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08-02-2021

Ct. 12

MAT 222 of 2020
With
CAN 1 of 2020 (old CAN 1440 of 2020)
With
CAN 2 of 2020 (old CAN 1441 of 2020)

Sakti Kumar Bardhan
Versus
The State of West Bengal & Ors.

(Through Video Conference)

Mr. Nipendra Nath Mondal, Adv.
...for the petitioner

Mr. Joytosh Majumder, Ld. G.P.
Mr. Raja Saha, Adv.
Mrs. Kakali Samajpati, Adv.
...for the State

Re: CAN 1 of 2020 (old CAN 1440 of 2020)

There is a delay of 849 days in preferring the appeal.

Sufficient cause being shown for not being able to prefer the appeal within the statutory period of limitation. The delay of 849 days in preferring the appeal is condoned.

CAN 1 of 2020 (CAN 1440 of 2020) is allowed.

The appeal is arising out of an order dated December 2, 2016 in a writ petition filed by the appellant seeking regularization of the service.

Before the learned Single Judge the writ petitioner relied upon the letter of appointment dated November, 12, 1997 issued in favour of the petitioner and also a judgment dated 2nd June, 2016 passed by a learned Single Judge in *W.P. No. 9822(W) of 2016 (Jaharlal Mondal –vs.- State of West Bengal & Ors.)* and invited the learned Single Judge to decide the matter in his favour.

The learned Single Judge noticing that the appointment of the writ petitioner as an Assistant Teacher on November 12, 1997 was not against any sanctioned post and *Jaharlal Mondal* (supra) was not the case similar to that of the writ petitioner as in the said proceeding the appointment of Jaharlal Mondal was irregular and not illegal, dismissed the writ application.

A review application was filed by the writ petitioner before the learned Single Judge. In the review petition the appellant disclosed the vacancies filled up by the School authority during 1972 and 1982 and submitted that since from time to time the authorities concerned have sanctioned posts of teachers, the case of the petitioner may be considered against the permission granted by the authorities concerned in 31st January, 2012.

We are unable to accept the said submission in view of the fact that after promulgation of School Service Commission in 1997, all appointments are to be made in accordance with the said Act. Even for filling up the said post, the school has to follow the said procedure.

In view of the fact that the appointment of the petitioner on November, 12, 1997 is not against the sanctioned post we are unable to consider the prayer of the petitioner.

The appeal being MAT 222 of 2020 and the application being CAN 2 of 2020 (old CAN 1441 of 2020) are accordingly dismissed. However, there shall be no order as to costs.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)