

W.P.A. 29592 of 2014
IA No. CAN 1/2015 (Old No. CAN 7481/2015)
(CAN not in file)

Sm. Swapna Pathak
Vs.
The State of West Bengal & Ors.

Mr. Dilip Kumar Samanta
Ms. Dibapriya Samanta
...for the petitioner

Affidavit-of-service filed on behalf of the petitioner
is taken on record.

The writ petition is presented, *inter alia*,
challenging grant of approval in favour of the petitioner
as assistant teacher of Marwari Balika Vidyalaya with
effect from 20th September, 2001 instead of 31st October,
1990.

Mr. Dilip Kumar Samanta, learned advocate
representing the petitioner has submitted that petitioner
was appointed with effect from 1st November, 1989 vide
appointment letter dated 4th October, 1989. Therefore, the
concerned respondent authorities ought to have granted
approval of appointment with effect from 31st October,
1990 which has been turned down by the authority while
granting approval of appointment in favour of the
petitioner vide memo dated 27th March, 2002.

Petitioner is aggrieved by issuance of said memo
dated 27th March, 2002 whereby approval was granted in
favour of the petitioner with effect from 20th September,

2001. In support of such contention of the petitioner reliance has been placed on Government Memo dated 20th September, 2001 relating to filling up vacant posts within the government sanctioned strength in the schools which are in receipt of DA component from the State government. According to the petitioner pursuant to such Government Memo dated 20th September, 2001 she should have been granted approval of appointment with effect from 31st October, 1990 and consequential service benefits ought to have been extended in favour of the petitioner.

This Court has heard the learned advocate representing the petitioner. However, no one appears for the State-respondents.

Approval of appointment has been granted in favour of the petitioner with effect from 20th September, 2001 pursuant to the order dated 5th October, 1999 passed by a coordinate Bench on a writ petition being WPA 14192 of 1999. It appears from the contents of the order dated 5th October, 1999 that the coordinate Bench directed the authorities to consider the case of the petitioner for grant of approval of appointment for receiving Dearness Allowance from the State exchequer along with other eligible candidates, if necessary by relaxing age bar and also de-reserving the posts in question considering the service rendered by the petitioner in the school. It has also been recorded in the

order dated 5th October, 1999 that a post fell vacant in the year 1992.

Taking cue from the order dated 5th October, 1999 passed by the coordinate Bench it appears though petitioner has claimed grant of approval of appointment with effect from 31st October, 1990 but there was no post lying vacant in the school at the material point of time since post fell vacant in 1992.

In terms of the order passed by a coordinate Bench dated 5th October, 1999 the concerned District Inspector of Schools (SE), Kolkata by issuing memo dated 27th March, 2002 accorded approval of appointment in favour of the petitioner with effect from 20th September, 2001. Petitioner after issuance of memo dated 27th March, 2002 worked in the school in question for a period of 12 years as an approved assistant teacher and thereafter filed the present writ petition on 5th November, 2014. Apart from delay in approaching the Court in preferring this writ petition question crops up whether the post was lying vacant which could have been considered for grant of approval in favour of the petitioner at the material point of time considering the claim lodged in this writ petition that is grant of approval of appointment with effect from 31st October, 1990.

There is nothing on record which goes to show that approved post was lying vacant during the period from 31st October, 1990 till the grant of approval in favour of

the petitioner and the case of the petitioner was forwarded to the concerned District Inspector of Schools by the school authority in terms of the Government Memo dated 20th September, 2001. Since this Court does not find any material relating to availability of vacancy at the material point of time considering the claim of the petitioner for grant of approval with effect from 31st October, 1990 it appears the memo dated 27th March 2002 issued by the concerned District Inspector of Schools is not erroneous.

It further appears that attempt has been made to challenge grant of approval of the petitioner with effect from 20th September, 2001 by preferring this writ petition after 12 years, the writ petition was filed on 5th November, 2014.

It is trite law that though there is no statutory prescription relating to approaching writ Court but steps are required to be taken within the reasonable time. Such reasonable time has been enunciated by the Apex Court in the judgement reported in **(2007) 9 SCC 274 (Shiv Das Vs. Union of India & Ors.)** and another judgement reported in **(2007) 9 SCC 278 (New Delhi Municipal Council Vs. Pan Singh & Ors.)**. In paragraph 17 of **Pan Singh (supra)** the judgement delivered by the Apex Court in **Shiv Das (supra)** was considered and quoted and it was decided therein that petitioner should

approach the writ Court within three years from the date of cause of action.

In the present case petitioner has approached this Court by presenting this writ petition after 12 years.

In view of aforesaid conspectus, this Court does not find any merit in the writ petition and accordingly same stands dismissed.

Application, if any, also stands dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)