

11.07.2023

MAT 1691 of 2016
With
CAN 1 of 2016 (Old No. CAN 10826 of 2016)
CAN 2 of 2016 (Old No. CAN 10827 of 2016)

State of West Bengal & Ors.

-Vs-

Prabir Patra & Ors.

Mr. Suman Sengupta
Mr. Santan Panja

... for the Appellants

Mr. Biswarup Biswas
Ms. Rimpay Mukherjee

... for the respondents

There is a delay of 1140 days in preferring the appeal.

An application for condonation of delay is filed on 15th September, 2016. The appeal has arisen out of a Judgment and Order dated 24th June, 2013 in connection with a writ petition filed by the son of a Group-D employee, who was his mother. His mother died on 11th August, 2005. The writ petitioner did not attain majority in 2007 and had applied for compassionate appointment on 25th October, 2008 and 25th June, 2009. His request for compassionate appointment has been turned down by the respondent authorities on the ground that the application for such compassionate appointment was made more than two years after the death of his mother.

The Learned Single Judge on consideration of the materials on record and relying upon the judgment of the Hon'ble Division Bench in *Chairman, District Primary School Council -Vs- Sri Prithwish Samanta* reported in (2011) 1

WBLR 664, allowed the writ petition.

The Learned Single Judge has also relied upon paragraph 6 of the decision of the Hon'ble Supreme Court in *Govind Prakash Verma -vs- Life Insurance Corporation of India & Ors.* reported in (2005) 10 SCC 289 and arrived at a finding that the receipt of terminal benefits could not be a ground for refusing compassionate appointment because in spite of receiving terminal benefits there may be need for compassionate appointment.

Moreover, the writ petitioner could only enjoy the pension of his deceased mother till the age of 25 years, as per the rules.

Learned Counsel representing the appellants submits that in views of the judgment of the Larger Bench in *Piali Saha -Vs- State of West Bengal* reported in (2013) 1 CHN 18, the period of two years contemplated under Rule 14 of the West Bengal Primary Teachers' Recruitment Rules, 2001 is not extendable in view of the fact that the writ petitioner did not apply within the two years from 11th August, 2005 and in view thereof the case of the writ petitioner could not have been considered by the Learned Trial Court.

It is further submitted that the Hon'ble Larger Bench did not accept the interpretation of Rule 14 given in *Sri Prithwish Samanta (supra)* which had clearly stated that while construing the Rule 14, the time cannot be extended by complying the provision of Section 6(1) of the Limitation Act.

It is submitted that the application for condonation of

delay is required to be considered with mercy and the explanation offered for not being able to file the appeal within the period of limitation in the instant case shall be considered liberally.

It is also submitted that in view of the fact that the appellant has a strong arguable case on merits in view of the judgment of the Larger Bench in *Piali Saha (supra)* dealing with similar situation, an opportunity should be given to the appellants to have a decision on merits.

Learned Counsel for the writ petitioner has submitted that following the judgment steps have been taken by the appellants to enlist the name of the writ petitioner in the register and in fact they have accepted the judgment of the Learned Single Judge and in this regard two communications dated 3rd January, 2014 and 19th December, 2015 have been produced.

It is submitted that the writ petitioner has furnished all the required documents and after the judgment was accepted, this application has been filed for condonation of delay without offering any explanation whatsoever for the delay caused.

We have carefully read the application for condonation of delay. It is a fact that in spite of notice, the appellants were not represented and no explanation was offered for not contesting the writ petition. In fact, nothing had prevented the appellants to approach the Learned Single Bench for recalling of the order and for consideration of the matter on

merits.

The impugned judgment was passed on June 24, 2013 and the application for condonation of delay was filed on 6th September, 2016 i.e. after 1104 days.

The explanation offered is that the judgment of the Learned Single Judge was *per incuriam* and an opportunity ought to have been given to the respondents, appellants herein, to file Affidavit-in-opposition disclosing the facts available on record.

However, there is no explanation offered for the delay in preferring the appeal. In an application for condonation of delay, the Court is required to be satisfied that there is sufficient cause for the delay. There is not a single sentence in the application by which any attempt has been made to explain the delay.

It is well settled that a government cannot be a beneficiary of its own wrong and cannot claim to be a favoured litigant.

We are conscious of the fact that Section 5 of the Limitation Act, 1963 has clearly stated that Court may admit any appeal or applications other than an application under any of the provisions of Order XXI of the Code of Civil Procedure (CPC) after the prescribed period, “if the appellant satisfies the Court that he had sufficient cause for not preferring the appeal or making the applications within such period. (emphasis supplied)

The Section casts a duty upon the Court to satisfy

itself with the cause shown for the delay. The cause for the delay needs to be “sufficient” and not a mere cause. The Court cannot exercise such power mechanically disregarding insufficient or unsatisfactory explanation. It implies discretion which needs to be applied judiciously. The discretion is conditional upon satisfaction of the Court with the explanation offered which should be reasonable and acceptable. The writ petitioner cannot be taken for a ride. He cannot suffer due to inaction, inertness and extreme casualness of the State and its machinery. The agony of the writ petitioner who lost her mother when he was minor and who had succeed in establishing his right shall not be shown the door by condoning the proverbial lackadaisical approach of the appellants.

The only explanation was that the impugned judgment is *per incuriam*.

However, by reason of long delay and inaction on the part of the appellants, a valuable right has accrued in favour of the writ petitioner. A right can be lost due to negligence or inaction. Culpable negligence writs large on the face of record. In fact the appellants did not take any initiative to move this application and kept it pending only to avoid contempt. The exasperated writ petitioner had filed a contempt petition being WPA 23000 of 2019 in which Hon’ble Justice Saugata Bhattacharyya passed an order on 07.09.2022 observing as follows:

“In view of such submission being made on

behalf of the State respondents, let the matter go out of list with the leave to mention the matter for inclusion in the list before the appropriate Bench after the disposal of the appeal, if the result of the appeal comes in favour of the writ petitioner”.

It clearly shows that from 2016 till 2019 no attempt was made to move the application. Thereafter also no attempt was made to move this application. There has been deliberate latches at every stage.

It is not in dispute that the said order was accepted and all required documents have been received by the D.I. of Schools (S.E.), Purba Medinipur in terms of the communication dated 19th December, 2015. In the application for condonation of delay, these two communications have been conveniently suppressed.

It clearly shows that they were aware of the order and had accepted the order.

Moreover, the writ petitioner could not have been given the employment when his mother died as he was minor at the relevant time and he had to wait until he attains majority. It is only thereafter his case could have been considered. His eligibility otherwise is not being questioned. There was no culpable negligence on the part of the writ petitioner.

Having regard to the above facts, we are not satisfied with the explanation offered for not being able to file the application for condonation of delay within the period of

limitation.

Hence, the application of condonation of delay is dismissed. As a consequence, the appeal, being MAT 1691 of 2016 along with the connected application for Stay stand dismissed.

The District Inspector of Schools (S.E.), Purba Medinipur is present and has filed a Status Report.

In view of the submissions made on behalf of the D.I. of Schools, Purba Medinipur that all the required documents have been received by the authorities in terms of the communication dated 19th December, 2015, the writ petitioner should be given appointment within four weeks from this date.

The personal appearance of D.I. of Schools, Purba Medinipur stands dispensed with.

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

(Uday Kumar, J.)

(Soumen Sen, J.)