

01.12.2022
Item No. 5.
Court No.6.
AB

M.A.T. 1740 of 2022
With
I A CAN 1 of 2022
I A CAN 2 of 2022

Asit Baran Guria
Vs
The State of West Bengal & Others

Md. Sarwar Jahan,
Mr. Jayanta Samanta ...for the Appellant.

Mr. Pinaki Dhole,
Mr. Avishek Prasad ...for the State.

Mr. Ritwik Pattanayak
....for the Respondent Nos.2 to 4.

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

In re : IA CAN 2 of 2022

This is an application for condonation of delay of 1480 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

I A CAN 2 of 2022 is, accordingly, disposed of.

In re : MAT 1740 of 2022, IA CAN 1 of 2022

A Judgment and Order dated September 11, 2018, whereby the appellant's writ petition being W. P. No.24917 (W) of 2017 was practically dismissed, is under challenge in this appeal.

The appellant/writ petitioner was appointed as Assistant Cashier by the respondent Cooperative Bank (in short "the Bank") in the year 1977. On or about January 24, 1998, a criminal case was initiated again

him for alleged defalcation of funds. He was placed under suspension. Disciplinary proceedings were also initiated against him.

He filed W. P. No.10416 (W) of 1998 challenging the order of suspension. He failed to obtain any interim order. The writ petition was dismissed for default on June 10, 2008. No steps were taken for restoration of the writ petition.

In the meantime, the disciplinary proceedings culminated in an order of dismissal of the appellant. This was on or about June 8, 1998.

In the usual course, the appellant would have retired on August 25, 2009.

The appellant was acquitted of the criminal proceedings on or about July 31, 2013.

More than four years after that, the appellant approached the learned Single Judge saying that since he had been acquitted of the criminal trial, he should be paid his terminal benefits and arrear salary. The learned Judge was told by the Bank that the appellant /writ petitioner had been dismissed from service upon completion of the disciplinary proceedings in June, 1998. Noting the same, the learned Judge disposed of the writ petition by observing "the question of payment of terminal benefits, if not already paid, except the petitioner's own contribution to Provident Fund, therefore, does not arise." Hence, this appeal.

We have heard learned Counsel for the parties. Mr. Jahan, learned Advocate appearing for the appellant, in his usual fairness, has stated that the appellant should have preferred a departmental appeal against the order of dismissal, as is provided for in the relevant Rules. However, he was not properly advised. He prays for condonation of the delay and an order permitting the appellant to file appeal against the order of dismissal. He very fairly submits that this is a mercy petition.

We may have full sympathy for the appellant but we are unable to pass an order permitting him to prefer departmental appeal against an order, which was passed way back on June 8, 1998. More than 24 years have elapsed, since the order of dismissal was passed. It would be very unfair to the respondent Bank if today we condone such huge delay and permit the appellant to reopen the entire issue.

We also keep in mind that a criminal trial and disciplinary proceedings are two independent proceedings. The fact that the appellant had been acquitted of the criminal charges does not necessarily mean that he would succeed in the disciplinary proceedings. The result of the criminal trial would really have no bearing on the disciplinary proceedings.

We find no infirmity in the order of the learned Single Judge. We wish, we could show mercy to the

appellant but we have to be guided by law and not by emotion.

The appeal fails and the same is, accordingly, dismissed along with the connected application, without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)