

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 965 of 2024
IA No. CAN 2 of 2024

The State of West Bengal and others
Vs.
Dibyak Narayan Mondal and others.

With

MAT 116 of 2020
IA No. CAN 1 of 2020
IA No. CAN 2 of 2020

The State of West Bengal and others
Vs.
Rakhal Chandra Das and others.

Mr. Somnath Ganguly,
Mr. Tapas Kumar Dey.

... for the appellants.

Mr. Ekramul Bari,
Mr. Sk. Imtiajuddin.

... for the writ petitioners/respondents.

Ms. Koyeli Bhattacharyya,
Mr. Bibek Dutta.

... for the respondent WBBSE.

Heard on : 19.07.2024, 30.07.2024 and 05.08.2024

Judgment on : 21st August 2024.

The Court:

**Re: CAN 1 of 2020 and CAN 2 of 2020
filed under MAT 116 of 2020**

The instant appeal arises from a judgment and order dated 20th August 2013 and 24th August 2018 passed in WP 19811 (W) of 2011 and RVW 193 of 2016 by which the writ petition was allowed and an application for review was disposed of by correcting the ministerial error respectively.

Admittedly, the State preferred an appeal against the judgment and order dated 20th August 2013 passed by the Single Bench disposing of the aforesaid writ petition by way of intra court appeal being MAT 1532 of 2013, which was dismissed on 24th April 2014 as the defect pointed out by the Stamp Reporter was not removed by the appellants.

Another appeal being MAT 239 of 2019 was filed challenging the order dated 24th August 2018 by which the review application was disposed of correcting the ministerial error. By an order dated 20th November 2019, the Division Bench dismissed the said appeal with categorical findings that the exercise of review jurisdiction of the learned Trial Judge does not appear to be without jurisdiction or erroneous. However, an observation was made that the said order shall not be construed as a formation of opinion on the original order dated 20th August 2013. Obviously, the Division Bench was not apprised of the fact that an appeal was preferred against the order dated 20th August 2013 by the State, which was dismissed on 24th April 2014 for non-removal of the defects.

The present appeal is filed assailing both the order dated 20th August 2013 and 24th August 2018 passed in WP 19811 (W) of 2011 and RVW 193 of 2016 respectively. There is a considerable delay in preferring the instant appeal, which would further be evident from the report appended on the reverse of the first page of the Memorandum of Appeal that there is a delay of 484 days. The State has filed an application for condonation of delay taking a stand that an earlier appeal was filed assailing the order of 20th August 2013, but the same was dismissed for non-removal of defects on 24th April 2014.

It is further averred that subsequently the writ petitioners/respondents preferred an appeal against an order dated 20th August 2013 by filing MAT 41 of 2014, which was disposed of on 24th July 2015 by granting liberty to the writ petitioners/respondents to file an application for review before the Single Bench. The said review application was ultimately disposed of on 24th August 2018 by rectifying the ministerial error crept in the order dated 24th August 2013.

It is also stated in the said application that after dismissal of the appeal being MAT 239 of 2019 on 20th November 2019, the State of West Bengal through its Officers thoroughly underwent the order dated 20th November 2019 and after taking into account the merits of the case, an advise was extended that there is a fair chance of success if the appeal is filed against the order dated 20th August 2013 and 24th August 2018 respectively. In the month of December, 2019, an advice was sought from the Legal Remembrances, West Bengal for filing an appeal, which was accorded on 24th December 2019 and thereafter the learned Government Pleader was requested to appear in the matter and to engage a junior of his choice.

Ultimately, the appeal was filed on 20th January 2020 before this Court.

Let us examine the facts narrated in the said application for condonation of delay in order to find out whether any sufficient cause is made out therein.

It is no longer *res integra* that the Court enjoins power to condone the delay in preferring the appeal beyond the statutory period of limitation provided therefor under Section 5 of the Limitation Act. Equally, the Court should also bear in mind the object and purpose behind the incorporation of Section 3 of the Limitation Act.

The State cannot be treated as a privileged litigant nor any leniency should be shown as the State has preferred the appeal. The Court should confine its scrutiny within the four corners of the provisions contained under Section 5 of the Limitation Act and in the event the Court finds that the explanation is plausible and reasonable, which impedes the filing of the appeal within the statutory period, the Court may condone the delay irrespective of its length. The Court should not adopt a lenient or sympathetic view in considering an application under Section 5 of the Limitation Act, but should confine its scrutiny on the conduct of the litigant in pursuing the remedy before the Court of Law.

It is beyond cavil of doubt that the Limitation Act does not destroy the right but debar the relief from the Court of Law. The conduct of the appellants is evident from the facts so disclosed that the order dated 20th August 2013 was challenged by filing a mandamus appeal, but in defective form despite several orders having passed to remove the defects, the same was not done, which constrained the Court to dismiss the said appeal on the ground of non-removal of defects.

There remains a complete silence from the year 2014 until the year 2020 when the instant appeal is filed against the order dated 20th August 2013 by which the writ petition was disposed of. A litigant should not take advantage that the other side has preferred an appeal as the right of appeal emanates from a statutory provision and every aggrieved person may challenge the said order irrespective of the fact whether the respondent therein would or would not challenge the said order before the Appellate Court. The litigant should not be permitted to take a calculated risk and remain dormant for a long period of time in pursuing the statutory remedy provided in the statute and cannot seek the blessings from the Court that the State being the appellant should be treated differently than the individual.

