

DL. January
28. 13, 2021

Through Video Conference

M.A.T. 710 of 2020

Mr. Raja Sen,
Ms. Kakali Samajpaty,
...for the appellants.

Mr. Mohinoor Rahaman,
Ms. Maria Rahaman,
...for the writ petitioner/respondent.

Re: CAN 1 of 2020 (condonation)
filed on October 19, 2020.

This is an application for condonation of delay of 246 days in filing the memorandum of appeal as reported by the additional stamp reporter vide his report dated December 4, 2020.

Sufficient cause being shown for delay in preferring the appeal beyond the statutory period, we are inclined to condone the delay of 246 days in presenting the memorandum of appeal.

The application for condonation of delay is, thus, allowed without any order as to costs.

Re: CAN 2 of 2020 (stay)
filed on October 19, 2020.

Although the matter is appearing under the heading application, by consent of the parties, the appeal itself is taken up for hearing by treating the same as on day's list.

The appeal is arising out of an order dated January 17, 2020 passed by a learned Single Judge of this Court in connection with a writ petition filed by the writ petitioner/respondent, namely, Murshid Alam, claiming extension of his engagement in the post of

para teacher in 29 Adarsha Primary School in the district of Murshidabad, in terms of notification dated November 16, 2010. In the writ petition, the writ petitioner/respondent has also prayed for setting aside of the order dated January 13, 2019 which is impugned in the writ petition and by which the District Project Officer, Sarva Shiksha Mission, Murshidabad, denied his claim to be considered as a para teacher and the consequential benefits in terms of notification dated November 16, 2010 by concluding that the writ petitioner was neither a para teacher at the date of issuance of the relevant orders dated November 16, 2010 and April 23, 2010 nor he was engaged vide issuance of engagement letter under contractual basis till attainment of his age of superannuation. Accordingly, his pay was fixed at Rs. 4,752/- per month and not at the enhanced salary of Rs. 10,000/- per month which is payable to the para teachers in terms of subsequent notifications.

The learned Single Judge was conscious of the earlier notifications but decided to grant benefit of salary and emoluments to the writ petitioner with effect from July 28, 2018 at the applicable rates payable to all para teachers existing and working as on the said date in terms of Circular dated July 2, 2018 as an existing para teacher mentioned therein.

We find no infirmity in the order passed by the learned Single Judge having regard to the fact that empanelment for appointment to the said post in favour of the writ petitioner arose only in the year 2007 but the appointment was denied to him till July 26, 2018. The writ petitioner was directed to be appointed by virtue of a court's order passed in W.P. 20225(W) of 2013. In fact,

the final appointment letter was issued to the writ petitioner after the contempt proceeding was initiated. As a result, he has been deprived of all service benefits from the year 2007 till July 2018. For all practical purposes he should have been fitted as a para teacher in the year 2007 but he was not for the delay caused by the authorities concerned.

The learned Single Judge has also considered the fact that the writ petitioner was empanelled in the year 2007 and had the fraudulent conduct of the respondent no. 6 been detected at the relevant point of time, he would have been entitled to join as para teacher in the year 2007 itself. However, considering that the writ petitioner/respondent rendered services only with effect from July 28, 2018, the claim of the petitioner for benefits in terms of the said circular either for tenure of service or arrears for the period until July 28, 2018 were not allowed. Once the writ petitioner is made to suffer for almost eleven years due to fraudulent conduct of the respondent no. 3 and unfortunately the appointment letter was issued during the pendency of the contempt proceeding in July 2018, there cannot be any doubt that the writ petitioner would be entitled to salary and emoluments with effect from July 28, 2018 at the applicable rates paid to all para teachers existing and working as on the said date in terms of circular dated July 2, 2018 as an existing para teacher mentioned therein.

We feel that the learned Single Judge was justified in allowing the writ petition partly. Accordingly, we affirm the order under appeal.

The appeal being MAT 710 of 2020 and the connected

application for stay being CAN 2 of 2020 stand dismissed.

There will be no order as to costs.

(Soumen Sen, J.)

(Saugata Bhattacharyya, J.)

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