

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 5058 of 2008

**Mahadeb Bhattacharya
VS
State of West Bengal & ors.**

For the Petitioner

: Mr. Asim Hati,
: Ms. Sreetama Neogi,
: Ms. Nandini Sharma,
: Mr. Antariksha Karmakar.

For the State

: Mr. Suman Dey.

Heard on : 14/01/2025

Judgment on : 14/01/2025

Rai Chattopadhyay, J. :-

1. The writ petitioner's grievance is with respect to the alleged inaction by the respondent No. 5 and 6, that is, school authority in considering his application submitted in response to the notification to fill up vacancy in the post of Assistant Headmaster.
2. The necessary fact relevant in this case is required to be stated, which is as follows:-

The petitioner has been an Assistant Teacher of the school /respondent No. 4. With effect from September 27, 2002 and as per resolution of the Managing Committee of the school, the petitioner was suspended from his service. Also the disciplinary enquiry has been initiated against him.

- 3.** During this period of time the vacancy notification dated June 16, 2003 was published, seeking applications for the post of Assistant Headmaster, from the eligible teachers. On June 19, 2003 the petitioner has submitted his application in response to the said vacancy notification. Allegedly his application as above has never been considered by the respondent school authority and he has not been granted any opportunity to take part in the selection process for appointment of Assistant Headmaster.
- 4.** According to Mr. Hati, who represents the petitioner, this has been done in gross violation of the rules and procedure laid down under the law. He would say that the petitioner has been deprived not only of his legal right to be considered within the zone of eligible candidates for the post of Headmaster but also principle of natural justice has been profoundly violated by declining him the opportunity to take part in the selection process. Mr. Hati would firstly say that the vacancy notification has never been widely circulated. Thus, the process has never been a transparent one, according to him. Thereafter, according to Mr. Hati the process has not been in terms of the existing rules enumerated in Government Order No. 1628-GA/OM-18/2001 dated July 10, 2002 and thus the same should not stand in the eye of law, he says.
- 5.** Mr. Hati has relied on the Clauses 3E, 1st paragraph and 2nd paragraph of the said notification No. 1628-GA/OM-18/2001 dated July 10, 2002, to submit that the rule prescribes preparation of panel either of three candidates or at least two candidates from amongst whom the appointee should be chosen. However, in the present case, according to the writ petitioner only one man panel has been prepared, which is in gross violation of the above stated provisions of the notification and guidelines. That apart from being illegal, the said one man panel would also be unreasonable and irrational, contrary to the tenets of transparency and fairness. On this Mr. Hati for the

petitioner has relied on an unreported judgment of this Court dated February 27, 2019 (***Dr. Abhijit Guha vs. Vidyasagar University & Ors. in W.P. No. 30119 (w) of 2008***)

6. Thus according to the petitioner the entire process of selection of an Assistant Headmaster would be bereft of due compliance with legal provisions and fail to meet the yardsticks of reasonableness and fair play and thus illegal.
7. On behalf of the State respondent, Mr. Dey has raised vehement objection as to the contentions or the prayer of the petitioner. He has firstly challenged the petitioner's prayer on the ground that the writ petition is meritless due to the unexplained delay in filing thereof. He has elaborated that after the vacancy notification published on June 15, 2003, the petitioner has come before this Court to challenge the same on March 14, 2008, without explaining the long span of time spent in between, for about five years. According to him such unexplained delay in filing the writ petition should defeat the petitioner's causes. He would further say that the petitioner has not challenged the penal or irregular circulation of vacancy notification as alleged. He would say that unless pleaded the petitioner would not have an opportunity to rest his arguments on the said points. He says that at the relevant point of time the writ petitioner was under suspension with serious charges of misconduct and subsequently disciplinary proceeding has also been initiated against him. In that event unsettling the settled position which has continued till date would not be equitable and proper, he says. He would seek for dismissal of the present writ petition.
8. Heard submissions. Perused the records. It is noticed that the writ petitioner has already retired during the pendency of the present writ petition, on January 31, 2019. He challenged the selection process for the post of Assistant Headmaster.

9. Nevertheless, he comes to the Court after delay of more than five years though does not clarify as to what restrained him to come before the Court after a prolonged period of time to challenge the said alleged inaction, which cannot be reasonably justified. The law is settled that unexplained and inordinate delay in filing the writ petition should defeat the causes of the petitioner.

10. One may note the following judgments, in this regard:-

- (i) ***Mrinmoy Maity vs. Chhanda Koley*** reported in **2024 SCC OnLine SC 551**. The relevant portion is quoted below:

“11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court.”

- (ii) ***Tridip Kumar Dingal vs. State of West Bengal*** reported in **(2009) 1 SCC 768**. The relevant portion is quoted below:-

“57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime. This principle applies even in case of an infringement of fundamental right.

58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose.”

- 11.** Therefore, notwithstanding infringement of fundamental rights of the petitioner, if any, he would have to be diligent, prompt and fair in seeking his relief, in a Court of equity. So far as the present petitioner is concerned, his delay in espousing his causes before this Court has remained unexplained. That leaves the Court with no option than to find laches on part of the petitioner, to approach the Court. By that time the petitioner's claim has become stale, as the span of time in between has allowed the other incumbent to possess a right over the post to which he has been appointed.
- 12.** The petitioner having submitted an application in response to the said vacancy notification could have come to the zone of consideration at an appropriate point of time. But due to the delay caused by him, his claim has already ceased to be valid any further and become stale. So far as his application is concerned, the petitioner has not been able to submit any supporting document therewith, excepting the speed post receipt, to show completed service of his application.
- 13.** Hence, the Court finds no merit in the present writ petition and same is dismissed.
- 14.** Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)