

18.08.2022
Item No.230
Crt. No.11.
KB

FMA 1276 of 2016
with
IA No. CAN 1 of 2021

Md. Sarfuddin
-Versus-
The State of West Bengal and others

Mr. N. C. Saha
Mr. Priyabrata Batabyal
Mr. Anirban Sarkar
.... For the Appellant.

Ms. Chaitali Bhattacharyya
Mr. Mrinal Kanti Ghosh
.... For the State-respondents.

Party/parties is/are represented in the order of
their name/names as printed above in the cause title.

This matter has thrown up a peculiar bundle of
facts.

The facts are as follows.

The writ petitioner is the appellant before this
Court. The father of the writ petitioner, who was
working in service in a Madrasah, died in 2010 prior to
his retirement. The writ petitioner claims to have
obtained no-objection from his family members and
applied for compassionate appointment to the Minority
Affairs, Madrasah Education Department, Government
of West Bengal within time.

The writ petitioner claims that a Scheme for Compassionate Appointment was operative at the time of his retirement. Since no steps were taken to consider his application for compassionate appointment, the writ petition, being W.P.21379 (W) of 2011 came to be filed before the Hon'ble Court.

The writ petition was dismissed for default by the then Hon'ble Single Bench on the 16th of April, 2013. The application filed for restoration of the writ petition upon recall of the order of dismissal for default dated 16th of April, 2013, being CAN No.1222 of 2015, was also dismissed by another Hon'ble Single Bench on December 1, 2015. By the same Order dated 1st of December, 2015 the said Hon'ble Single Bench was further pleased to dismiss the application for condonation of delay in filing the restoration application, numbered as CAN 1223 of 2015.

The writ petitioner is in appeal before this Court seeking setting aside of the Order dated December 1, 2015 and restoration of his writ petition for being considered on merits.

Mr. Batabyal, Learned Counsel, appears in support of the appeal.

The State is represented by Mr. Mrinal Kanti Ghosh, Learned Advocate.

Heard the parties.

Considered the materials placed.

This Court is not unmindful of the fact that long distances of time have expired at this stage when the appeal has come up for consideration.

However, this Court cannot be unmindful of the fact that the application for restoration of the writ petition along with the supporting application for condonation application was filed in 2015 immediately after the Order of dismissal was communicated by the erstwhile learned Advocate for the writ petitioner.

The attention of this Court is drawn to paragraph 4 of CAN 1 of 2021, which is an application for appropriate order. It is, *inter alia*, pleaded at paragraph 4 that the Order of dismissal for default of the writ petition passed on the 15th of January, 2013 was communicated by the erstwhile Learned Advocate-on-Record of the writ petitioner on 30th January, 2015, i.e. after the expiry of a period of two years. In the same year, i.e. 2015, the writ petitioner instructed his Learned Advocate to take steps for recalling the order of dismissal by filing the restoration application.

It is a settled position of law that a litigant should not be allowed to suffer due to any laches on the part of his conducting legal team.

It is apparent to this Court that the writ petitioner could not have acted beyond the instructions

of his Learned Advocate and, at any stage deserves an opportunity to present his facts before the competent Hon'ble Court on merits.

Accordingly, the Order dismissing the restoration application as well as the application in support thereof for condonation of delay dated December 1, 2015 stands set aside.

The Writ Petition, being W.P. No.21379 (W) of 2011 stands restored to its original file and number.

Considering the age of the writ petition, the writ petitioner/the appellant shall be entitled to pray for expeditious consideration before the Hon'ble Single Bench strictly upon notice to the other side.

It is made clear that this Court has expressed no opinion on the merits of the writ petition.

FMA 1276 of 2016 with IA No. CAN 1 of 2021 stand accordingly **disposed of**.

All parties to act in terms of a copy of the order downloaded from the official website of this Court.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Rai Chattopadhyay, J.)

(Subrata Talukdar, J.)

