

14.06.2022
Item No.275
Crt. No.11.
KB

**MAT 2415 of 2003
with
IA No. CAN 1 of 2005
(Old No. CAN 10200 of 2005)**

**Mrs. Sutapa Nandy
-Vs-
The State of West Bengal & Ors.**

Mr. Phatick Chandra Das
... For the Appellant.

Mrs. Kakali Samajpati
... For the State-respondents.

**In Re : IA No. CAN 1 of 2005
(Old No. CAN 10200 of 2005)**

The appellant is represented by Mr. Phatick Chandra Das, Learned Counsel.

Ms. Samajpati, Learned Advocate, appears for the State-respondents.

Affidavit of Service is filed by the appellant, which be retained with the record.

The appeal is barred by delay.

The delay has been sought to be explained by way of filing an application for condonation of delay being IA No. CAN 1 of 2005 (Old No. CAN 10200 of 2005).

The delay is found to be sufficiently explained in the application for condonation of delay.

Accordingly, the delay stands condoned.

IA No. CAN 1 of 2005 (Old No. CAN 10200 of 2005) stands thus disposed of.

In Re: MAT 2415 of 2003
with
CAN 2970 of 2005

Next, MAT 2415 of 2003 is taken up for consideration on merits.

The appeal is directed against the Judgement and Order dated 4th July, 2002 in the writ petition which is W.P. No. 8808 (W) of 2002.

The claim in the writ petition is for regularisation of the services of the writ petitioner as an Assistant Teacher in the School-in-issue.

The Hon'ble Single Bench refused the claim on the ground that the prayer made for regularisation is barred by delay. It was, *inter alia*, noticed by the Hon'ble Single Bench that the petitioner has challenged the order of the Director of School Education, West Bengal (for short the *DSE*) dated the 12th of October, 1998, wherein the *DSE* refused to accept the request of the writ petitioner for absorption on the ground that the writ petitioner was appointed only as a part time teacher in a Government aided School.

The Hon'ble Single Bench also, *inter alia*, held that at the relevant point of time the regular recruitment of Assistant Teachers stood governed by the School Service Commission Act, 1997 (for short the 1997 Act). The writ petitioner therefore had no enforceable right to claim regularisation merely being appointed in a part time or

ad-hoc basis which was not in the nature of a full time appointment to a sanctioned post.

The appeal has come up for consideration before this Court in June, 2022, i.e. after expiry of full two decades after passing of the Order of the Hon'ble Single Bench on the 4th of July, 2002.

From the Order-sheet in the appeal, it transpires that after the filing of the appeal in 2003, it first appeared before the Hon'ble Division Bench on the 10th of April, 2006. Thereafter, it appeared after a gap of two years before another Hon'ble Division Bench on the 24th of September, 2008.

It appeared next before a third Hon'ble Division Bench on the 21st of April, 2014, i.e. after a gap of six years.

The Hon'ble Division Bench was pleased to consider the appeal again on the 14th of May, 2014. Thereafter, the matter was again placed before another Hon'ble Division Bench when the appeal could not be taken up for consideration as Learned Counsel for the appellant prayed for listing the matter after four weeks.

Finally, the matter was taken up on the 5th of September, 2018, after a delay of four years and it was noticed that the appeal was still in its nascent stage. The appeal was still not regularised since the condonation of delay application had not yet been considered.

It would be relevant to mention that on the dates as stated above, none appeared for the appellant on the 24th of September, 2008 and on the 8th of May, 2014.

Assuming but not admitting that the appellant may have a reasonable case on merits, but at this distance of time this Court finds that the appellant cannot be extended the relief as prayed for in the original writ petition filed in 2002 against an order of the *DSE* passed in 1998. This Court further finds that in the interregnum the Hon'ble Apex Court had pronounced in detail on the point of regularisation in *State of Karnataka vs. Uma Devi. Uma Devi* still holds the field subject to specified exceptions and from the facts made out in the appeal, it does not transpire that the appellant falls within such exceptions.

Furthermore, the failure on the part of the appellant to assist this Court on several dates as noticed by Orders of the concurrent Hon'ble Division Benches and the fact that even till date the application for condonation of delay could not be considered in spite of the pendency of the appeal since 2003 till date persuades this Court to deny relief to the appellant.

MAT 2415 of 2003 with **CAN 2970 of 2005** stand thus **dismissed**.

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

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

(Lapita Banerji, J.)

(Subrata Talukdar, J.)