

**Circuit Bench of Calcutta High Court
at Jalpaiguri**

⁶²
sm 21.08.
2019

W.P.A. 31 of 2019

**Lawang Tshering Bhutia
Versus
The State of West Bengal & Ors.**

Mr. Anand Bhandari,
Mr. Panthu Rai.
.....for the petitioner.

Mr. Subir Kumar Saha,
Ms. Bedashruti Bose.
.....for the State.

Affidavit of service filed in Court today be kept
with the record.

The grievance of the present petitioner is that,
despite having previously passed in a Bengali
examination and in violation of a notification issued
by the Government of West Bengal, Finance
Department, dated November 13, 2002, exempting
candidates of hilly areas from the compulsory
requirement of knowledge in Bengali, it was insisted
that the petitioner take a fresh examination in Bengali
and subsequently was demoted from his post as
Sheristadar in the Court of the District Judge,
Darjeeling.

Accordingly, the petitioner gave a
representation on December 10, 2009 to the
Secretary, Finance Department, being the respondent
no. 2 herein, which has not been considered till date.
It is submitted that previously a writ petition was

moved by the petitioner before the Principal Bench of this court, which was dismissed as not maintainable for lack of jurisdiction since, at that juncture, the petitioner had not been absorbed in the Judicial Department and was continuing as a re-deployed employee on a lien in the parent department under the respondent no.3 therein.

It is submitted on behalf of the petitioner that the cause of action for the present action is continuing and the previous order of the Principal Bench does not operate as *res judicata*, since the merits of the petitioner's claim were not decided by the order passed by the said Bench. It is further submitted, as stated in the present writ petition, that after the said order of the Principal Bench, the petitioner was in dire straits as far as the petitioner's financial condition was considered and as such could not move Court prior to filing the present writ petition.

Upon hearing both sides and on perusal of the representation-in-question, it appears that the petitioner has retired from service in the meantime. The success of the petitioner's claim would otherwise be doubtful in the eye of law due to the extensive length of delay occasioned by the petitioner since the rejection of his earlier writ petition, which is for about eight years, to file the present writ petition. However, keeping in view the financial plight of the petitioner

and the deleterious effect which the non-consideration of the petitioner's case would have on the petitioner, the present writ is entertained.

Accordingly, WPA 31 of 2019 is disposed of by directing the respondent no.2 to dispose of, in accordance with law, the representation made to the said respondent on December 10, 2009 by the present writ petitioner, which is annexure P-8 at page 26 of the present writ petition. The petitioner is directed to submit a copy of the present writ petition, with all annexures, to the respondent no.2 within a week from date, upon which the respondent no.2 shall consider and dispose of the said representation in accordance with law, upon giving an opportunity of hearing to the petitioner, at the earliest, preferably within two months thereafter.

Urgent photostat certified copy of this order, if applied for, shall be given to the parties upon compliance of usual formalities.

(Sabyasachi Bhattacharyya, J.)