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MAT 138 of 2019
with
I.A No. CAN 1 of 2019 (Old CAN No. 7284 of 2019)
CAN 2 of 2019 (Old CAN No. 7285 of 2019)

The State of West Bengal & Ors.
Vs.
Biswajit Mahato & Ors.

Mr. Avishek Prasad
... For the Appellants/State

Ms. Rita Patra
Ms. Pusmita Das
... For the Respondents

Re: CAN 7285 of 2019
(Condonation of Delay)

1. There is a delay of 121 days in presenting the memorandum of appeal.
2. We are satisfied with the explanation offered for not being able to file the memorandum of appeal within the statutory period, we are inclined to condone the delay in presenting the memorandum of appeal.
3. The application for condonation of delay is, thus, allowed without any order as to costs.
4. CAN 7285 of 2019 is thus disposed of.

Re: MAT 138 of 2019

1. An unhealthy practice has grown by which the State in most of the matters do not appear in spite of notice and thereafter challenge the said order in appeal on materials that were never produced before the learned Single Judge. If the State respondents are

advised to prefer an appeal and challenge the order on merit, the State respondents should not be allowed to produce any document, which is not forming the record of the writ petition. There is no explanation offered in this matter on behalf of the State respondents for non-appearance on the date when the order was passed. The order recorded that despite service of notice, the State is not represented. Nothing prevented the State respondents to file any application for recalling of the said order with materials or for review of the said order for consideration. They did not do so.

2. We are not inclined to interfere with the order as we are of the view that the proper course would have been to approach the learned Single Judge for recalling of the order explaining the reason for non-appearance on that date. In the event of an appeal against the said judgment, the State/appellants is not entitled to rely upon any other document or material to challenge the said order unless it is established that the said order was obtained without disclosing material facts. In the instant case, the matter concerning compassionate appointment is pending for a considerable period of time and the order was passed on the basis of the recommendation of the District Inspector of Schools

dated 30th March, 2013.

3. The learned Single Judge was right in giving the direction based on the said communication as no other material was available on record. It is not the case of the appellants that the writ petitioner has suppressed any document as the document on which the State now wants to rely upon by way of a supplementary affidavit is a document which admittedly was not within the knowledge and possession of the writ petitioner.

4. On such consideration, we dismiss the appeal.

5. However, this order shall not prevent the writ petitioner to seek recalling of the said order in accordance with law.

6. The appeal being MAT 138 of 2019 is accordingly disposed of.

7. In view of disposal of the appeal, nothing remains to be decided in the application for stay being CAN 7284 of 2019 and the same is accordingly disposed of.

8. However, there shall be no order as to costs.

9. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar,J.)

(Soumen Sen, J.)

