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05.03.2022
kaushik/Dd/Aloke
/Ad
Court no. 8

(Via Video Conference)

**MAT 304 of 2022
With
IA No. CAN 1 of 2022**

**Kajali Roy Chowdhury
Vs.
The State of West Bengal & Ors.**

Mr. Anjan Bhattacharya
Mr. Sabyasachi Chatterjee
Mr. Kallol Guha Thakurta
Mr. Sayan Banerjee
Mr. Komal Kanta Kar
Mr. Emamul Hossain Mullick
Ms. Anita Shaw, Advocates
... .. for the appellant

Ms. Koyeli Bhattacharya, Advocate
... .. for the WBBSE.

Mr. Bhaskar Prasad Vaisya
Mr. Suman Dey, Advocates
... .. for the State.

The appeal is directed against the order dated
March 3, 2022 passed by the learned Single Judge.

By the impugned order dated March 3, 2022, the
learned Single Judge was pleased to dismiss the writ petition
after finding that the appellant failed to fill up the requisite
forms for appearing in the ensuing 'Madhyamik Examination'.
The learned Single Judge was of the view that the Court

cannot give relaxation to the appellant for filling up the form at this stage. The learned Single Judge also found no merit in the application since the school was not made a party and that no document was submitted and that no submission was made even orally that the examination fees were paid.

We have heard the learned Advocate for appellant, the State and the West Bengal Board of Secondary Education (in short 'the Board').

Learned Advocate for the appellant submits that by reason of the student suffering from a medical condition coupled with economic condition of the appellant steps could not be taken in time. The appellant is seeking mercy and an opportunity to participate in Madhyamik examinations.

Learned advocate appearing for the Board draws our attention to the fact that there is no materials on record to suggest, let alone establish that, the appellant approached the school with the requisite fees and paid the same. The school was not made a party-respondent in the writ petition. It is the obligation of the school to forward the application of the student to the Board for the Board to process the same, issue an Admit Card to the student and allow the student to take the examination. Since the school is not a party in the

writ petition as well as in the present appeal, in the event, the Court is pleased to allow the student to take the examination then, the requisite formalities need to be complied with both by the student and the school.

Learned advocate appearing for the State also draws the attention of the Court to the fact that the school is not a party to the writ petition or the present appeal.

We have given our anxious considerations to the facts and circumstances of the case. We find that a student of 'Class-X' of an age of 17 years with a medical condition is seeking to take the 'Madhyamik Examination' conducted by the Board.

There are substances in the contentions of the Board and the State that the absence of the school and the absence of requisite documents, evidencing that the appellant deposited requisite fees and complied with the formalities are of same consequence.

However, considering the plight of the student concerned and his peculiar medical condition and considering the fact that he should not be made to bear the burden of the laches of his guardian or his advocates and since the student is anxious to appear at the examination, it would be in

the interest of justice that we direct the Board to allow the appellant to appear at the ensuing 'Madhyamik Examination'. For such purpose, learned advocate for the Board is requested to inform the Board, in view of the paucity of time, to take appropriate measures so that the student is able to appear at the examination.

The student concerned, however, will comply with all formalities including payment of requisite fees and submitting application with the appropriate authorities. Such compliance be made within seven days from date. The Board will consider such application and the candidature of the student to sit for the examination and pass a reasoned order thereon after allowing an opportunity of hearing to the student. At the time of giving such opportunity of hearing, the student is at liberty to be represented by his guardian or any other person of his choice. The Board will pass a reasoned order and communicate the same to the student preferably within four weeks after the date of the last 'Madhyamik Examination' of the student. The hearing should also be given to the student after the last 'Madhyamik Examination' of the school.

In the event, the Board is of the view that the

student is eligible to sit at the examination, the Board will pass a reasoned order thereon and also publish the result of the student. In the event, the Board is of the view that the student is ineligible to appear at the examination, the Board will also pass a reasoned order thereon and communicate the same to the student forthwith thereafter. In such eventuality, the Board need not publish the result of the student.

Since we are of the view that there was latches on the part of the guardian of the student and his advocate in taking appropriate steps within time to facilitate the student to appear at the examination and in conducting the present litigation, and given the medical condition of the student this order be treated as one limited to the petitioner and shall not be cited as precedent.

The appeal being MAT 304 of 2022 along with the application, IA No. CAN 1 of 2022 are treated as on day's list and disposed of. The impugned order stands substituted accordingly.

All parties to act on the server copy of this order duly downloaded from the official Website of this Hon'ble Court.

(Debangsu Basak, J.)

(Ajoy Kumar Mukherjee, J.)