

SWAPAN DHAR AND ORS.  
v.  
STATE OF WEST BENGAL AND ORS.

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OCTOBER 8, 2007

[S.B. SINHA AND H.S. BEDI, JJ.]

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*Judgment—Finality of—Judgment of Court—Party not challenging the same in appeal—Filing subsequent new writ petition claiming relief contrary to the judgment—Placing reliance on order of Court passed in appeal filed by the opposite party—Held : Such relief not permissible, party having accepted finality of the judgment by not preferring appeal thereagainst—In the facts of the case doctrine of Merger also not applicable—Service Law— Grant of Service benefits Doctrine of Merger.*

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D

*Doctrine—Doctrine of Merger—Applicability of.*

**Appellants, employed as temporary Pump Operators in Calcutta Metropolitan Development Authority, were transferred to the Calcutta Municipal Corporation on the post of Turn Clock. Appellants filed a Writ Petition stating that the post of Turn Clock being a lower post, they had a legitimate claim of being appointed as a Fitter Driver. Single Judge of High Court directed the authorities to offer them suitable equivalent post. The authorities, after interpreting the judgment denied the claim.**

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**Appellants filed another writ Petition claiming equivalent post and the same was allowed by Single Judge of High Court by order dated 8.1.1992, but the benefits were directed to be given from the date of filing of the Writ Petition and not from earlier date. Appellants did not prefer any appeal thereagainst. The appeal of the Corporation was dismissed by Division Bench of the High Court. The Special leave Petition thereagainst was also dismissed.**

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**Appellants filed Contempt Petition against the authorities of the**

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- A corporation and the same was disposed of. The authorities posted the appellants on the equivalent post with back date, but the consequential benefits were granted with effect from the date of filing of the application as per the order dated 8.1.1992. Appellants filed another Contempt Petition, which was dismissed with liberty to file a separate Writ Petition.**

Appellants filed the Writ Petition, but the same was dismissed by Single Judge as well as Division Bench of High Court. Hence the present appeal.

- C Dismissing the appeal, the Court**

- HELD: 1. Single Judge of High Court by order dated 8.1.1992 categorically directed 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, 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.**

[Para 12] [790-G-H; 791-A]

- 2. The doctrine of merger could have been held to be applicable provided the Division Bench had said the same expressly, eventhough no appeal was taken by the appellants from the order of the Single Judge of High Court. 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. Division Bench could not have given any higher benefits to the appellants by applying doctrine of merger although no appeal was preferred by them.**

- G [Para 12] [791-A-C]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4767 of 2007.

- H From the Judgment and final Order dated 26.07.2006 of the High Court at Calcutta in A.P.O. No. 202 of 2001.**

Pradeep Ghosh, Padmini Behera, Chanchal Kumar Ganguli and Rina A  
Sarkar for the Appellants.

Tapash Ray, L.C. Agrawala, Tara Chandra Sharma, Neelam Sharma  
and Krishna Datta for the Respondents.

The Judgment of the Court was delivered by B

**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 C  
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 D  
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. E

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 F  
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 G  
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 H

A 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*  
 B *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.”

C (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  
 D 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  
 E 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  
 F 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  
 G 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  
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disposed of by the Division Bench by an order dated 29.6.1995 in the following terms: A

“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.” B C D E

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: F

- “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. G
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.” H

A 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  
B 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.

C 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.

D 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.

E 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,  
F it is open to a court exercising writ jurisdiction to deny service benefits to an employee for a particular period.

G 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  
H 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 A  
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 B  
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 C  
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.

K.K.T.

Appeal dismissed. D