

(2018) 01 CAL CK 0020
In the Calcutta High Court
Case No : 4074 of 2017

Sri Sukanta Sarkar

APPELLANT

Vs

West Bengal College Service Commission & Ors.

RESPONDENT

Date of Decision : 25-01-2018

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Power of High Courts to Issue certain writs

Citation : (2018) 01 CAL CK 0020

Hon'ble Judges : Protik Prakash Banerjee

Bench : Single Bench

Judgement

1. This matter has come up as "To Be Mentioned" at the instance of the Court. None appears when the matter is called on. This application was heard and orders passed therein, including effecting of amendment in the first page of the application, by a Division Bench comprising His Lordship, the Hon'ble Mr. Justice Dipankar Datta and I on January 24, 2018.

2. It appears that the learned advocates appearing in this matter did not bring it to the attention of the court that the defects are not only in the first page of the application, but matters extraneous to the cause title of the memorandum of appeal as also matters which are not supposed to appear in the cause title of the application made in connection with an appeal presented in the Original Side, were present not just in page 1 but also in pages 2 and 3 of the application. Because this was not pointed out to the court, the court only granted liberty to amend the first page of the application in consonance with the rules. This defect has also been brought to the notice of the court by the department whose dedication is appreciated.

3. The Court, therefore, proposes to pass necessary orders for correction of its earlier order. This order was passed by us on January 10, 2018. However, the order was passed by us sitting in Division and though under Chapter 31, Rule 29(a) of High Court Rules, 1914 when the Division Bench is not sitting, the Judge

sitting singly has sufficient powers in terms of Chapter 31, Rule 29, clause (b) to pass necessary orders dispensing with any or all of the rules contained in the Rules of High Court, 1914, I consider it contrary to judicial propriety to pass the order while sitting Singly, for the reasons which are mentioned below

4. The Order was passed by a Division Bench which would be available on and from January 29, 2018. Another reason why I am not inclined to pass the order today itself is because Chapter 31 Rule 29 envisages an application being made and in terms of Chapter 20, the application must be made by motion and there is no motion made before me in that regard.

5. So it would be proper that any necessary modification of the order and consequent extension of time ought to be considered by Division Bench and, therefore, put up this matter before the Division Bench, of which I am a part, for its consideration on January 31, 2018 at the usual time when the Division Bench takes up matters of original side.

6. However, from the application on which the order dated January 24, 2018 was passed, it appears that Practice Directions are required to be made to ensure compliance with the Rules of High Court, 1914 and the existing practice of this Court and hence I propose to pass the following Practice Directions which shall be applicable to all petitions, applications, Memorandum of Appeal, Affidavits (within the meaning of Chapter 15 Rule 15) of the High Court Rules, 1914 and without compliance wherewith the department, the learned Commissioner, Centralized Filing Section and/or any ministerial staff of the Court shall not accept them or any of them. The Practice Directions I propose to pass are as follows: - i) Any affidavit in the original side including a petition within the meaning of Chapter 15 Rule 15 shall contain the full cause title of the cause in which it is being filed. Chapter 15 Rule 1 clearly indicates that an affidavit shall be intituled in the cause for which it has been filed. In cases where service of a particular affidavit within the meaning of such Rule is to be filed showing service, full cause title is required. Unlike Appellate Side, Original Side of this Court does not allow in such cases usage of short cause title with the first party's name indicated and the rest being indicated by "others" and "another" in case service is to be shown. Henceforth, the existing practice of this Court within the meaning of Chapter 40 Rule 3 is declared to be use of the full cause title of the cause which shall be reproduced in the cause title without addition or deletion from what appears on the face of the plaint, petition, application, Memorandum of Appeal and/or Affidavit within the meaning of Chapter 15 Rule 15. If there is any departure, such plaint, petition, application, Memorandum of Appeal and/or affidavit within the meaning of Chapter XV Rule 15, as the case may be, shall not be accepted by a Commissioner for affirmation, Centralized Filing Section for filing or any ministerial officer, without the leave of the Court.

ii) No addition to the cause title shall be permitted in any circumstances unless it is accompanied by an order passed by the Court or the Master, as the case may be, and such order shall take effect unless otherwise directed, only upon

signature of the Judge's fiat. Any departure from such direction shall result in taking such plaint/ application/ petition/ memorandum of appeal/ affidavit within the meaning of Chapter 15 Rule 15, as the case may be, off the file and register after being listed "For Orders" in the peremptory cause list within one clear day after detection thereof, before the appropriate Court or Judge, unless otherwise directed by the Court.

