

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

F.M.A. 311 of 2014

Girish Chandra Biswas

Vs.

State of West Bengal & Ors.

Mr. Kamalesh Bhattacharjee

Mr. Ashim Kumar Halder

Mr. A. Bhattacharyya

... For the Appellant.

We have gone through the order of this bench made on 23rd August, 2022.

This appeal was directed to appear under the heading 'Short Hearing Matter' on and from 30th August, 2022 within the first three matters.

Advocate on record for the appellant was asked to serve a notice of the order on the learned government pleader.

An affidavit of service has been filed in court showing due compliance with the above order regarding service of notice.

None appears for the respondents.

S.D. We notice from the impugned judgement and order dated 23rd July, 2013 that the writ application was dismissed only on the ground of delay. The learned judge noted that the vacancy arose in 2009. The writ application was filed on 17th July, 2013. For this delay the

writ application was dismissed.

Mr. Bhattacharjee, learned advocate for the appellant submits that the writ concerns recruitment of primary school teachers of which the vacancy arose in 2009. His client was selected but was not given the appointment letter because he was not sponsored by the said exchange. It is also contended that the selection process has not been concluded.

Since, the selection process was continuing when the writ application was filed and also when it was dismissed, delay was not of such a nature, so as to deprive the appellant/writ petitioner of his substantive rights or expectation to get the matter adjudicated on merits.

Hence, the learned judge ought not to have dismissed the writ application on this technical ground.

The respondent authorities ought to have been directed by the court to file an affidavit in opposition dealing with the above factual matters raised by the appellant/petitioner.

For this reason, we set aside the order dated 23rd July, 2013.

The entire matter is referred to the Principal Secretary, School Education Department. He will make an enquiry into the following facts:

1. Was the appellant selected in the subject

recruitment process?

2. Whether the appellant/petitioner was not given appointment because he was not sponsored by the employment exchange? Sponsorship through the employment exchange was not a mandatory condition to be fulfilled in our opinion. If the appellant/petitioner had been selected as Mr. Bhattacharjee argues but was not appointed because he was not sponsored by the employment exchange the decision was wrong.

The Principal Secretary shall hear the parties and pass a reasoned order within three months from date.

The appeal (FMA 311 of 2014) is disposed of.

(I.P. Mukerji, J.)

(Biswaroop Chowdhury, J.)

