

28.08.2023
Item No.48
Ct. No.5
CHC
(dismissed)

WP.ST 61 of 2022

**Pradip Naskar & ors.
Vs.
The State of West Bengal & ors.**

Ms. Susmita Paul
...for the writ petitioners

Mr. Biswabrata Basu Mallick, Ld. A.G.P.
...for the State

The writ petition is directed against an order dated February 14, 2020 passed in M.A.33 of 2020 by the West Bengal Administrative Tribunal.

By the impugned order, the Tribunal, dismissed the Miscellaneous Application for recalling the order dated April 3, 2019 and order dated September 11, 2019 passed in MA 201 of 2019.

The writ petitioners approached the Tribunal by way of Original Application being O.A.531 of 2016.

Nobody appeared on behalf of the writ petitioner before the Tribunal in the Original Application on October 11, 2018, October 3, 2019 and April 3, 2019.

The Original Application was dismissed for default on April 3, 2019.

The writ petitioner filed MA 202 of 2019 praying for recalling of the order dated April 3, 2019 and condonation of delay in filing the application.

Both the Miscellaneous Applications were heard and disposed of on September 11, 2019. Both the applications were dismissed on the ground that, the learned advocate for the writ petitioners refused to show any ground for his non appearance and/or recalling of the order or to argue further. The Tribunal noted such conduct and commented on the same as being not encourageable. Thereafter, the writ petitioners filed MA 33 of 2020 seeking recalling of the order dated April 3, 2019 and September 11, 2019.

The writ petitioners went unrepresented on February 14, 2020 in MA 33 of 2020.

In such circumstances, the Tribunal passed the impugned order dismissing MA 33 of 2020.

Learned advocate appearing for the writ petitioner draws the attention of the Court to the averments made in the paragraph-5 of the writ petition seeking to explain non-appearance of the learned advocate on February 14, 2020.

The explanation sought to be proffered by the writ petitioners is that there was a protest in the street of Kolkata on February 14, 2020 and for such reason learned advocate could not attend the Tribunal. Apart from such bald allegations there are no material particulars with regard to the so-called protest and where the learned advocate was stalled from reaching the Tribunal are absent.

We remind ourselves that we should be lenient while considering an application for restoration. However, our leniency should not be stretched to mean that any absurdity should be taken on face value and order of dismissal for default be recalled on such basis.

In the facts of the present case, the writ petitioners were unrepresented on three days before Tribunal in the Original Application. The advocate for the writ petitioners did not cooperate with the Tribunal while the Tribunal was considering the application for restoration. The application for restoration was dismissed on September 11, 2019. The writ petitioners did not challenge the order dated September 11, 2019 before the higher forum. The writ petitioners approached the Tribunal again for recalling of such order. On the date fixed for hearing of the recalling application it was dismissed for default.

In such circumstances, we find no reason to interfere with the order impugned.

WP.ST 61 of 2022 is dismissed without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)