

23.08.2024
rpan/04

WPCT 60 of 2017
Smt. Madhuri Das
– Versus –
**The Comptroller and Auditor General
of India & Others**

Mr. N. C. Bihani,
Mr. P. B. Bihani,
Mr. Soumyajit Ghosh,
Mr. Soumya Mukherjee
... for the Petitioner.

Mr. Suman Basu [through V.C.]
... for the Respondents.

The present writ petition has been preferred challenging an order dated 1st December, 2016 passed by the learned Tribunal in an application for delay being MA 326 of 2016 filed in connection with a review petition, being RA 22 of 2016. The said review petition was filed challenging an order dated 13th May, 2016 passed in an original application (for short, OA), being OA 1437 of 2013.

Mr. Bihani, learned advocate appearing for the petitioner submits that the learned Tribunal dismissed the condonation of delay application as well as the review petition observing *inter alia* that:

‘... the review petition cannot be entertained after prescribed period of limitation and the Rule 17 of Administrative Tribunal Act.’

He contends that the issue, as to whether the learned Tribunal has the jurisdiction to condone the delay and to hear out the review application on its merit, is no longer *re integra* and has been finally decided by the Hon’ble larger Bench of this Court in a writ petition, being

WPCT 44 of 2017 [Union of India & Ors. Vs. Ram Krishna Mondal & Ors.]. In view thereof, the order impugned in the present writ petition needs to be set aside.

Drawing our attention to paragraphs 6 and 10 of the order passed by the learned Tribunal on 6th May, 2016 in OA 1437 of 2013, Mr. Basu, learned advocate appearing for the respondents, however, submits that during pendency of the litigation, the petitioner has been transferred to Kolkata and she has also joined at Kolkata. As such, the *lis* pertaining to the order of transfer does not survive any further. By a letter dated 23rd July, 2013 issued by the respondent no.4, the petitioner was also requested to submit a leave application for regularization of her absence for the period from 21st March, 2008 to 3rd December, 2008 and from 8th December, 2008 to 24th February, 2009.

Answering our query, Mr. Basu submits that in the event the petitioner submits an appropriate application for leave, the respondents are ready and willing to consider the prayer for regularization of the said period of absence by sanctioning leave admissible to the petitioner.

In view thereof, nothing remains to be decided in the review application, even though the same can be entertained by the learned Tribunal in view of the judgment delivered by the Hon'ble larger Bench.

Accordingly, instead of remanding the matter to the learned Tribunal for hearing of the review application afresh, we are of the opinion that the dispute can be finally

resolved directing the petitioner to submit an appropriate application to the competent authority, being respondent no.4 for regularization of the period of absence on and from 21st March, 2008 to 3rd December, 2008 and from 8th December, 2008 to 24th February, 2009. Let such representation be filed within a period of four weeks from date.

In the event such representation is submitted, the respondent no.4 shall consider the same, upon granting an opportunity of hearing to the petitioner and communicate a reasoned decision to the petitioner within a period of four weeks from the date of receipt of the representation.

With the above observations and directions, the writ petition, being WPCT 60 of 2017 is disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)