

10.12.2021

Court : 04
Item : 17
Matter : SAT
Status : DISMISSED
Transcriber: nandy

MAT 1539 of 2014

with

CAN 1 of 2014

(CAN 8949 of 2014)

with

CAN 2 of 2014

(CAN 8956 of 2014)

Madhusudan Pramanik & Ors.

Vs.

The State of West Bengal & Ors.

Mr. Biswarup Bhattacharya, Advocate

Mr. Kamal Mishra, Advocate

.....for the Appellants

Mr. Bhaskar Prasad Vaisya, Advocate

Mr. Suman De, Advocate

.....for the State

Mr. Ranjan Saha, Advocate

.....for the Respondent Nos. 5 & 6

CAN 1 of 2014

(CAN 8949 of 2014)

The belated challenge to an entire selection process had been turned down by the Single Bench in passing the impugned order which is further been assailed in the instant appeal after a delay of more than 300 days.

The above mentioned application for condonation of delay has been taken up showing a ground for delay which according to the learned Advocate for the appellant was beyond his control.

It is beyond cavil of doubt that an application for condonation of delay is to be decided on the parameter of sufficiency of cause and the Court

should not be swayed by the length of delay. The delay of shorter period may not be condoned in absence of sufficient cause; on the other hand, the delay of longer period deserved to be condoned provided the cause shown in there, is sufficient. Apart from the same the Court must encourage the litigation to be decided on merit than to be nibbed in the bud on the envil of limitation.

After perusal of the averments, we find that the appellants were prevented by sufficient cause and, therefore, the application for condonation of delay being **CAN 1 of 2014** (CAN 8949 of 2014) is hereby **allowed**.

The delay in filing the instant appeal is hereby condoned. The appeal is now registered formally.

MAT 1539 of 2014

Upon consent of the respective Counsels, the main appeal is taken up for hearing.

It is contended by the learned Advocate for the appellants that the appellants sought for an information pertaining to the appointments having given to the candidates from the list but the authorities failed to provide such information which implies suppression of true and correct state of affairs. It is further submitted that from the aforesaid conduct, one can infer that there have been

irregularities and/or illegalities in the selection process and, therefore, the appellants have a right to know the aforesaid fact and is entitled to be included in the list of successful candidates.

The matter pertains to a recruitment process initiated in the year 2006. The selection process ensued in the year 2009 and completed therein. The appellants were also permitted to participate in the selection process in terms of the order passed by this Court and in fact, participated therein but still felt aggrieved, as their names were not included in the final list. An information under the Right to Information was sought to disclose the relevant documents pertaining to the aforesaid selection process which according to the appellants, has not been given to them. The Single Bench upon noticing the aforesaid fact declined to exercise its power under Article 226 of the Constitution of India because of availability of alternative efficacious remedy to the petitioners under the Right to Information Act.

It is true that the power under Article 226 of the Constitution of India is to be exercised on a sound legal principle. It is a rule of discretion than of compulsion. The Writ Court may refuse to entertain the writ-petition if the exhaustive remedy is provided in the statute and such discretion cannot be said to be capricious and/or arbitrary. The appellate Court

should be slow and circumspect in interfering with the order passed by the single Bench in exercise of the discretion unless there is a patent illegality and/or unreasonableness can be seen there on a bare reading thereof. Further, the Single Bench dismissed the writ-petition on another score that the petitioners cannot turn around and challenge the process belatedly after having participated therein. The petitioners participated in the selection process and have taken a rebound, the moment they were found unsuccessful. It is an attempt to forestall the entire selection process and upset the appointments already made more than a decade ago and to reopen the entire process, amounting to an instability in the appointments already made in terms of such selection process.

There are umpteen number of judgments delivered by the Supreme Court as well as by the High Courts deprecating such litigation to be entertained after participation in the selection process and the results showed unfavourable to such litigants. It is too late in a day even to accept the innocuous prayer made before the appellate Court at the behest of the appellants that the representation of the appellants/petitioners may be directed to be reconsidered by the authority. The Court must be cautious in extending such benefits in the garb of an innocuous prayer as it would resurrect the stale

cause of action and resuscitated the rights which has already been sowed beneath the earth. We thus do not find any merit in the appeal.

The appeal being **MAT 1539 of 2014** is thus **dismissed**. No order as to costs.

With the dismissal of the main appeal itself, the connected application being **CAN 2 of 2014** (CAN 8956 of 2014) also stands **dismissed**.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)