

Item-19. 06-09-2023

MAT 1300 of 2023
CAN 1 of 2023
CAN 2 of 2023

sg Ct. 8

Rajendra Prasad Jaiswal & Anr.
Versus
The State of West Bengal & Ors.

Mr. Pius Chaturbedi, Adv.
Mr. Sujit Sankar Koley, Adv.
...for the appellants
Mr. Tbhaskar Vaisya, Adv.
Mr. Biswaroop Biswas, Adv.
...for the State

In Re: CAN 1 of 2023

1. This is an application for condonation of delay. There is delay of 28 days in preferring the appeal. Sufficient cause being shown for not be able to file the appeal within the stipulated time.
2. We condone the delay of 28 days in presenting the memorandum of appeal. CAN 1 of 2023 is, accordingly, disposed of.

In Re: MAT 1300 of 2023 and CAN 2 of 2023

3. The appeal is arising out of an order dated 16th May, 2023 in which the writ petitioners have challenged the order passed by the District Inspector of Schools (S.E.) Kolkata on 27th January, 2017. The petitioners claim minority status and hence exemption from applicability of the relevant provisions of the School Service Commission Act, 1997.
4. Mr. Biswarup Biwas, learned Counsel for the State in opposing the appeal, has drawn our attention to the order

passed by the Secretary of the School Education Department dated 17th January, 2013 in which the Secretary on consideration of the materials on record has observed that Raghmal Arya Vidyalaya has failed to submit papers and documents to justify the minority status.

5. The order impugned passed by the Director refers to this reasoned order and thereafter the prayer for minority status was rejected. The D.I. followed the order of the Secretary, School Education Department, as he could not find any change of circumstances. The subsequent order of the D.I. was passed pursuant to the order passed by the learned Single Judge in *Mrs. Surovi Koley & Ors. vs. The State of West Bengal & Ors.* decided on 23rd August, 2016. The one of the issues came up in *Surovi Koley* (supra) was the recruitment process of the teachers *de hors* the sanctioned strength. In that perspective, the District Inspector of Schools (S.E.), Kolkata was directed to consider the case of the writ petitioner for approval of appointment given by the School authorities concerning the reply submitted by the Secretary by the School on 3rd March, 2016. The prayer was disallowed by referring to the order passed by the Secretary, Education Department on 17th January, 2013 in which it was categorically stated that the school was unable to establish its minority status.
6. We do not find from the order of the District Inspector of School that fresh material was produced by the school for revisiting the said issue and the Director, accordingly, was bound to follow the observations made earlier by the

Secretary, School Education Department who admittedly was superior in rank.

7. The writ petitioner no.1 is the Secretary of Raghmal Arya Vidyalaya and the writ petitioner no.2 is the Arya Pratinidhi Sabha. The grievance of the writ petitioners was that the decision of the authorities concerned is in utter disregard to the special Rule dated 19th march, 1973 which, according to the writ petitioners, is applicable to the Institutions.
8. The writ petitioners have contended that the decision of the Hon'ble Division Bench on 3rd December, 2013 has conclusively decided in the issue. However, this has been disputed by Mr. Biswas.
9. Considering the fact that any authority lower than the rank to the Secretary would be bound by the observations made by the Secretary, School Education Department, in the fitness of thing, we feel that the matter should be decided by the Secretary, School Education Department.
10. It is needles to mention that unless any fresh material/s is/are produced in justification of minority status, the decision of the Secretary dated 17th January, 2013 cannot be touched. It appears that the Secretary has taken into consideration all the relevant facts as were available at the time of falling the decision.
11. In view of the fact that the writ petitioners have contended that there are documents on records justifying the minority status which could not be produced at the relevant point of time, we permit the writ petitioners to rely on such documents and materials upon prior notice to the State

respondents for a fresh consideration by the Secretary, School Education Department within ten weeks from the date of communication of this order by either of the parties and shall decide the matter after giving an opportunity of hearing to the parties.

12. The reasoned order to be passed shall be communicated to the parties within two weeks from date of passing of the order.

13. The impugned order is modified to the aforesaid extent. The appeal and the stay application are disposed of accordingly.

14. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)