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Ct-08

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FMA 425 of 2022

with

I.A No. CAN 1 of 2022

CAN 2 of 2022

Md. Sadekul Islam

Vs.

The State of West Bengal & Ors.

Mr. Kamalesh Bhattacharya

Ms. Tanwishree Mukherjee

... For the Appellant

Md. T.M. Siddiqui

Mr. S. Adak

... For the State

Re: CAN 1 of 2022

(Condonation of Delay)

1. In view of the order of the Hon'ble Supreme Court passed in Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020 on 23rd September, 2021 the appeal is treated as within time and there is no necessity to file application for condonation of delay and the appeal is treated as filed in time. The application for condonation of delay is redundant and the same is accordingly disposed of without, however, any order as to costs.

Re: FMA 425 of 2022

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

2. The appellant participated in the selection process to the post of Assistant Headmaster in Lalgola Rahmatullah High Madrasah (H.S), District-Murshidabad. The final panel comprising of three

persons was sent to the District Inspector of Schools (S.E), Murshidabad for approval.

3. Indisputably, the writ petitioner is the first empanelled candidate on the basis of the marks obtained in the selection process. He was not, however, given appointment on the ground that the Secretary could not participate in the said selection process. Moreover, a provisionally approved teacher was not considered in the said selection process.

4. Learned counsel appearing for the appellant before the learned Single Judge has argued that on the strength of the decision of the Division Bench in the case of ***District Inspector of Schools (S.E), Murshidabad & Ors. Vs. Samsul Huda & Ors.***, reported in ***(1987)2 C.L.J 144*** the writ petitioner ought to have been appointed.

5. Learned counsel for the appellant further submits that even if the marks awarded by the Secretary is deleted from the marks awarded by other members of the selection committee, the petitioner would still rank first amongst all the candidates.

5. Learned counsel for the State has placed documents in relation to the said selection process. However, it appears from the record that the

Secretary could not have participated in the said selection process as he became ineligible to continue as a parent representative since his ward was sent up for High Madrasah Examination 2019. However, it is not in dispute that even if the marks awarded by the Secretary is deleted from the marks awarded by other members of the selection committee, the petitioner would still rank first amongst all the candidates. It is also not in dispute that the candidate who was not an approved teacher at the relevant of time is not eligible to participate in the said selection process. His right to participate arises once he received the final approval.

4. On such consideration, we set aside the order impugned and direct the District Inspector of Schools (S.E), Murshidabad, to grant approval to the appellant as Assistant Headmaster of the school after compliance.

5. The entire process shall be completed within three weeks from the date of communication of the order.

6. In view of the above, the appeal being FMA 425 of 2022 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 2022 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.

(Uday Kumar,J.)

(Soumen Sen, J.)

