

20.09.2024
sayandeep
Sl. No. 45
Ct. No. 08

MAT 408 of 2024
With
CAN 1 of 2024

Rubaiya Yeasmin
Vs.
The State of West Bengal & ors.

Mr. Anindya Bose
Mr. Santanu Maji
Mr. S. Das

... for the appellant

Mr. Arjun Ray Mukherjee
Mr. Subhendu Sengupta

..... for the State

Mr. Saikat Banerjee
Mr. Ratul Biswas
Mr. Kaushik Chowdhury

.... for the WBBPE

The writ petition seeking mandamus to participate in the recruitment process initiated on the notification dated September 29, 2022 with further consequential relief, is dismissed by the Single Bench solely on the ground that the petitioner was not diligent enough to approach the Court and, therefore, the lapses can be attributable to his conduct. In other words, the writ petition was dismissed on the ground of delay and laches as the petitioner could not pursue his remedy promptly.

At the first blush, we were convinced with the submission advanced by the writ petitioner/appellant that the writ petition could not have been disposed of on the ground of delay and laches when the writ

petitioner/appellant promptly approached the Court after being communicated the information sought under the RTI Act.

We are conscious that the approach to an extraordinary jurisdiction conferred under Article 226 of the Constitution of India should be made promptly more particularly within the normal period of limitation provided for institution of the civil suit before the Court for the self-same reliefs. However, the writ Court may refuse to exercise such powers in a case of inordinate delay and relegate the parties to pursue the remedy otherwise available. There is no period of limitation provided under the Limitation Act for institution of a proceeding under Article 226 of the Constitution of India. However, the Courts have imposed self-restraint in entertaining the belated approach and may refuse to exercise such powers on the ground of delay and laches. It is thus rule of discretion than of compulsion.

In the instant matter, we find that the result of the TET, 2017 was uploaded for the first time in the official website on 10th January, 2022 and the petitioner approached the writ Court within one year therefrom. It cannot be said that there was an inordinate delay in approaching the Court and, therefore, we do not find that the dismissal on such score can be justified. The Apex Court in **Tukaram Kana Joshi & Ors. vs. Maharashtra Industrial Development Corporation & Ors.** reported in **(2013)1 SCC 353** held that there

cannot be any hard and fast rule to exercise the jurisdiction conferred under Article 226 of the Constitution of India as a party moved the Court belatedly. It all depends upon the nature of the explanations offered in the said petition and if it appears that there has been a denial of a justice, in the hands of a statutory authorities or the Government, it should not be used as a weapon to thwart the said proceedings.

We had an occasion to peruse the averments made in the said writ petition. We do not find that the delay and laches can be attributed to the conduct of the appellant and, therefore, it ought to have been decided on merit. But after assimilating the facts adumbrated in the said writ petition in order to discern the cause of action leading to the reliefs claimed therein, we find that the ultimate decision taken by the Single Bench cannot be faulted with. Undisputedly, the petitioner appeared in the Teachers Eligibility Test, 2017 and was declared unqualified therein. Subsequently, an application was made to the Secretary, West Bengal Board of Primary Education for scrutiny of her paper and to supply a copy of the OMR/digitized datasheet which was kept in abeyance for a pretty long time. Subsequently, the information so sought was responded and a copy of the OMR sheet was also handed over to the appellant wherefrom it appears that she secured 82 marks which was a qualifying mark in the said test. Thereafter, the

authorities after realizing the mistake, rectified the same and declared the petitioner as qualified candidate in TET, 2017. In the meantime, a recruitment process was initiated in the year 2022 for filling up 11,758 posts of the Assistant Teachers in different subjects and in various categories throughout the districts of the West Bengal. The process was completed and 9,533 candidates were found eligible for appointment to such post. However, the dispute arose on a decision of the authorities in conducting the said recruitment examination and also categorizing the vacancies which ultimately reached to the Apex Court by way of Special Leave to Appeal (C) No. 12660 of 2023. On 29th January, 2024, the Apex Court passed an interim order permitting the respondents therein to declare the merit list with the rider that any appointments so made shall be subject to the outcome of the said SLP. However, the remaining vacant post was directed to be kept vacant subject to the further order to be passed in this regard. The said SLP is still pending before the Apex Court.

From the tenet of the said order, it is cleared that the recruitment process initiated in the year 2022 has virtually reached to its final destination, so far as 9,532 candidates are concerned but with the rider that said appointment shall be subject to the ultimate decision taken in the said SLP. The petitioner neither offered her candidature on the basis of an advertisement published by the respective respondent authorities nor underwent

any tier of the recruitment process. The claim made in the writ petition pertains to permitting the petitioner to offer her candidature in the said recruitment process which has virtually reached to its destination but because of the pendency of the litigation, the appointments so made, are subject to the result thereof. The relief claimed in the writ petition cannot be granted at this stage for the simple reason that, in the event, such relief is allowed, the petitioner shall be permitted to offer her candidature by making an application and then have to undergo all tiers of the examinations be it written test or an interview and, therefore, we do not find that simply because the result of the TET, 2017 was declared belatedly, the right to re-open the entire recruitment process initiated in 2022 can be allowed. However, it will not prevent the petitioner to offer her candidature in a future recruitment process as she has now qualified the TET, 2017.

With these observations, the appeal is disposed of.

Accordingly, the connected application is also disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)