

Court No.
13.02.2023

(Item No. 41)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 3041 of 2023

Debasish Paul
VS
The State of West Bengal & Ors.

Mr. Uday Sankar Chattopadhyay
Mr. Sumon Sankar Chatterjee
Mr. Santanu Maji
Mr. Pronay Basak
Mr. Debdipto Banerjee
.... For the petitioner

Mr. Biswajit De
Ms. Debdooti Dutta
.... For the State
Ms. Koyeli Bhattacharyya
.... For W.B.B.S.E.

The petitioner claimed to a successful candidate in the **First State Level Selection Test, 2016** and was selected for the post of **Assistant Teacher (Classes IX to X)** for the subject **Physical Science (GRAD)**. At the relevant point of time, when the petitioner was selected for the post of Assistant Teacher he was already employed with the department of the **Defence, Union of India**. On **January 9, 2019, Annexure P-4** at **page 24** to the writ petition, the petitioner received the necessary appointment for the post of Assistant Teacher under the communication issued by the respondent No. 6. On the same day the petitioner by a letter dated **January 9, 2019, Annexure P-6** at **page 27** to the writ petition made a representation before the respondent No. 6 that, since, he was working with the **Ordinance Factory, Jabbalpur**, he requested the

Board to consider for extension of some period to enable him to join the said post of Assistant Teacher by receiving the said appointment.

Mr. Uday Sankar Chattopadhyay, learned advocate appearing for the petitioner submitted that, the petitioner was vigilant and requested the respondent No. 6 from time to time to grant the extension of time to enable the petitioner to join at the post of Assistant Teacher and the office of the respondent No. 6 always assured the petitioner that, such extension would be provided for. Mr. Chattopadhyay had relied upon paragraph 11 from the writ petition, which is quoted below:

“Your petitioner states that the father of the petitioner suffered from COVID and took months to recover completely, being an old-aged person. During most phase of 2020 and 2021, the pandemic because of the same was causing havoc. The petitioner also stayed out of his house at Madhya Pradesh. As such, there were many difficulties for the petitioner during such phase, which caused the undesired and unintentional delay while filing the instant writ petition. In the said context, it is also pertinent to mention that during the said intermittent period, the petitioner, on several occasions made representations before the respondents and visited their offices physically to sort out their issue, and the respondents kept on assuring the petitioner that their issue would be sorted out and the petitioner would be allowed to join his desired school. The delay caused herein is

absolutely unintentional and should be condoned.”

He submitted that, since he has successfully qualified and received the appointment for the post of Assistant Teacher, he has a right to join as such and the representation was made before the respondent No. 6 on the same day i.e. **January 9, 2019** at **page 27** to the writ petition when the petitioner received the appointment. The respondent No. 6 slept over the said representation and did not pay any heed thereto, for which the petitioner should not suffer and the instant writ petition should be allowed.

Ms. Koueli Bhattacharyya, learned advocate appearing for respondent No. 6 submitted that, since January 9, 2019 there was not a scrap of document to show that the petitioner was vigilant in pursuance his claim. Only after four years a further communication dated **January 2, 2023** was sent by the petitioner to the respondent No. 6 to consider his case, **Annexure P-7** at **page 28** to the writ petition. This long four years of silence had not been explained at all by the petitioner.

After considering the rival contentions of the parties and upon perusal of the materials on record it appeared to this Court that, the petitioner has been serving the **Defence department, Union of India** successfully after receiving a proper appointment

there. In deed the petitioner in between **January 2019 till January 2023** did not pursue his claim.

On a careful scrutiny of the averments made in the writ petition including those at **paragraph 11** of the writ petition, this Court is of the view that, the statements made therein are bereft of any evidence and a general statements with an attempt to cover up the delayed action of the petitioner.

In as much as, in view of the said severe and stringent employment condition all over the country, when the petitioner is serving the Defence department of the country by way of his permanent employment, if such a delayed action is allowed the petitioner would have to resign from the said Central Government and in that event, employment of at least one *bona fide* candidate should be wasted from the selected panel and the employment will be blocked for at least one individual, if he would be allowed to join for the post of Assistant Teacher at this belated stage of four years. The pendency of the representation of the petitioner made in **January 2019** before the respondent No. 6 would not give rise to any right or equity and/or special equity which can be considered by this Court, in the facts and circumstances of this case.

This Court in exercise of its high prerogative writ jurisdiction grants its equitable relief and such equitable relief should depend upon facts of each

case. Considering the facts and circumstances of this case this ,Court is of the firm view that, no such equitable relief should be granted to the petitioner.

For the foregoing reasons and discussions this writ petition being **WPA 3041 of 2023** stands dismissed.

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

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)