

29 **22.08.**
2024

Ct. No. 08

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MAT 597 of 2024
IA No. CAN 1 of 2024
IA No. CAN 2 of 2024

Mredula Sasmal
Vs.
The State of West Bengal and others.

Mr. Sarwar Jahan,
Mr. Sayantan Hazra,
Ms. Tapati Sarkar.

... for the appellant.

Mr. Rajat Dutta,
Mr. Sasthi Charan Dhara.

... for the State.

Ms, Debjani Sengupta,
Mr. Abhijit Chatterjee,
Ms. Koyel Bag.

... for the respondent no. 6.

Re: CAN 1 of 2024

This is an application for condonation of delay in preferring the appeal beyond the statutory period of limitation provided therefor.

After perusal of the explanations offered in paragraph 1 to 3 of the instant application, we are satisfied that the appellant/applicant was prevented by sufficient cause in not preferring the appeal within the period of limitation.

The instant application is allowed.

The delay in preferring the instant appeal is hereby condoned.

The office is directed to formally register the appeal.

On consent of the parties, the appeal and the application for stay are taken up for hearing.

A piquant situation has arisen in the instant appeal filed against an order of the Single Bench dismissing the writ petition upon returning a finding on the facts neither pleaded in the writ petition nor the relief in this

regard was prayed for.

Admittedly, the father of the appellant, who was an employee of the college, affiliated to the Vidyasagar University, died while in service. The appellant claimed appointment on compassionate ground as the family is suddenly put into penury and the college accommodated the appellant by offering a post as a Library Clerk on ad hoc basis. The appellant continued to discharge her duties and amidst the same came to know that the college is contemplating to fill up the post by inviting an application from the eligible candidates, which constrained the appellant to file the writ petition before this Court.

The only relief claimed in the writ petition is as follows:

“A writ in the nature of Mandamus Commanding the concerned respondents to regularize the service of the petitioner w.e.f. from the temporary appointment and/or appoint the petitioner permanently with regular pay and allowances in a vacant post consistent with the qualification of the petitioner at an early date.”

From the averments made in the writ petition as well as the relief as quoted above, there is no scintilla of doubt that the appellant wanted to regularize her ad hoc appointment, but the Single Bench proceeded to dismiss the writ petition as an argument was advanced before the Court that the petitioner's appointment on compassionate ground has been made. The Single Bench observed that since the father of the petitioner had few months left in service and the petitioner has been appointed on ad hoc basis, the claim of the petitioner is untenable.

It is further observed that since the petitioner's family was aware that the father of the petitioner would retire within few months and, therefore, if the death occurred few months before the retirement, it does not

alter the position, as the family would be sustained with the pensionary benefit.

There is no pleading in this regard nor any relief was claimed in the writ petition. An argument *de hors* the pleading if made at the Bar should not be encouraged nor the decision should be taken solely on the ground of submissions so made, which is foreign to the pleadings and the relief claimed in the writ petition. The importance of pleading in an adversarial adjudication system is well-known as each and every party to the litigation is entitled to know the points, which she is under obligation to meet and, therefore, the decision should be within the four corners of the pleadings and the reliefs and should not be taken on an extraneous factors.

We are of the opinion that the manner in which the writ petition is dismissed cannot be supported yet another point, which is required to be decided, is whether the ultimate decision taken by the Single Bench warrants any interference on the basis of the facts pleaded in the writ petition and the relief claimed therein.

Admittedly, the appellant is appointed as Library Clerk on ad hoc basis and claimed regularization and/or approval of such ad hoc service in the writ petition. In view of the judgment of the Constitution Bench of the Apex Court rendered in case of **Secretary, State of Karnataka and others vs. Umadevi (3) and others**, reported in **(2006) 4 SCC 1**, the appointment, which is *de hors* the recruitment Rules or without following the same comes within the fold of an illegal appointment and the regularization should not be permitted.

Since the petitioner is appointed on ad hoc basis and it does not appear from the pleadings that the recruitment procedures were duly followed, therefore, the prayer for regularization and/or approval to such illegal appointment cannot be granted.

We, thus, find the ultimate decision of the Single Bench cannot be faulted with though we do not approve the findings leading to the said ultimate decision to be inconsonance with law.

The appeal is, thus, dismissed.

In view of the dismissal of the appeal itself, the connected application for stay being CAN 2 of 2024 has become infructuous and the same is also dismissed.

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

(Harish Tandon, J.)

(Prasenjit Biswas, J.)