

14.01.2021
SL No.9
Court No.12
(gc)

**MAT 55 of 2021
With
CAN 1 of 2021**

**Arif Mohammad Khan & Ors.
Vs.
The State of West Bengal & Ors.**

(Via Video Conference)

Mr. Dibyendu Chatterjee,
Mr. Siddhartha Roy,
Ms. Piyali Paul,
...for the Appellants.
Mr. L.K. Gupta, Sr. Adv.,
Mr. Subir Sanyal,
Mr. Ratul Biswas,
...for the W.B.B.P.E.

By consent of the parties, the appeal and the application are taken up together for consideration and disposed of by this common order.

Mr. L.K. Gupta, learned Senior Counsel representing the West Bengal Board of Primary Education has, at the outset, very fairly submitted that the writ petitioners are aggrieved due to non-relaxation of the qualifying marks, it so happened that this matter was tagged with other matters where the issue of relaxation of the age bar was also considered.

It seems that the facts have not been properly represented before the learned Single Judge. Since we feel that the order proceeds on the basis that the writ petitioners have prayed for relaxation of the age bar and the issue with regard to the relaxation of the qualifying marks was not addressed and, accordingly, not considered, we feel

it proper to set aside the order in so far as the present appellants are concerned and request the learned Single Judge to consider the matter afresh. We also feel that instead of preferring the appeal, the appellants ought to have approached the learned Single Judge with the proper facts.

We make it clear that we have not gone into the merits of the matter and the learned Single Judge shall consider the writ application on its own merits after giving an opportunity of hearing to the parties.

The appeal being MAT 55 of 2021 along with the application being CAN 1 of 2021 are, accordingly, disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)