

29.04.2024
Item No.11
Court No.11
Avijit Mitra

WP.ST 60 of 2024

In re: An application under Article 226 of the Constitution of India;

And

Tarak Das
- Versus -
The State of West Bengal & ors.

Mr. Suhrid Sur,
Mr. Chandri Chattopadhyay
...for the petitioner

Ms. Sonal Sinha,
Mr. Avishek Prasad
...for the State respondents

The present writ petition has been preferred challenging an order dated 17th January, 2024 passed in the original application being O.A. No.291 of 2017. By the said order, the learned Tribunal expressed its dissatisfaction as regards the admissibility of the original application since no cogent reason was given for the delay in preferring the original application and as the petitioner failed to appear on four consecutive dates before the learned Tribunal between 16th April, 2018 to 17th September, 2018.

Records reveal that the original application was filed by the petitioner challenging *inter alia* an order of dismissal dated 27th May, 2015 passed by the respondent no.6 without preferring any statutory appeal. The original application was admitted by the

learned Tribunal on 18th April, 2017 directing the parties to exchange their reply and rejoinder. The matter thereafter appeared on 27th July, 2017 and as there was no quorum, the matter was adjourned and was fixed for further consideration on 22nd November, 2017. On the said returnable date, the learned Tribunal again adjourned the matter to 22nd February, 2018 as '*There is no time today. As such the matter cannot taken up for hearing*'. On the returnable date i.e., 22nd February, 2018, the matter was again adjourned though the learned advocates appearing for the respective parties were present. On the returnable date i.e., on 16th April, 2018, none appeared for the petitioner and the matter was fixed on 12th July, 2018. On the said returnable date since the division bench was not sitting, the matter was adjourned to 17th September, 2018. As none appeared on behalf of the petitioner on 17th September, 2018, the matter was dismissed for default. The petitioner filed a restoration application which, upon contested hearing, was allowed on 9th November, 2022 keeping the maintainability point open. As the learned Tribunal was not functioning with its full strength, the matter was placed for hearing before a learned single Member on 17th January, 2024 and on consent of the parties, the

matter was heard and disposed of '*without passing any order*'.

Mr. Sur, learned advocate appearing for the petitioner submits that during pendency of the original application, the petitioner's advocate-on-record expired on 21st September, 2021 and the petitioner had to engage another learned advocate but, in the meantime, the application was dismissed for default. The restoration application was heard and allowed by an order dated 9th November, 2022 and the original application was restored keeping the maintainability point open.

According to Mr. Sur, initially upon hearing both the parties, the original application was admitted and as such by a subsequent order, the point of maintainability ought not to have been reopened. The challenge against the order of dismissal, which affects his life and livelihood, has been turned down in a mechanical manner. It is also not a case that the petitioner's advocate did not appear on four consecutive dates between 16th April, 2018 to 17th September, 2018 since the matter could not be taken up on 12th July, 2018 as the division bench was not sitting,

Ms. Sinha, learned advocate, assisted by Mr. Prasad, learned advocate, appearing for the State respondents denies and disputes the contention of

the petitioner and submits that the facts would reveal that the petitioner was not diligent in proceeding with the matter before the learned Tribunal and as an alternative remedy was available to the petitioner, he ought not to have approached the learned Tribunal at the first instance.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The punishment which has been imposed is the highest punishment and the same severely affects the livelihood of the petitioner and his family. The records reveal that the original application was initially admitted upon contested hearing and the parties were directed to exchange their reply and rejoinder. Subsequently due to the death of the learned advocate engaged by the petitioner, appropriate steps could not be taken and as such the matter was initially dismissed for default. However, upon considering the circumstances, the application was again restored but the maintainability point was kept open. Regard being had to the facts involved and the punishment which has been imposed, we are of the opinion that an opportunity needs to be granted to the petitioner to avail the remedy, as provided under the statute, by preferring a departmental appeal/statutory appeal.

Accordingly, the order dated 17th January, 2024 passed by the learned Tribunal in the original application being O.A. No.291 of 2017, is set aside and the original application as well as the present writ petition are disposed of with liberty to the petitioner to prefer a statutory appeal/departmental appeal before the competent authority within a period of three weeks from date.

In the event such statutory appeal is preferred within the period as directed, the competent authority shall consider the same on merits and in accordance with law and pass a reasoned order within a period of eight weeks from the date of filing of the appeal and communicate the decision to the petitioner within a period of two weeks thereafter.

It is made clear that in event the statutory appeal is not filed within the time as directed above, it shall be deemed that the petitioner has waived his right to challenge the order of dismissal.

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

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

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