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MAT 471 of 2023
with
I.A No. CAN 1 of 2023
CAN 2 of 2023
CAN 3 of 2023
CAN 4 of 2023
CAN 5 of 2023

Dr. Manik Bhattacharya
Vs.
The State of West Bengal & Ors.

Mr. Sourav Kumar Mukherjee
Ms. Anjana Banerjee
Ms. Sohana Pal
Mr. Souhardya Mitra
... For the Appellant

Mr. Dibyendu Chatterjee
Mr. Pritam Majumdar
Mr. Rahul Deb Goenka
Mr. Mainak Singha Barma
Ms. Satabdi Das
... For the Private Respondents

Mr. Supriyo Chattopadhyay
Ms. Iti Dutta
... For the Respondent nos. 18 & 19

Mr. Bhaskar Prasad Vsisya, Ld. AGP
Mr. Mrinal Kanti Ghosh
... For the State

Mr. Nilay Baran Mondal
... For the DPSC, Purulia

Mr. Saibal Kumar Acharya
Mr. Tanveer Jamil Mondal
... For the Respondent nos. 36 & 37

Mr. Arindam Chattopadhyay
... For the DPSC, Nadia

Mr. L.K. Gupta, Sr. Adv
Mr. Subir Sanyal
Mr. Ratul Biswas
Mr. Kaushik Chowdhury
... For the WBBPE

Mr. Gourav Das
... For the Respondent nos. 12 & 13

Re: CAN 1 of 2023 & CAN 3 of 2023

1. CAN 1 of 2023 is an application for leave to prefer an appeal and CAN 3 of 2023 is an application for condonation of delay. Both the applications are heard together and disposed of by this common order.
2. The appellant was the Principal of Jogesh Chandra Chaudhuri Law College. After his retirement he was appointed as the President of West Bengal Board of Primary Education. On 25th January 2023 the appellant was served a letter dated 24th January, 2023 issued by Dibyendu Chatterjee, learned advocate, without any copy of the writ petition or any order passed in the writ petition. Subsequently, the appellant obtained a copy of the writ petition. By the order dated 16th January, 2023 passed in WPA 23798 of 2022 the learned Single Judge imposed cost of Rs.1,00,000/- (one lakh) to be realized from the petitioner/appellant. The petitioner is in custody since October 2022. In the application it is stated that he was not served the writ petition nor any order passed in the said proceeding. With great difficulty he could conduct his proceeding while he is in custody. There has been no intention or laches on his part.
3. The application for condonation of delay is

opposed by the respondent nos. 44 to 123 and they have filed objection against the said Application. It is stated there the appellant filed several applications before the Hon'ble Supreme Court as also in the Hon'ble High Court during February 2023. As such his explanation that by reason of him being in custody he is unable to file his application for leave to prefer an appeal along with the application for condonation of delay is not sustainable and should not be accepted.

4. It is a fact that he is in custody since October 2022 and there is no denial that he has not been served the copy of the writ petition or any order passed in the said writ petition. It is not disputed that he is not a party to the writ petition, but his right has been affected by the order of the learned Single Judge by imposing cost of Rs.1,00,000/- (one lakh) to be realized from the petitioner/appellant. Moreover, it appears that the delay is mainly attributable to the learned advocate on record conducting the matter on behalf of the applicant as the learned advocate initially filed an application on 9th March, 2023 in the department and thereafter he filed another application on 25th September, 2023. The department was equally responsible in not pursuing the application dated 9th March, 2023

and the revised report of the stamp reports shows that the said application was only processed on 13th October, 2023 but was declared “lapsed” on 16th October, 2023 on account of non-depositing of requisite fees within 7 days. There is no explanation offered by the department on the date the first requisition was filed in not processing the said requisition. If it were processed immediately the period of delay would have been shorter. Having regard to the facts and circumstances of the case we are of the view that the delay in filing the appeal has been sufficiently explained and we accept the said explanation. The delay of 245 days is condoned. In view of the order passed in the writ petition imposing cost for his perceived negligence without giving him an opportunity to explain inasmuch as he has not been served with the writ petition, we feel that he is a party aggrieved and hence we allow the application for leave to prefer an appeal.

