

11 05.10.2023

Ct-08

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MAT 353 of 2023

with

I.A No. CAN 1 of 2023

CAN 2 of 2023

Ambika Prasad Tewari

Vs.

State of West Benal & Ors.

Mr. Partha Sarathi Bhattacharyya, Sr. Adv

Mr. Bidyut Baran Biswas

Mr. Ranjit Rath

Mr. Alok Chakraborty

Mr. Raju Bhattacharyya

... For the Appellant

Ms. Koyeli Bhattacharya

... For the WBBSE

Mr. Saktipada Jana

Mr. Subhajyoti Das

... For the Respondent nos. 8 & 9

Mr. Asish Kumar Guha

Mr. Benazir Ahmed

... For the State

Re: CAN 1 of 2023

(Condonation of Delay)

1. There is a delay of 175 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 1 of 2023 is thus disposed of.

Re: MAT 353 of 2023

1. We have heard the learned counsel appearing for the parties.

2. By consent of the parties, the appeal and the application for stay are heard together and disposed of by this common order.

3. The facts in the instant case are similar to the issue we have decided in MAT 1051 of 2023 (*Sri Jitendra Nath Biswas Vs. The State of West Bengal & Ors.*) on 21st November, 2023. In *Jitendra Nath Biswas* (supra) in view of breach of natural justice during the disciplinary proceeding the matter was remanded to the disciplinary authority for fresh consideration. However, by reason of the West Bengal Board of Secondary (Appointment, Confirmation, Conduct and Discipline of Teachers and Non-Teaching Staff) Rules, 2018 came into force the said proceeding could not have been resurrected as the relevant Rules does not permit continuation of the disciplinary proceeding after the retirement of an employee.

4. Learned counsel representing the School authority has submitted that in 2008 the then Managing Committee functioning as disciplinary authority had recommended dismissal of the petitioner from service and forwarded the same to

the West Bengal Board of Secondary Education for approval, although the Board sat tight over the matter.

5. The appellant retired from service on 31st January, 2009. In view of such retirement, there cannot be any question of removal or dismissal from service after retirement and at the same time there is also no scope of obtaining prior permission or approval from the Board for such removal or dismissal after retirement in terms of Rule 28(8) of the 1969 Rules as applicable to the writ petitioner at the relevant point of time. This was considered by a coordinate Bench in ***Durgadas Mukhopadhyay Vs. The State of West Bengal & Ors.***, reported in **2007(4) CHN 382**.

6. Learned counsel for the school authority has further argued that the charge against the appellant is grave and serious and the appellant had obtained the employment on the basis of the fake B.Ed certificate. However, it is not in dispute that the appellant is having B.Sc. degree in mathematics and he subsequently acquired Master Degree in mathematics while in service. The School authority has also submitted that a criminal proceeding is pending against the appellant with regard to producing fake B.Ed certificate and the

said proceeding has not yet been concluded.

7. Having regard to the fact that the disciplinary proceeding cannot be continued under the present Rules of 2018 and it had lapsed in the mean time and the writ petitioner in terms of the decision of the Hon'ble Supreme Court in the case of ***Bhagirathi Jena Vs. Board of Directors, O.S.F.C & Ors.***, reported in ***AIR 1999 SC 1841*** would be entitled to all admissible retiral benefits subject to the result of the criminal proceeding. In view of the pending criminal proceeding the appellant/petitioner is entitled to only provisional pension.

8. We make it clear that in the event the criminal proceeding is decided in favour of the complainant and against the writ petitioner, proceedings may be initiated for recovery of all amounts that he would receive in terms of this order. The period of limitation of such case shall not stand in the way and the petitioner would be entitled to the benefit of Section 14(3) of the Limitation Act.

9. To release of the gratuity amount of Rs.3,00,000/- in favour of the petitioner is also subject to the result of the pending criminal proceeding. Learned advocate holding the gratuity

amount shall immediately proceed, after the criminal proceeding is decided, with the gratuity amount with accrued interest to the District Inspector of Schools (S.E), Kolkata in terms of the direction of the learned Single Judge.

10. The acceptance of the said amount is payable upon the said condition and shall be released only after an affidavit of undertaking is filed with the District Inspector of Schools (S.E), Kolkata. After filing of such affidavit of undertaking all admissible retiral benefits including the gratuity shall be released in terms of this order.

11. In view of the fact that a criminal proceeding, being Criminal Case No. 49 of 2007 (State Vs. Ambika Prasad Tewari) before the 6th Judicial Magistrate, Sealdaha, is pending for almost 20 years, we request the learned Trial Judge to dispose of the criminal case preferably within a period of six months from the date of communication of this order by either of the parties.

12. The order under appeal is modified to the aforesaid extent.

13. In view of the aforesaid, the appeal being MAT 353 of 2023 stands disposed of.

14. In view of the disposal of the appeal, nothing remains to be decided in the application for stay being CAN 2 of 2023 and the same is accordingly disposed of.

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

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

(Uday Kumar, J.)

(Soumen Sen, J.)

