

04.10.2023
SL No.1
Court No.8
(gc)

MAT 1579 of 2019
CAN 1 of 2019 (Old No: CAN 11012 of 2019)
CAN 2 of 2019 (Old No: CAN 11014 of 2019)

The State of West Bengal & Ors.
Vs.
Madhumita Naskar & Anr.

Mrs. Kakali Samajpaty
...for the Appellants.
Mr. Saktipada Jana
...for the Respondent No.1/
Writ petitioner.

Re: CAN 1 of 2019
(Old No: CAN 11012 of 2019)

1. Sufficient cause being shown for not being able to file the memorandum of appeal within the period of limitation.
2. The delay of 230 days in filing the memorandum of appeal is condoned.
3. Accordingly, the application for condonation of delay is allowed and disposed of.

Re: MAT 1579 of 2019
CAN 2 of 2019
(Old No: CAN 11014 of 2019)

4. The State is aggrieved by the order dated 6th February, 2019 passed by the learned Single Judge allowing the application of the writ petitioner for higher scale of pay. Briefly stated, the writ petitioner joined the service as an Assistant Teacher in

Bansdroni Benoy Balika Vidyalaya, Bansdroni, Kolkata. She was having an Honours degree in Food and Nutrition. She acquired post-graduate degree, namely, M.Sc. in Dietetics and Community Nutrition Management from Vidyasagar University through Distance Education with prior 'No Objection' from the school authority. The last date of her M.Sc. examination was held on 1st November, 2013. On acquiring such higher qualification, she applied for post-graduate scale of pay for her M.Sc. degree which is her relevant teaching subject as a teacher of Higher Secondary Section. This was claimed by Section 14(3) of the West Bengal School (Control and Expenditure) Act, 2005. She also made a representation to the District Inspector of Schools (S.E.), Kolkata narrating all the relevant facts. It was clearly stated by her that she had participated in the said examination after obtaining necessary permission from Managing Committee as required under the relevant rules. She has also relied upon the case of ***Rajeswari Roy Vs. The State of West Bengal & Ors. (W.P.***

20228(W) of 2017) for post-graduate scale of pay. It appears that the representation was made pursuant to an order passed by Justice Saraf on 18th June, 2018 directing the District Inspector of Schools (S.E.), Kolkata to consider her representation for higher scale of pay. Although the reference was made to the case of **Rajeswari Roy**, it was decided by the Commissioner of School Education, West Bengal, who was higher in rank to the District Inspector of Schools (S.E.), Kolkata disposed of the matter. It seems that the D.I. of Schools (S.E.), Kolkata completely ignored the said case in deciding the application filed by the writ petitioner for higher scale of pay.

5. We have carefully read the order of the Commissioner of the School Education, West Bengal. We do not find any distinction between the two cases and for reasons best known to the D.I. of Schools (S.E.), Kolkata, the said decision was not taken into consideration. The petitioner is similarly circumstanced as that of **Rajeswari Roy**. The petitioner as a candidate has completed all the formalities. In fact, it appears that D.I.

was also approached by the school for the purpose of granting prior permission on 30th August, 2011. The learned Single Judge has taken into consideration the aforesaid facts and also the decision of a Coordinate Bench in ***Akhtar Hossain Chowdhury Vs. State of West Bengal*** reported in ***2013(2) CHN (Cal) 632*** in allowing the writ petition.

6. We concur with the reasoning of the learned Single Judge in granting the benefit of higher scale of pay to the writ petitioner.
7. The appeal fails.
8. Accordingly, the appeal and the application stand dismissed.
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.)