

26.08.2022.
Court No.13
Item No. 32
ap

W.P.A. No. 19252 of 2018
With
I.A. No. CAN 2 of 2022
And
I.A. No. CAN 1 of 2022
Anoar Passa & Ors.
Versus
The State of West Bengal & Ors.

Mr. Ekramul Bari,
Mr. Biswarup Biswas,
Mr. Majnu Sk.

...For the petitioners.

Mr. Anirban Ray, ld. G.P.
Mr. Pinaki Dhole,
Mr. Avishek Prasad.

...For the State.

In Re: CAN 2 of 2022 (Sec.5)

This is an application filed under Section 5 of the Limitation Act, 1963 for condonation of delay of about two years and six months in filing the restoration application.

Having heard the learned Advocate appearing on behalf of the respective parties, as also considering the statements made in the said application, I am satisfied with the grounds indicated therein, as sufficiently explaining delay of two years and six months in preferring the restoration application.

The application for condonation of delay being CAN 2 of 2022 is, thus, allowed and disposed of.

There will, however, be no order as to costs.

In Re: CAN 1 of 2022 (Restoration)

Sufficient grounds are available to explain the absence of the petitioners and/or their Counsel on 6th January, 2020 before a co-ordinate Bench of this Court.

The said order is recalled and the writ petition is restored to its file and number.

Accordingly, CAN 1 of 2022 is disposed of.

There will be, however, no order as to costs.

In Re: W.P.A No. 3657 of 2009

A short question that falls for consideration is as to whether the petitioners, who claim to be organizing teachers of Barafkhana Tinkari High School (Co-Education) which was recognized by the Board subsequently after a DLIT Report, are entitled to be approved by the State.

In connection with the recognition of the said School as also the claim for approval of the petitioners, a number of proceedings ensued. The claim of the petitioners for approval of service was finally rejected by the impugned order dated 20th April, 2018 and hence the writ petition.

Counsel for the petitioners, Mr. Bari, relies upon a decision of the Hon'ble Supreme Court of India being Special Leave to Appeal (C) No. 27804 of 2019 dated 6th May, 2022 (Prabir Kumar Ghosh & Ors. – Vs. – The State of West Bengal & Ors.). In the said decision, a three Judges' Bench of the Hon'ble Supreme Court has

held that appointment of organizing teachers like the petitioners cannot be strictly called illegal. Approval of such teacher was ordered.

The said decision, according to Mr. Bari, takes a view different from that of the Division Bench of this Court in the case of **Manindra Nath Sinha – Vs. – State of West Bengal & Ors. reported in 2006(2) C.L.J. (Cal) 489**. Reference is also made to another Division Bench decision of this Court in the case of **State of West Bengal & Ors. – Vs. – Smritikana Maity & Ors** reported in **(2008) 1 CHN 582**.

In view of the above, this Court is of the view that the respondents should file an affidavit.

Let affidavit-in-opposition to the main writ petition be filed within three weeks from date. Reply, if any, thereto be filed two weeks thereafter.

Given the importance of the question of law raised in this writ petition, list this writ petition for hearing five weeks hence.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)