2. CAN 1 of 2023 and CAN 3 of 2023 are accordingly disposed of.

Re: CAN 4 of 2023 & CAN 5 of 2023)

1. CAN 4 of 2023 and CAN 5 of 2023 are the applications for addition of party. The applicants have filed these applications for addition of party in connection with the appeal being MAT 471 of 2023

filed by Dr. Manik Bhattacharya. The basis of the applications appear to be that in respect of all District Primary School Council in West Bengal, the West Bengal Board of Primary Education never published additional panel of 5% and that are covered by the order of the learned Single Judge, we are unable to appreciate the nature of submission as the appeal and applications preferred by Dr. Manik Bhattacharya is only limited to the personal liability imposed upon him and in that proceeding the applicants cannot seek relief as their applications are unconnected with the said appeal. If they are aggrieved by the order of the learned Single Judge, they can file separate appeal. In view of the above, CAN 4 of 2023 and CAN 5 of 2023 stand dismissed.

**Re: MAT 471 of 2023
with
CAN 2 of 2023**

1. By consent of the parties the appeal and the application are disposed of by this common order.

2. The applicant is aggrieved by the order dated 16th January, 2023 by which the applicant was directed to pay cost of Rs.1,00,000/- from his own source and the said amount shall released from the bank account or from the property of the applicant. The applicant was the erstwhile President of the West Bengal Board of Primary Education. He is in custody

since October, 2022. It appears that a writ petition was filed in which, inter alia, a grievance was raised that the Board did not declare and fill up additional panel of 5% of the General, Scheduled Castes, Scheduled Tribes, OBC Category-A, OBC Category-B, Exempted Category, Ex-Servicemen and Physically Handicapped candidates in the same manner as referred to sub-rule (5)(b)(i) of Rule 8 of 2016 Rules. The learned Single Judge called for a report from the Board. The Board in its report stated that the additional panel of 5% of vacancies has not been prepared or published. The report of the Board is placed before us.

3. Mr. L.K. Gupta, learned Senior Counsel appearing on behalf of the Board has submitted that in case of non-joining of candidates, the remaining vacancy could be filled up by creation of additional panel of 5% as contemplated in Rule 8(6) of the 2016 Recruitment Rules read with Rule 10(4). However, this point appears to have not been argued or appears to have been considered in the impugned order. Possibly it was not argued. Attention of the Court is drawn to a subsequent order passed by Justice Gangopadhyay on 29th March, 2023 in which with regard to additional panel, the following observation has been made:-

“Unless a decision is taken in respect of the subsistence or cancellation of more than 40,000

recruitment by this Court in 2016 recruitment process, the question of publication of additional panel should not be decided.”

4. Mr. Gupta submits that in view of the aforesaid observation, it is clear now that the interpretation of Rule 8(6) and 10(4) of the Recruitment Rules, 2016 are now to be considered and decided in the pending proceeding.

5. In view of the subsequent order passed by Justice Gangopadhyay, it, prima facie, appears that no final decision has been taken by the learned Single Judge with regard to the requirement and preparation of an additional panel.

6. We are, however, not expressing any opinion with regard to the interpretation of the aforesaid provisions as we are of the view that such issues should be raised before the learned Single Judge for a decision. However, having regard to the fact that there is an arguable case and require a consideration, we feel that an opportunity should have been given to the petitioner to explain how he is not responsible for non-preparation of the additional panel.

7. Moreover, the panel has to be prepared by the Selection Committee in terms of Rule 8(5) in which the President of the Board is not involved and, accordingly, the failure on the part of the present appellant in the capacity of President, possibly could not have been inferred.

8. In absence of mala fide being established or an opportunity being given to the appellant to explain the reason for non-preparation of the additional panel, we feel that the cost could not have been imposed as it has a civil consequence.

9. Under such circumstances, we set aside the order insofar as it has imposed cost.

10. The appeal is allowed.

11. Accordingly, the appeal and the application stand disposed of.

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

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

(Uday Kumar,J.)

(Soumen Sen, J.)

