

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Harish Tandon

And

The Hon'ble Justice Prasenjit Biswas

MAT 641 of 2024

with

CAN 1 of 2024

CAN 2 of 2024

Jyotsna Ghosal

Vs.

The State of West Bengal & Ors.

For the Appellant	:	Mr. Rittick Chowdhury, Advocate Mr. Mihir Saha, Advocate
For the State	:	Mr. Bhaskar Prasad Vaisya, Ld. AGP Mr. Sagnik Chatterjee, Advocate
For the DPSC, Howrah	:	Mr. Ratul Biswal, Advocate Mr. Koushik Chowdhury, Advocate
Heard on	:	July 4, 2024
Judgment on	:	July 4, 2024

The Court:

CAN 1 of 2024

1. This is an application for condonation of delay in filing the instant appeal beyond the period of limitation provided therein.
2. Though the learned Advocate has indicated in the instant application that there is a delay of 165 days but from the report of the Stamp Reporter, it appears that there is a delay of 139 days. The supplementary affidavit filed today contains a lucid and elaborate explanation occasioning the delay in filing the instant appeal.

3. It appears that the appellant being the patient of 'Parkinson', was unable to commute because she fell down and was diagnosed with distal radius and humeral neck fracture. It further appears that the Counsel who was engaged in the instant matter also suffered back and neck spasm and was unable to attend the Court between the period on and from 10.01.2024 to 28.03.2024.
4. Taking the overall stock of the explanation so offered, we find that the petitioner no. 1 prevented by sufficient cause in not preferring the appeal within the statutory period of limitation.
5. Accordingly, the application for condonation of delay being **CAN 1 of 2024** is **allowed**.
6. Delay in preferring the instant appeal is hereby condoned.
7. Office is directed to formally register the appeal.

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8. It is astonishing that the writ-petition is dismissed not only on the ground that complicated questions of facts are discerned in course of hearing but also on the ground of delay and laches in approaching the Court.
9. It has been categorically observed in the impugned order that the petitioner approached the Court claiming the family pension on the death of her husband in the year 2012, after a lapse of 11 years. Further observation was made that the dismissal shall not create any bar for the petitioner to take appropriate steps under the law where evidence is adduced.
10. But such observation, in our opinion, was unwarranted and surplusage. The moment a right of the person is set at rest on the ground of delay and laches, such observation cannot resurrect the dead wood to be implanted at another place. It is not a case that the petitioner approached the Court for the first time with the said writ-petition where the delay and laches attributable to her conduct can be a factor for denying the relief,

but prior thereto the petitioner filed a writ-petition being WPA 17613 of 2022 before this Court raising the same point founded upon the same set of facts which was duly entertained by the same Single Bench and direction was passed upon the District Inspector of Schools (Primary Education) to give an opportunity of hearing to the petitioner to settle the matter. It was further observed that while giving an opportunity of hearing, the District Inspector of Schools (Primary Education) shall take into account all relevant annexures made in the writ-petition and the entire exercise shall be completed within 60 days from the date of communication of the order.

11. Pursuant to such direction passed upon the authority to take a conscious decision in a writ-petition which was admittedly filed after a gap of 10 years from the date of death of the husband of the petitioner, the delay and laches cannot be taken as a factor in dismissing the second writ-petition wherein the decision of the District Inspector of Schools (Primary Education) was challenged immediately after the same was communicated to the petitioner. There does not appear to be any symmetry in the previous order and the impugned order challenged in the instant appeal, as in our opinion, the certainty in the decision is the hallmark of dispensation of justice.
12. It is inconceivable and unacceptable to us that a writ-petition challenging the order of District Inspector of Schools (Primary Education) passed on 10.03.2023 can be dismissed on the ground of delay and laches. The Single Judge has not recorded any satisfaction as to why the order of the District Inspector of Schools (Primary Education) is not susceptible to be interfered with on the ground of infirmity.
13. Recording of reasons in arriving at the conclusion is a basic and fundamental duty entrusted upon the Court as every litigant who has approached the Court, has a right to know the reasons

for dismissal of his writ-petition. The reason is the heart and soul of an order without which it cannot survive. It is expected that the Court must record the reasons before it embark its journey on the peripheral of deciding the correctness and/or incorrectness in the order challenged before it and should not surreptitiously jumped to a conclusion without any edifice of reasoning.

14. On such score, we find that the order warrants interference.
15. The impugned order is set aside.
16. The Single Bench did not make any observation on the merit of the writ-petition filed by the appellant and, therefore, the matter is remitted back to the Single Bench to decide the writ-petition on merit.
17. For abundant precaution we hereby made it clear that we had no occasion to go into the merit of the claim and the entire findings is based upon technical issues and, therefore, any observation, incidentally or accidentally, made hereinabove, shall not have any persuasive impact at the time of deciding the matter.
18. The appeal being **MAT 641 of 2024** accordingly **disposed of**. The connected application being **CAN 2 of 2024** also stands **disposed of**.

(Harish Tandon, J.)

(Prasenjit Biswas, J)