

28.06.2023
Item No.26
Ct. No.5
CHC

W.P.S.T.274 of 2013
IA NO: CAN/1/2018 (Old No:CAN/6936/2018)

Sri Barun Das
Vs.
The State of West Bengal & ors.

Mr. Debabrata Saha Roy,
Mr. Supriyo Chattopadhyay,
Mr. Sudip Kr. Maiti
...for the writ petitioner

Mr. Tapan Kr. Mukherjee, Sr. Advocate & A.G.P.
Mr. Pinaki Dhole,
Mr. Somnath Naskar
...for the State

In assailment in this present writ petition is an order dated July 11, 2006 passed by the West Bengal Administrative Tribunal in O.A.1644 of 2004.

Learned Senior Advocate appearing for the State raises the issue of inordinate delay in approaching both the Tribunal as also the High Court and such delay remaining unexplained.

A selection process of 1999 where the writ petitioner participated was challenged by the writ petitioner in the Original Application.

Learned advocate appearing for the writ petitioner submits that, the writ petitioner participated in the selection process in the post of Constable in Kolkata Police. He draws the attention of

the Court to the factual matrix of the case. He submits that, initially the selection process was assailed. An Original Application was filed with regard to the selection process being O.A.1538 of 1997. The order passed by the Tribunal was assailed by way of writ petition being W.P.S.T.352 of 1999 by the State. Such writ petition was dismissed. The original applicant therein was granted relief. A Special Leave Petition directed against the order dated July 24, 2003 of the High Court was dismissed.

Thereafter, a slew of original applications were filed before the West Bengal Administrative Tribunal. In the second trunch of litigation, an order granting relief to the original applicant was passed by the Tribunal. Such order was again assailed by the State before the High Court. The challenge was not sustained. Supreme Court dismissed the Special Leave Petition.

In the third round of litigation, the Division Bench granted certain reliefs to the original applicant. He submits that, since the petitioner filed the Original Application in 2004, the petitioner should be treated at par with the second and third round of litigants and granted the same relief as those of such original applicants of the second and third round of litigations.

The crucial issue in the present case is one of delay. The impugned order before us is dated July 11, 2006 passed by the Tribunal. The writ petitioner approached the High Court in 2013. Although, the provisions of Limitation Act, 1963 are not attracted, so far as proceeding under Article 226 of the Constitution is concerned, nonetheless a writ petitioner is required to explain the delay in approaching the High Court. In the facts of the present case, the writ petitioner relies upon medical documents to claim that the writ petitioner was unwell for the given period when, the writ petitioner did not approach the High Court.

In the facts of the present case, the writ petitioner approached the Tribunal with a delay of about five years. However, the Tribunal considered the Original Application on merits. Therefore, we are not minded to take into consideration the delay in approaching the Tribunal.

We are, however, concerned with the delay in approaching us under Article 226 of the Constitution of India, in respect of the impugned order dated July 11, 2006 in a writ petition filed on July 10, 2013. There is a delay of about seven years in approaching the High Court under Article 226 of the Constitution of India.

Provisions of the Limitation Act, 1963 are not attracted in a proceeding under Article 226 of the Constitution of India. However, we take into account the quantum of the delay in filing a writ petition to asses whether or not to extend the extraordinary discretionary relief to the writ petitioner, under Article 226 of the Constitution of India.

In the facts of the present case, the writ petitioner seeks to explain seven years delay in approaching the High Court by relying upon medical documents both of himself as well as his mother. There are about four medical documents relied upon in the writ petition. They do not cover the entirety of the period from the date of the order of the Tribunal till the date of filing of the writ petition. In any event, the medical documents do not suggest that the writ petitioner or his mother was suffering from such a grievous medical condition that would prevent a prudent person in exercising his rights under Article 226 of the Constitution of India for a period of seven years.

The explanation putforth is unacceptable.

In such circumstances, we find that the delay remains unexplained.

That apart, there is another aspect as to the age of the writ petitioner. The writ petitioner was born

on October 10, 1978 and is presently about 45 years of age.

In view of the discussions made above **W.P.S.T. 274 of 2013** with connected application are dismissed without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)