

06 **22.04.2021**
Ct. No.11
Sws.M

MAT 169 of 2020
with
CAN 1 of 2020
(Old No: CAN 1588 of 2020)
with
CAN 2 of 2020
(Old No.: CAN 1589 of 2020)

Jauhar Jamal
vs.
The Bhatpara Municipality & Ors.

(Via Video Conference)

Mr. Ekramul Bari
Mr. Indradeep Pal
Ms. Tanuja Basak

.....for the appellant

Mr. Dipak Kumar Mukherjee
Mr. Rajib Mukherjee

....for the Respondents

Inspite of filing Affidavit-of-Service, none has appeared for the State-Respondents to oppose the applications.

Under challenge in this appeal is the order impugned of the Hon'ble Single Bench dated 4th July, 2018 in the writ petition.

But before this Court proceeds to consider the order impugned of the Hon'ble Single Bench on merits, it is incumbent that the delay in filing this appeal which is stated to be of around 565 days requires to be dealt with first.

Mr. Pal, learned Counsel, appearing for the appellant led by Mr. Bari, learned Senior Counsel with Ms. Basak, learned Advocate-on-Record, relies on the pleadings in the application for condonation of delay being CAN 1589 of 2020 filed in connection with this appeal. Particular reliance is placed on the averments at Paragraph 5 of such application.

At paragraph 5 (*supra*) it is, *inter alia*, averred that due to financial stringency the appellant could not file this appeal on time.

Although, Mr. Mukherjee, learned Counsel appearing for the respondents/Bhatpara Municipality leaves it to this Court to decide the merits of such application for condonation of delay, this Court, of necessity, must notice the pleadings at paragraph 5 of the application in the context of the arguments on merits in the appeal which has been advanced on behalf of the appellant.

The appellant has primarily submitted on merits that the reliance by the Hon'ble Single Bench *vide* its order impugned dated 4th July, 2018 on the pronouncement in W.P. 13147 (W) of 2017 (In Re. *Gobinda Hazra vs. State of West Bengal & Ors.*) stands superseded by the judgment of the Hon'ble Division Bench in several connected appeals being M.A.T. 859 of 2018 (In Re. *Debabrata Tiwari Vs. The State of West Bengal*) along with other connected appeals. The Hon'ble Division Bench

had, *inter alia*, held that the similarly circumstanced appellants in MAT 859 of 2018 along with the appellants in the connected appeals are entitled to be considered for compassionate appointment under the respondents/ Bhatpara Municipality for the reasons as observed by the Hon'ble Division Bench.

Therefore, the appellant submits that the order of the Hon'ble Division Bench in MAT 859 of 2018 (*supra*) has overruled the findings of the Hon'ble Single Bench In Re: *Gobinda Hazra (supra)* and such would expressly appear from paragraph 3 of the judgment and order of the Hon'ble Division Bench.

Next, in the discussion connected to the application for condonation of delay, this Court finds that the order impugned of the Hon'ble Single Bench was passed on 4th July, 2018. The judgment and order of the Hon'ble Division Bench was passed on 30th September, 2019. Between the order passed on 4th July, 2018 of the Hon'ble Single Bench and the order of the Hon'ble Division Bench as passed on 30th September, 2019, a reasonable person can infer that this period more or less spans the 565 days which the petitioner claims to have lost in limitation.

Therefore, the averments connected to the financial stringency of the appellant at paragraph 5 of the application for condonation of delay relied, thus appears to this Court to be vitiated by the facts as recorded above

and further vitiated by the additional fact that the appellant lost no time in filing this appeal after coming to learn of the judgment and order of Hon'ble Division Bench dated 30th September, 2019, notwithstanding his so-called financial stringency.

This Court does not propose to expand on the above discussion except to observe that the law exists for the vigilant and the diligent.

Having observed as above, this Court cannot lose sight of the fact that ultimately the claim of the appellant to compassionate appointment which, has now taken a legal colour with the judgment and order dated 30th September, 2019 read with the stand of Mr. Mukherjee, learned Counsel appearing for the respondents/Bhatpara Municipality, who produces a Notification of the Labour Department, Employment Cell, Government of West Bengal numbered as *97-Emp* dated *6th June, 2005*, which learned counsel claims, still applies to cases of compassionate appointment which are brought before the Bhatpara Municipality.

Balancing thus the so-called claim of the appellant for a right of hearing in this appeal upon condonation of delay with the legal right which the appellant claims at present to accrue in his favour, this Court finds cause to condone the delay.

CAN 2 of 2020 (Old No: CAN 1589 of 2020)

stands thus **disposed of**.

Second, on merits, this Court although does not find, having regard to the extent and content of the submissions of the parties recorded before the Hon'ble Single Bench *vide* its order impugned dated 4th July, 2018 that any error appears to have been committed by the Hon'ble Single Bench, however, for a deeper appreciation of the rights of the parties accruing on the basis of subsequent facts as recorded above, this Court remands the matter to be decided afresh by the Hon'ble Single Bench.

Purely for the above reasons, the order impugned dated 4th July, 2018 stands set aside.

Both the appeal being **MAT 169 of 2020** and its connected application being **CAN 1 of 2020 (Old No: CAN 1588 of 2020)** for interim reliefs also stand accordingly **disposed of**.

In the light of the above discussion, affidavits are not invited. Therefore, allegations made in CAN 1 of 2020 (Old No: CAN 1588 of 2020) and CAN 2 of 2020 (Old No: CAN 1589 of 2020) shall be deemed to be denied.

Parties to act on a server copy of this order.

(Hiranmay Bhattacharyya, J.)

(Subrata Talukdar, J.)