

66 20.9.2023

Ct-08

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MAT 764 of 2023

with

I.A No. CAN 1 of 2023

CAN 2 of 2023

Sudhir Kumar Mallick

Vs.

The State of West Bengal & Ors.

Mr. Susanta Pal

Mr. Prabir Kumar Ray

... For the Appellant

Mr. Pinaki Dhole

Ms. Tapati Samanta

... For the State

Re: CAN 1 of 2023

(Condonation of Delay)

1. There is a delay of 115 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 764 of 2023

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

2. The appellant is aggrieved by the order dated 8th December, 2022 on the ground that the income of the petitioner to be disclosed by filing a

supplementary affidavit may not have any relevance with regard to the reliefs claimed in the writ petition. The writ petitioner has prayed for interest on the delayed payment of retiral benefits. The interest can be awarded provided the State is not responsible for the delay or there are reasonable grounds for releasing the pensionary benefits within a reasonable time. The respondents must have filed an affidavit justifying the delay. We have been informed that a report has been filed before the learned Single Judge. It is submitted on behalf of the appellant that the said report is unsatisfactory.

3. Since the learned Single Judge is in seisin of the matter, the claim towards interest on the ground of delayed payment of pensioner benefits is to be decided on the basis of affidavits to be filed by the parties. However, in deciding the said matter, we are of the view that the amount received by the petitioner after his retirement is inconsequential and cannot have any relevance to the issue to be decided with regard to the payment of interest.

4. Accordingly, there is no requirement to file any affidavit disclosing the total amount as the petitioner has received the amount towards retiral benefits.

5. To the aforesaid extent, the order of the learned Single Judge is set aside.

6. In view of the above, the appeal being MAT 764 of 2023 stands disposed of.

7. 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.

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

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

(Prasenjit Biswas, J.)

(Soumen Sen, J.)