No attempt is made to restore the earlier appeal, which was dismissed for non-removal of the defects. Furthermore, the appeal filed against the order dated 24th August 2018 disposing of the review application stood dismissed on merit with the categorical finding that the Division Bench does not find that the exercise of the review jurisdiction is erroneous and/or illegal. The moment the Appellate Court affirmed the order by recording a reasoned order, it is not open to the same appellants to challenge the selfsame order, which is set at rest by dismissing the appeal by approaching the Division Bench again.

A circuitous route is sought to be adopted in challenging the parent order as well as the order under review in one single appeal when both the orders are independent and separate having passed by the Court exercising the different jurisdiction and the powers conferred by the statute.

We, thus, do not find that the explanation so offered instill a confidence in us that the appellants were prevented by sufficient cause in preferring an appeal after such a long period of time.

The application for condonation of delay sans merit, the same is hereby dismissed. As a consequence whereof the appeal being MAT 116 of 2016 and the connected application being CAN 2 of 2020 are also dismissed.

Re: MAT 965 of 2024

This is an appeal against a judgment and order dated 4th March 2024 passed by the Single Bench in WPA 7384 of 2020 by which a writ petition was disposed of directing the authorities to issue an appropriate order of approval to the writ petitioners/respondents with effect from the date when the school was recognized by the authorities.

Irrespective of several round of litigations at the behest of the parties, the instant appeal is filed before this Court relating to the recognition of a school established by the organizing teachers and organizing staffs as well as the grant of approval to their respective services to the post held by them.

It is not in dispute that the orders were passed in earlier writ petition recognizing the rights so claimed not only in relation to the recognition of the school but also its teachers and staffs, who were discharging duties since the formation of the said school.

An approach was made by the school to the authorities for its recognition, which was granted by the West Bengal Board of Secondary Education, but as a new set up with effect from 1st May 2001. The said order was challenged before this Court and the writ petition was disposed of directing the District Level Inspection Team to inspect and report to the District Inspector of Schools (SE)

Dakshin Dinajpur to take a decision regarding the approval of the appointment of the writ petitioners/respondents and also to grant recognition of the said school. Subsequently, the Court appointed a Special Officer to submit the report as to the functioning of the school, the details of the organization and the number of teaching and non-teaching staffs.

On the basis of the said report, the writ petition was disposed of directing the authorities to take expeditious step for approval of the service of the teaching and non-teaching staffs of the said school. In the said writ petition, the respondents were also directed to approve the existing Managing Committee of the school and to sanction of the post of teaching and non-teaching staffs in order to accommodate the writ petitioners.

The dispute arises from the language used in the said judgment dated 20th August 2013 passed by the Single Bench as both the parties are construing the same in a different manner. According to the appellants, it has to be construed to the perspective of the fact after coming in force of the School Service Commission Act, 1997, where the appointment can only be made on the recognition of the said School Service Commission, which, in fact, has been considered by the Single Bench and the direction in this regard was passed. On the other hand, the writ petitioners/respondents contend that the observations in this regard has been deleted while disposing of the review application on 24th August 2018 and the cumulative effect of the order passed on review would be that not only the schools were recognized but the appointment of the organizing staff should also be approved by the competent authorities.

As indicated above, the approaches on the part of the appellants in assailing the aforesaid orders passed in an earlier writ

petition has gone in vain as more than one appeals filed against the aforesaid orders have been dismissed. The order attained finality and, therefore, the appellants cannot resile therefrom.

The Single Bench interpreted the aforesaid order to the effect that once the recognition to the school has been accorded by the authorities, the subsequent approval to the appointment of the organizing teaching and non-teaching staffs by the State cannot be made from prospective date but should be given effect from the date when the school or its Managing Committee was duly recognized by the Government.

The attention was drawn to the Government Notification issued by the Directorate of the School Education dated 20th December 1984 wherein the Government had taken a conscious decision that the services of the teachers or the non-teaching staffs of the newly recognized school should be approved with effect from the date of recognition thereof. Even after promulgation of the Act of 1997, the order passed in the earlier writ petition is laudable that the Court directed the appointment of the writ petitioners/respondents herein to be approved by the authorities, obviously taking into account that the right for approval of such appointment originated when the recognition was made by the School Authorities.

It would be fallacious to suggest that though the recognition to the school or its Managing Committee is accorded by the State but the recognition to its organizing teachers or the staffs who set up the said school would not be recognized, probably for such reason and in order to eradicate any discrepancies or disparity in this regard, the said Notification dated 20th December 1984 was issued indicating that the services of the teachers and non-teaching staffs shall take effect from the date when the school was duly recognized.

In such view of the matter, we do not find that instant appeal has any merit. The same is hereby dismissed.

Since the time limit set up for completion of the entire exercise directed in the impugned order has expired because of the pendency of the instant appeal, such time is extended for a period of four weeks from date.

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

(Harish Tandon, J.)

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(Prasenjit Biswas, J.)