

22.04.2021
SL No.13 wt 14
Court No.17
(gc)

MAT 229 of 2021
With
CAN 1 of 2021
With
CAN 2 of 2021

Priyanka Dey
Vs.
Union of India & Ors.

With

WPA 3801 of 2016

(Via Video Conference)

Mr. Dilip Kumar Samanta,
Mr. Biswajit Hazra,
...for the Appellant.
Mr. U.S. Menon,
...for the Respondent Nos.2 and 3.

Re: CAN 1 of 2021

There is a delay of 37 days in presenting the memorandum of appeal.

We have perused the application for condonation of delay. We are satisfied with the reasons furnished by the appellant for not being able to present the appeal within the period of limitation. We allow this application for condonation of delay. Delay of 37 days in presenting the memorandum of appeal is hereby condoned.

The application for condonation of delay, being CAN 1 of 2021, stands disposed of.

Re: MAT 229 of 2021
With
CAN 2 of 2021

By consent of the parties, the appeal and the application are treated as on the day's list and disposed of by this common order.

Mr. U.S. Menon, Learned Counsel appearing for the Respondent Nos.2 and 3 has raised a preliminary objection as to the maintainability of the appeal. However, we decided to ignore the said fact. We want to really find out whether the respondents have violated the order passed by the learned Single Judge. On 24th August, the writ petition was disposed of by the learned Single Judge with the following observation:-

“There will be an order in terms of prayer (a) to be complied with within a period of four weeks from date of communication of this order. Standard proof for reference is to be furnished to petitioner in regard to the four remaining questions, to demonstrate there are no errors in any or all of them, if that is view of experts of the Board even on review.”

Thereafter, a contempt application was filed. On 19th February, 2020, we disposed of the appeal with the following observation:-

“On such consideration, we feel that it was not necessary to file any appeal against the order dated 24th August, 2018. The Court deciding the contempt application cannot travel beyond the order passed as it is limited only to the examination of the compliance of the said order and not with regard to the correctness, validity or legality of the order or steps taken afresh in compliance of the order dated 24th August, 2018. If the writ petitioner dissatisfied with the standard proof of reference furnished to the writ petitioner in regard to

the four remaining questions to demonstrate that there are no errors in any or all of them then it may give rise to a fresh cause of action and may not be a subject matter of the contempt application.”

In order to satisfy whether the direction passed by the learned Single Judge on 24th August, 2018 was complied with, we called for the record of the contempt proceedings. The affidavit of compliance filed before the learned Single Judge affirmed by Jitendra Kumar Yadav on 23rd July, 2019 is placed before us for consideration.

In Paragraphs 4 and 5, Mr. Yadav has stated the compliance of the relevant order. The said two paragraphs read:-

“4. I respectfully submit that in terms of the solemn orders dated 29th March, 2019 and 21st June, 2019 passed by this Hon’ble Court in the present proceedings, the Board again consulted the subject experts and deliberated the matter in detail. The subject experts assembled and considered the arguments and/or contentions of the applicant with particular reference to Question Nos.49, 50, 74 and 31 and the key answers. The subject experts who are eminent and qualified educationists in their respective field have since submitted a detailed report with standard proof which are acceptable uniformly in academia, so as to demonstrate that the key answers are absolutely correct and that the answers given by the applicant and her contentions are incorrect.

The latest report submitted by the subject experts is annexed hereto and marked with the Letter “A”.

5. I submit that in compliance with the order dated 24.08.2018 the applicant had already been awarded two marks for Question No.23, hence the applicant’s

mark in Paper-II stood increased to 68 from 66. Accordingly, the Board had forwarded the revised mark sheet of the petitioner on 19.09.2018 and the same was uploaded by National Information Centre.”

This compliance has to be read with our observation made on 19th February, 2020. In our view, on a proper reading of our order dated 19th February, 2020, the learned Single Judge found that the grievance raised by the petitioner cannot be decided in the contempt proceeding as it may give a fresh cause of action. We are in agreement with the learned Single Judge.

With the aforesaid observation, the appeal and the application are, accordingly, stand dismissed.

However, this order shall not prevent the writ petitioner to take appropriate proceedings in accordance with law if so advised.

The affidavit of compliance filed before the learned Single Judge be kept with the record of the present appeal.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)