

13.07.2023

MAT 1192 of 2018
With
CAN 1 of 2018 (Old No. CAN 8191 of 2018)
CAN 2 of 2018 (Old No. CAN 8194 of 2018)

The State of West Bengal & Ors.

-Vs-

Md. Aqeel Uz Zaman & Ors.

Mr. Tapan Kumar Mukherjee
Mr. Avishek Prasad

... for the Appellants

Mr. Samim Ul Bari
Mr. Ali Ahsan Alamgir
Ms. Rabia Khatoon
Ms. Soma Mal

... for the respondent/writ petitioner

In Re: CAN 1 of 2018 (Old No. CAN 8191 of 2018)

There is a delay of 272 days in filing the appeal.

Sufficient cause has been shown for not being able to file the Memo of Appeal with the period of limitation.

Delay of 272 days in filing the appeal is hereby condoned.

CAN 1 of 2018 (Old No. CAN 8191 of 2018) is accordingly disposed of.

The appeal and the connected application, if any, stand restored to its file.

In Re: MAT 1192 of 2018

The conduct of the appellants is completely unsatisfactory. It would be evident from the communication of the Chairman, Murshidabad District Primary School

Council to the Director of School Education, School Education Directorate (Primary Branch) dated 21st October, 2011 that in spite of filing all required documents, no attempt has been made by the respondent authorities in considering the candidature of the petitioner for appointment in the died-in-harness category.

The facts have been accurately stated in the impugned order and hence, we are not narrating the facts in detail.

The contention of the appellant is that the reference to the 1987 Circular may not be appropriate in this case. However, we find that the Learned Counsel representing the State-respondents have agreed that the applicable circular would be the Memo No. 457-Edn.(P)/4A-50/83 dated 12.10.1987 of the School Board.

Be that as it may, his candidature was required to be considered by the Commissioner of School Education (Primary), Government of West Bengal.

The Learned Single Judge disposed of the writ petition by directing the respondent no.5/the Chairman, District Primary School Council, Murshidabad to forward all the documents of the petitioner to the District Inspector of Schools (S.E.), Murshidabad within four weeks and the respondent no.3 was directed to consider the petitioner's case and thereafter enlist the petitioner's name under the die-in-harness category according to the seniority as well as the petitioner's qualification and when the petitioner's turn comes, then send the petitioner's name to the concerned

School Service Commission.

If we accept that the 1987 Circular may not be applicable to the petitioner, at the time of death of his father the fact remains that at the relevant time the petitioner was entitled to be considered for appointment in the died-in-harness category subject to fulfillment of certain conditions.

The appellants in the Memorandum of Appeal has referred to a notification dated 9th July, 2009 applicable for compassionate appointment. We are unable to accept that the said circular would be applicable to the writ petitioner as the date of death occurred in the year 2008 and the scheme existing on the date of death is applicable.

Learned Counsel for the writ petitioner submits that a request has been made by the writ petitioner for consideration of his candidature as a non-teaching staff as after 2017 for appointment of a teacher training is mandatory.

In view of the fact that the case of the petitioner was not considered for almost 10 years for no fault of the writ petitioner and now new condition has been imposed on and from 2017 for being appointed as a teacher, the case of the petitioner is now required to be considered as a non-teaching staff of any aided non-government Secondary School.

We modify the impugned order to the aforesaid extent.

The entire exercise shall be completed within four weeks from this date.

With the aforesaid observations, MAT 1192 of 2018

along with the connected application(s), stand disposed of.

All parties shall act on the server copy of this order, duly collected from the official website of the Hon'ble High Court, Calcutta.

(Uday Kumar, J.)

(Soumen Sen, J.)