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Ct-08

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MAT 1678 of 2023

with

I.A No. CAN 1 of 2023

CAN 2 of 2023

Md. Mohammad Ali & Ors.

Vs.

The State of West Bengal & Ors.

Mr. Dibyendu Chatterjee

Sk. Morshed Ali

Mr. Rahul Deb Goenka

Mr. Mainak Singha Barman

... For the Appellants

Mr. Biswabrata Basu Mallick, Ld. AGP

Ms. Parna Roy Choudhury

... For the State

Re: CAN 1 of 2023

(Condonation of Delay)

1. There is a delay of 74 days in presenting the memorandum of appeal.

2. We are satisfied with the explanation offered for not being able to file the memorandum of appeal within the statutory period, we are inclined to condone the delay in presenting the memorandum of appeal.

3. The application for condonation of delay is, thus, allowed without any order as to costs.

4. CAN 1 of 2023 is thus disposed of.

Re: MAT 1678 of 2023

1. The appellants filed a writ petition in the year 2010, inter alia, for a direction to permit the writ petitioners to participate in the written examination for the recruitment process 2006. In the said

proceeding an interim order was passed to the following effect :-

“Mere participation of the petitioners in the written examination shall not create any equity in their favour and the same shall be subject to result of the writ petition. Also, they shall not be appointed without obtaining leave of Court if of course they come within the zone of consideration.”

2. The said writ petition was disposed of by Justice Tapabrata Chakraborty on 9th January, 2020 with the following observations:-

“The petitioners were issued the admit cards and allowed to participate in the written examination on 14th February, 2010. In view thereof, as the primary relief has already been granted, nothing remains to be adjudicated in the writ petition.

Accordingly, the writ petition is dismissed.

It is, however, made clear that the dismissal of the writ petition will not prevent the petitioners from availing the remedies, as provided under the Right to Information Act, 2005.”

3. No appeal has been preferred against the said order. The only remedy that was given to the writ petitioners was to avail the remedies as provided in the Right to Information Act, 2005. The second writ petition was filed raising issues with regard to their appointments. It was made clear in the first order that participation of the petitioners in the written examination would not create any equity in their favour. Learned Single Judge

disposed of the writ petition without granting any other relief, which the writ petitioners could avail in the pending proceeding depending upon their results in the examination.

4. In view of the changed circumstances, the writ petitioners filed an application for amending of the writ petition for incorporation of a prayer for issuance of necessary direction upon the respondents to issue appointment letters in favour of the writ petitioners. The amendment application was rejected. This order surprisingly has been accepted and no appeal was filed against. The only remedy that was available to the writ petitioners by raising the previous order dated 9th January, 2020 to seek remedies, as provided in the Right to Information Act, 2005.

5. In the second writ petition, pursuant to an interim order, the Secretary, West Bengal Board of Primary Education communicated its decision saying the writ petitioners did not come into the zone of consideration for appointment as Primary Teachers having less marks than the cut of marks in the respective category in the recruitment process of 2006 conducted by DPSC and it was clarified that the Board was not involved in the recruitment process of 2006 in terms of the then

recruitment rules.

6. In view of the aforesaid background the impugned order is not required to be reconsidered. Learned Single Judge having regard to the nature of the earlier proceeding and the order passed earlier and the fact that the recruitment process of 2006 is over long back declined to grant any relief. We also are unable to grant any relief to the appellants.

7. In view of the aforesaid, the appeal being MAT 1678 of 2023 stands disposed of.

8. In view of the disposal of the appeal, nothing remains to be decided in the application for stay being CAN 2 of 2023 and the same is accordingly disposed of.

9. However, there shall be no order as to costs.

10. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar , J.)

(Soumen Sen, J.)

