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16-12-2020

Ct. 12

MAT 713 of 2020
With
CAN 1 of 2020
With
CAN 2 of 2020

Md. Abdul Gafur
Versus
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Arindam Chattopadhyay, Adv.
Ms. Lipika Chatterjee, Adv.
...for the appellant

Md. Sarwar Jahan, Adv.
Sk. Nayeemul Haque, Adv.
...for the respondent no.5

Re: CAN 1 of 2020.

There is a delay of 443 days in preferring the appeal. We have perused the explanations offered in the petition for condonation of delay and we are satisfied with the causes shown for not being able to file the appeal within the statutory period of limitation.

On such consideration, we allow this application for condonation of delay.

The application for condonation of delay, being CAN 1 of 2020 is, thus, disposed of.

Re: MAT 713 of 2020

This appeal is arising out of an order dated 5th July, 2019 passed by the learned Single Judge in a writ petition, being WP No. 11481(W) of 2019, filed by the writ petitioner for claiming the service

benefits from the time when his father was declared incapacitated till the date of his actual joining.

The father of the writ petitioner was a primary teacher under the Murshidabad District Primary School Council (in short 'the Council'). He was declared medically incapacitated with effect from 10th July, 1998. The petitioner's representation for grant of compassionate appointment was not contemporaneously considered. However, the Council appointed the petitioner as a Primary Teacher on 15th September, 2005. The petitioner joined the said post thereafter. After twelve years of such joining, the petitioner approached this Court by filing a writ petition, being WP No. 30186(W) of 2017 and by an order dated 8th January, 2018, the petitioner's claim was relegated to the competent authority for consideration. Since the said order was not complied with in time, a contempt proceeding was initiated, in which an order was passed on 28th March, 2019 granting liberty to the writ petitioner to renew his prayer before the appropriate authority.

The learned Counsel for the appellant has submitted before us that the appellant was pursuing his remedy diligently and service benefits cannot be denied to him during the period from 10th July, 1998 till his date of joining in the year 2006. There is no doubt that the petitioner was appointed in 2006 and the present application for claiming service benefits has been filed after twelve years of his appointment. It was open to the petitioner at the time of his appointment to seek such service benefits. The object for compassionate appointment is to ameliorate the immediate financial distress faced by the family due to the death or incapacitation of the sole bread earner. Compassionate appointment is not a vested right.

In view of the fact that the petitioner was given appointment in 2006 on compassionate ground and there has been no contemporaneous challenge to claim any benefit, after a period of twelve years or more, we feel that there is acquiescence on the part of the petitioner in claiming past benefits. The delay for not claiming such benefits for all these years as a relevant consideration, the learned Single Judge has dismissed the writ petition on the ground of delay and laches which is a possible view.

In the facts and circumstances of the case, we are not inclined to entertain this appeal.

The appeal, being MAT 713 of 2020 and the application being CAN 2 of 2020 are accordingly dismissed. However, there shall be no order as to costs.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)