

07.06.2023

Item No.1

Crt.11

F.B./b.r.

FMA 433 of 2022

with

IA No. CAN 1 of 2021, CAN 2 of 2021 (Xerox)

Md. Jiaullah

-vs-

The State of West Bengal & Ors.

Mr. Saibal Acharya

Mr. Sahen Shah

Mr. Zakir Hossain

..... for the appellant.

Mr. Prasenjit Mukherjee

Ms. Madhurima Sarkar

..... for the Madrasah Service Commission.

Mr. Subhrangsu Panda

..... for the Respondent Nos. 1,2 and 6.

In Re: **CAN 1 of 2021**

Party/parties is/are represented in the order of their name/names as printed above in the cause title.

The appellant/ the writ petitioner who is represented by Mr. Acharya, Learned Counsel appearing with Mr. Sahen Shah, Learned Advocate, although makes the submission that an application, being CAN 1 of 2021, for condonation of delay in filing the appeal has been preferred by the appellant, from the Report of the Additional Stamp Reporter dated 22nd of February, 2022, it transpires that the appeal has been filed within time.

In the above view of the matter, no order is required to be passed in CAN 1 of 2021.

CAN 1 of 2021 stands accordingly **disposed of.**

FMA 433 of 2022 (MAT 1341 of 2021) with CAN 2 of 2021

Next, the appeal along with its connected application for stay of operation of the order impugned being CAN 2 of 2021, is taken up for consideration on merits.

The appellant/writ petitioner was appointed to a Group-D post in the Madrasah-in-issue on compassionate grounds. Upon joining and thereafter being approved in the said Group-D post, the appellant/writ petitioner moved the Hon'ble Single Bench for appointment as a Regular Assistant Teacher in the Primary Section of the Madrasah.

The Hon'ble Single Bench rejected the prayer of the appellant/ the writ petitioner on the ground that compassionate appointment, once exercised, cannot be invoked again to seek regular appointment for the second time. While furnishing its reasons, the Hon'ble Single Bench relied on the authority reported in (1994) 6 SCC 560 (*In Re: State of Rajasthan -versus- Umrao Singh*).

Mr. Mukherjee, Learned Counsel, appears for the Madrasah Service Commission and submits that the appellant/writ petitioner accepted the compassionate appointment without demur. It is not now open to the appellant/writ petitioner to claim

regular appointment as an Assistant Teacher again invoking compassionate grounds.

Mr. Panda, Learned Counsel, appears for the State-Respondents.

Having heard the parties and considering the materials placed, this Court finds no error in the reasoning applied by the Hon'ble Single Bench. It would be however open to the appellant/ the writ petitioner to apply in respect of any regular vacancies as an Assistant Teacher through participation in any selection/ recruitment in accordance with law.

FMA 433 of 2022 with **CAN 2 of 2021** stand accordingly **disposed of**.

Parties to also act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with all necessary formalities.

(Supratim Bhattacharya, J.) (Subrata Talukdar, J.)