Oil Corporation Ltd. vs. State of Bihar) and State of Manipur Vs. Thingujam Brojen Meetei, In the first case Indian Oil Corporation challenged the order of reinstatement passed by the Labour Court directly before the Apex Court. The Apex Court dismissed the SLP by a non-speaking order. The Indian Oil Corporation thereafter approached the High Court against the award. The High Court refused to entertain the writ petition on the ground that the issue had reached finality because of dismissal of the SLP by the Apex Court. While setting aside the decision of the High Court the Apex Court observed that when a SLP was dismissed by a non-speaking order it would mean that the Apex Court thought it fit not to entertain such petition by granting Special Leave and there was no decision on merit. The Apex court also discussed the probable circumstances under which SLP could be dismissed in limine by a non-speaking order. In the later case also in a similar circumstance, Apex Court expressed the same view.

5. In my view in the present case the SLP was dismissed as withdrawn by granting liberty to the applicant to approach the High Court afresh for certain clarification. The authority did not choose to avail of such leave, instead they extended benefit by implementing the order of the learned single judge. It is further pertinent to mention admittedly at no stage KMDA made any grievance with regard to the decision of the learned single judge on merit.

6. How forceful the arguments of KMDA may be on merit, how plausible a justification KMDA could offer on merit, I am unable to go into the controversy once again by allowing KMDA to contest the claim of the petitioners on merit in the circumstances discussed hereinbefore.

7. I am of the view that once the earlier judgment was upheld by the Division Bench as I find from the order dated February 7, 2001 and once the writ petitioners in the other matter were extended benefit by virtue of the decision this court, the present

batch of petitioners must be accorded the same benefit.

8. Despite service, none appears on behalf of State to oppose this writ petition although a copy of the affidavit-in-opposition has been served upon Ms. Sengupta. appearing for the writ petitioners.

9. KMDA is directed to extend benefits to the present petitioners at part with the petitioners in W.P. No. 809 of 1999 within a period of four weeks from the date of communication of this order.

10. State is also directed to render all necessary assistance to KMDA to implement this order.

11. The writ petition stands disposed of accordingly. There would be no order as to costs. Let urgent xerex certified copy of this order be furnished to the parties on priority basis, if applied for.