iii) Of late the Court has noticed with alarm the practice of the learned Advocates practising in the Original Side of using a format of making application which is more suited to the Appellate Side of the court than the Original Side. This includes adding the name of a proposed added party to the original cause title of a proceeding where such learned Advocate-on-Record has taken out process for addition of party of his client. Sometime it takes the form of using innumerable number of "In the Matter of" and also using "In the Matter of" in the cause title of an application made in a suit or an appeal, and the actual insertion of non-parties' names in the cause title of the Notice of Motion, petitions and the affidavits indicating that such person is a proposed added party/applicant. The Court makes it clear that these are alien to the Original Side of this Court and are innovations not supported by a Practice Direction. Any affidavit within the meaning of Chapter 15 Rule 15 or application containing such matters extraneous to the original cause title of the suit or the appeal, except where the rules or practice expressly allow such a course of action, shall be held to be defective and not accepted for affirmation and/or filing as the case may be, and shall not be read in Court in support of any allegation contained therein or for any relief prayed for therein. In case such an affidavit within the meaning of Chapter XV Rule 15 including a petition or an application is allowed to be affirmed or accepted for filing by the Central Computerized Filing Section, the appropriate ministerial staff of the department and/or filing section and/or the learned Commissioner concerned shall have to bear the consequences including disciplinary consequences.

iv) An affidavit in the Original Side is drawn up in terms of Chapter 15. However, the long standing and existing practice of the Original Side has been to eschew use of paragraphs when the affidavit verifies a petition, plaint, application. In such cases, the affidavit is continuous unlike an affidavit with numbered paragraphs which is used as a counter in an application or a petition or in exceptions or affidavits taken as grounds of an application or even affidavits in support of Judge's Summons. The Court has seen that the affidavits verifying petitions have been drawn up with paragraphs and the Commissioner is hereby directed to stop accepting such affidavits even in constitutional writ jurisdiction where the affidavit verifying a petition contains numbered paragraphs. However, I make it clear that this embargo does not apply to Affidavits-in-Opposition, Affidavits-in-Reply, Rejoinder, Sur-Rejoinder, Rebuttal, Sur-Rebuttal or any affidavit which is filed as grounds of a petition or where exception is taken or a counter in an application or a petition or in or affidavits taken as grounds of an application or affidavits in support of Judge's Summons.

v) The Writ Rules of this Court apply to applications under Article 226 of the Constitution of India, filed in its Constitutional Writ Jurisdiction, both in the Original and Appellate Sides of this Court, with equal force subject, to Rules 36 and 48 of the said Rules. It is made clear that the cause title of such a writ petition except where the said Rules indicate further matter is to be added, must not and cannot contain anything beyond or in excess of what is provided for in Rule 9 of the said Rules, as substituted by Clause 4 of the Notification No.7103-G dated November 18, 1999 and inclusion of other matters already required to be incorporated in the Presentation Form provided for under Rule 8B, or any matter beyond what is provided for in the substituted Rule 9 as above, shall not form a part of the cause title of the petition itself. If there is any departure from this, then the petition under Article 226 of the Constitution of India shall not be allowed to be affirmed by the Commissioner nor allowed to be filed in the Central Computerized Filing Section nor placed in the cause list nor be read in Court, unless the Court otherwise directs.

7. The above proposed Practice Directions are directed to be circulated immediately. I make these practice Directions as a Judge sitting in the Original Side.

8. Place these Practice Directions before the Division Bench of which I am a part and which passed the Order dated January 10, 2018 referred to above, such that the Division Bench may in its wisdom either confirm or vary the above Practice Directions. Further orders as to placing before the Full Court shall be passed, if so directed by the Division Bench.

9. The above Practice Directions shall come into effect on and from January 25, 2018 at 4PM. Any plaint, petition, application, memorandum of appeal and affidavit within the meaning of Chapter 15 Rule 15 of the Rules which does not comply with the above Practice Directions shall cease to be taken or received for filing or for affirmation or for any purpose whatsoever with effect from 4 PM today subject to further orders of the Division Bench.

10. Put up the matter as also these Practice Directions before the Division Bench for its consideration on January 31, 2018 at the usual time when the Division Bench takes up matters of original side. Registrar, Original Side and the Learned Registrar General of this Court as also all concerned Registrars in the Appellate Side shall circulate this order to all the departments for compliance.