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Ct-08

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**MAT 608 of 2023**

with

I.A No. CAN 1 of 2023

CAN 2 of 2023

The State of West Bengal & Ors.

Vs.

Sagarika Bhattacharjee

Mr. Amal Kumar Sen , Ld. AGP

Mr. Lal Mohan Basu

... For the Appellants

Mr. Sanjib Kumar Mukhopadhyay

Ms. Nargish Parveen

... For the Respondent/Writ Petitioner

**Re: CAN 1 of 2023**

**(Condonation of Delay)**

1. There is a delay of 309 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 608 of 2023**

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

2. The appeal is arising out of the judgment and order passed by the learned Single Judge in a bunch of writ petitions that were taken up for

analogous hearing and disposed of by a common order dated 16<sup>th</sup> April, 2021.

3. Mr. Amal Kumar Sen, Ld. AGP, has fairly submitted that the present writ petitioner and barring a few others are covered by the decision of the coordinate bench in MAT 514 of 2019 (State of West Bengal Vs. Meghnath Roy) on 16<sup>th</sup> December, 2019 and MAT 825 of 2020 (Md. Adeel-Uz-Zaman Vs. State of West Bengal) on 11<sup>th</sup> February, 2021, in which the prior permission for obtaining higher qualification in Section 14(3) of the West Bengal Schools (Control of Expenditure) Act, 2005 was considered. In the said decision the coordinate bench had held that an ex-post-facto approval of higher scale of pay is not barred under Sub-section (3) of Section 14 of the 2005 Act. Mr. Sen has submitted that in all those matters the coordinate bench was deciding the acquiring of higher qualification prior to coming into force of 2005 Act was under consideration and the writ petitioners are all teachers who were pursuing post graduate studies at the time of their entry.

4. However, so far as the present writ petitioner is concerned, the petitioner was appointed as a Librarian on 23<sup>rd</sup> December, 2008

and she is not at par with those who were extended benefits under the coordinate bench's decision. Mr. Sen has drawn our attention to the representation made on behalf of the writ petitioner in which it has been stated that *"neither the provisions of the W.B Schools (Control of Expenditure) Act, 2005 nor the relevant Govt. Circular bearing No.593-SE(B) dated 27.11.2007 is applicable in the case of granting higher scale of pay to the Librarian upon acquiring M.Libs Entitlement of post graduate scale of pay was extended to the Librarian in the ROPA, 1998 which has subsequently been revised in the ROPA, 2009 in the scale of pay at Rs.7100-37,600/-."*

5. The petitioner having qualifications B.A (Honours) with Bachelor of Library & Information Science was appointed as Librarian and joined the service 23<sup>rd</sup> December, 2008 and she claimed to have improved her qualification in 2011. These are the facts which are required to be taken into consideration in deciding the writ petition. These facts should have been brought to the notice of the learned Single Judge in deciding the writ petition. The case of the writ petitioner is different as that of the teachers whose cases were considered on the basis of the

coordinate bench judgment of this court as mentioned above.

6. In view thereof, we set aside the order passed by the learned Single Judge, in so far as the present writ petitioner is concerned. The order is restricted only in respect of WPA 13100 of 2019 (Sagarika Bhattacharjee Vs. The State of West Bengal & Ors.)

7. The State shall file an affidavit in the writ petition indicating the distinctive view which may distinguish the case of the writ petitioner from the others within three weeks from date. Reply, thereto, if any, be filed within 10 days thereafter.

8. Liberty to mention before the learned Single Judge after exchanging affidavits.

9. All points are left open to be considered by the learned Single Judge.

10. The observation made in this order is prima facie.

11. On such consideration, the appeal being MAT 608 of 2023 is allowed and stands disposed of.

15. In view of 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.

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.)