

1.
07-03-2022
debajyoti
(Ct. no.06)

MAT 732 of 2019
with
IA NO:CAN/1/2019 (Old No:CAN/5918/19)
+
CAN/2/2019 (Old No:CAN/5919/19)
Johora Bibi
Vs.
Momotaj Bibi & Ors.

Mr. Partha Pratim Roy,
Mr. Anirban Das,
Mr. Sarbananda Sanyal

... For the Appellant.

Mr. Jahar Lal Dey,
Ms. Debjani Mitra

... For the State.

Re : CAN 5919 of 2019

This is an application for condonation of delay of 53 days, as pointed out by the Additional Stamp Reporter, in filing the appeal. Causes shown being sufficient, the delay is condoned.

The application being CAN 5919 of 2019 is, thus, allowed.

By consent of the parties, the appeal and the stay application are taken up together for hearing.

The private respondent in the writ petition is the appellant before us.

The writ petitioner had challenged the selection and appointment of the private respondent in the post of 'Asha Karmi'. It appears that direction was given for exchange of affidavits. Neither the State nor the private respondent filed Affidavit-in-Opposition. On the day the matter was taken, i.e., on March 19, 2019,

no one appeared either for the State or for the private respondent. The learned Judge recorded such non-appearance and non-filing of affidavits and also the fact that no prayer had been made for extension of time to file affidavits. Accordingly, the learned Judge held that the averments in the writ petition were not controverted and were admitted by non-traverse. An order was passed in terms of prayers (a) and (b) of the writ petition, the effect of which was that the selection and appointment of the private respondent was set aside and liberty was granted to the State to initiate fresh process of selection by issuing necessary advertisement.

Being aggrieved, the private respondent is before us.

Appearing on behalf of the State, Mr. Dey, learned counsel, apprises us that pursuant to the order impugned, the State initiated a fresh process of selection and a third person, neither the appellant nor the writ petitioner, has been selected and appointed in the post in question. Such appointment was approved on July 15, 2021.

In view of the aforesaid, the appeal has become infructuous. In any event, the new appointee is not a party to these proceedings. Needless to say, the appellant will be at liberty to challenge the appointment aforesaid, in accordance with law, if he is entitled to do so.

The appeal and the stay application are disposed of accordingly.

Affidavits not having been called for, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)