

**09.02.
2023**

Ct. No. 04

Ab

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.**

WP.ST 3 of 2023

Sk. Firoj

Vs.

The State of West Bengal and others.

**Mr. Biswarup Biswas,
Mr. Pranab Kumar Das.**

... for the petitioner.

**Mr. Tapan Kumar Mukherjee,
Mrs. Saheli Mukherjee.**

... for the State respondents.

The instant writ petition arises from an order dated 6th May 2022 passed by the West Bengal Administrative Tribunal in OA 534 of 2019, by which the tribunal application was disposed of on merit.

The dispute relates to the appointment on compassionate ground because of the sudden death of the father of the applicant while in service. A grievance was raised in relation to non-consideration of such claim and the matter was admitted on 15th November 2019. The Tribunal was directed the parties to exchange affidavits, which, in fact, were done, but thereafter the matter was listed on three or four occasions when the writ petitioner did not appear.

Suddenly, on the day of passing the impugned order, the State respondents and the private respondent appeared and invited the attention of the Tribunal on the merit of the said application and the Tribunal proceeded simplicitor on the basis of their submissions and disposed of the proceeding in absence of the writ

petitioner being the applicant of the tribunal application.

It is beyond cavil of doubt that the moment the applicant does not appear on the date when the tribunal application was called on for hearing, the course, which can be adopted by the Tribunal, is to dismiss the said application for default and should not enter into the merit of the case and decide the same without affording an opportunity to the applicant therein. The another reason for such proposition is that the contesting respondents would invite the attention of the Tribunal to the defence and the applicant may not be able to counter those submissions and bring the clarity thereof and, therefore, such decision may sometimes be tainted with lack of proper application for legal provisions.

Since the impugned order reveals the matter to have been decided on merit in absence of the writ petitioner being the applicant in the tribunal application, the same cannot be sustained in the eye of law.

The impugned order is, thus, set aside. The tribunal application is restored to its original file and number.

The Tribunal is directed to consider and dispose of the said tribunal application within four weeks from the date of communication of this order.

The time limit given herein before is for the reason that the parties have already exchanged their affidavits and the matter was ready for final disposal. However, the learned Advocate for the writ petitioner assures this Court that he would not indulge any unnecessary procrastination of the litigation and shall not seek any adjournment except necessitated by unavoidable and

unforeseen circumstances.

The Tribunal is requested to fix a date for hearing of the said application in presence of the parties or their respective Counsels, which should not be beyond fifteen days from the date of communication of this order.

With these observations, the writ petition is disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)