

05.09.2023
Item No.3
Ct. No.5
CHC
(dismissed)

WP.ST 115 of 2015
IA NO: CAN/1/2023

Anil Kumar Karmakar
Vs.
The State of West Bengal & ors.

Mr. Probal Sarkar,
Sk. Kiran
...for the writ petitioner

Mr. Tapan Kr. Mukherjee, Sr. Advocate & A.G.P.
Mr. Somnath Naskar
...for the State

In Re: CAN/1/2023

CAN/1/2023 is an application for
restoration.

The writ petitioner seeks recalling of the
order dated July 27, 2023.

For the ends of justice and for the grounds
shown in the application, the order dated July 27,
2023 is recalled.

WP.ST 115 of 2015 is restored to its original
file and number.

C.A.N.1 of 2023 is disposed of.

In Re: WP.ST 115 of 2015

The writ petition is directed against an order dated June 3, 2008 passed in O.A.113 of 2004 by the West Bengal Administrative Tribunal.

By the impugned order, the Tribunal was of the view that, the issues raised by the original applicants were covered by the earlier decision of the Tribunal and therefore, refused to intervene.

The original applicants, applied for grant of reoption acting in terms of an order passed by a learned Single Judge of the High Court. The original applicants gave undertaking in writing that they would refund overdrawal if so found subsequently. Thereafter, the State sought to recover the excess amount paid. The action of the State in recovering excess amount was challenged by the Tribunal. Tribunal noticed its earlier decision that the excess amount can be recovered by the State. It also noticed its earlier order passed in the review application which rejected the review application. It returned a finding that, no appeal was preferred against its decision passed in the original application or in the review application and therefore, it was bound by the earlier decision.

The impugned order is dated June 3, 2008. The writ petition was filed in 2015.

Directions for affidavits were granted on May 8, 2015 for filing affidavits by the High Court.

Today, when the writ petition was taken up for hearing, a query was put to the learned advocate appearing for the writ petitioner as to why, the issue of limitation be not decided as against the writ petitioner.

Faced with such query, learned advocate appearing for the writ petitioner submits that, the point of limitation was not kept open by the order dated May 8, 2015.

May 8, 2015 is an order passed by the coordinate Bench, granting leave to the parties to file affidavits in the writ petition. It also did not grant any interim order. On the issue of limitation, no pronouncement was made.

Issue of limitation is a mixed question of fact and law.

As noted above, the impugned order is dated June 3, 2008. The writ petition was filed in 2015. There is no explanation in the writ petition as to the delay.

True, the provisions of the Limitation Act, 1963 are not attracted in respect of a writ petition filed under Article 226 of the Constitution of India.

However, delay in approaching the Writ Court is one of the factors which is required to be

taken into consideration for grant of discretionary relief.

In the facts of the present case, there is no explanation as to why the Writ Court was approached after a delay of seven years.

On merits the writ petitioner gave undertaking to refund in the event of overdrawal.

In such circumstances, we are not in a position to grant any relief to the writ petitioner.

WP.ST 115 of 2015 is dismissed without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)