

SL
No.8
Court
No. 11
G.S.Das
06.12.2022

MAT 2148 of 2014
[WPA 15837 of 2010]
With
CAN 1 of 2014
(Old No. CAN 12400 of 2014)

Alok Kumar Khatua
-Vs-
State of West Bengal & Ors.

Mr. Kanailal Mondal
Mr. Rajat Kumar Dhar
Mr. Pijus Kanti Ghoshal

... for the Appellant

Mr. Susanta Pal

... for the State-respondents

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

In Re: CAN 1 of 2014 (Old No. CAN 12400 of 2014)

It is submitted by Learned Counsel appearing for the
appellant that the appeal is barred by delay.

Heard the appellant on the question of limitation.

Perused the contents of CAN 1 of 2014, which is an
application for condonation of delay.

Sufficient cause has been made out in support of the
prayer for condonation of delay.

Delay stands accordingly condoned.

The appeal stands formally taken on board.

CAN 1 of 2014 stands accordingly disposed of.

In RE: MAT 2148 of 2014

In compliance with the previous order of this Court
dated 7th of November, 2022, Mr. Mondal, Learned Counsel

appearing on behalf of the appellant, files Affidavit-of-Documents.

A copy of the Affidavit-of-Documents (*supra*) is handed over to Mr. Pal, Learned Counsel appearing for the State-respondents.

The record of the writ petition, being WP No. 15837(W) of 2010, is also tagged with the present appeal.

The petitioner claims to have been appointed as a teacher in Mathematics at the school in issue which is Government aided. The appointment of the teacher was on voluntary basis pursuant to the recommendation of the then Managing Committee (for short, MC) of the School in issue.

After serving in the School in issue, the appellant has prayed for regularisation of his service. Since the prayer for regularisation was not considered by the then MC, the appellant approached the Writ Court for reliefs.

By an Order dated 26th of November, 2008 in the Writ Petition being WP No. 22733(W) of 2008, the Hon'ble Single Bench directed the School Education Department, Government of West Bengal, to take a decision in this respect in accordance with law.

It further transpires from the record of this appeal that by an order dated 3rd December, 2009, the District School Education (DSE) rejected the claim of the petitioner for regularization of his service. It was opined by the DSE that initially the appointment of the appellant was made without taking permission from the concerned District Inspector of

Schools (for short, D.I. of School) as required under the then Rules. Such appointment was therefore held to be without statutory basis. The claim for regularisation of the appellant was also rejected on the strength of the Constitution Bench decision of the Hon'ble Apex Court [***In Re.: Umadevi & Ors., reported in 2006 4 SCC 1***].

It was further opined by the DSE that after coming into force of the West Bengal School Service Commission Act, 1997, there can be no appointment of teaches in any Government aided schools without the recommendation of the Regional School Service Commission.

Challenging the order of the D.S.E. dated 3rd of December, 2009 (*supra*), the writ petition presently under appeal being WP 15837(W) of 2010, was filed. The said writ petition was dismissed by an order dated 5th July, 2012 passed by the Hon'ble Single Bench which is the order under challenge.

The Hon'ble Single Bench was pleased to uphold the legality of the order of the DSE dated 3rd December, 2009 (*supra*). The Hon'ble Single Bench found the writ petition to be without merit in view of the operation of the School Service Commission Act, 1997 governing the appointment of teachers to Government aided schools.

Having heard the parties and considering the materials placed, this Court finds that the appellant has been unable to show that he has been appointed to the School in issue following the recruitment rules and procedure. The

letter of appointment shows that the appellant was appointed purely on voluntary basis by the then MC upon payment of a monthly honorarium.

In the above view of the matter, this Court is of the view that the DSE was correct in holding that the appellant was appointed without any statutory basis. The DSE was further correct in holding that in view of the operation of the School Service Commission Act, 1997, the appellant has been unable to make out a case for being considered for regular appointment.

For the reasons above, this Court does not find any merit in this appeal.

MAT 2148 of 2014 stands accordingly **dismissed.**

Since affidavits are not invited, all allegations to the contrary are deemed to be denied and disputed.

All parties to act on a server copy of this order duly obtained from the official website of the Hon'ble High Court, Calcutta.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Supratim Bhattacharya, J.)

(Subrata Talukdar, J.)