

24.06.2024
sayandeep
Sl. No. 37-38
Ct. No. 08

MAT 994 of 2024
With
CAN 1 of 2024
Rakhi Chakraborty
Vs.
State of West Bengal & ors.
With
MAT 996 of 2024
With
CAN 1 of 2024
Shanaj Begum
Vs.
State of West Bengal & ors.

Mr. Anindya Bose
Mr. Santanu Maji
Ms. Ruma Das Maity
Mr. Mridul Biswas

... for the appellants

Mr. Avishek Prasad

... for the DPSC, Malda

Mr. Supriya Chattopadhyay
Mr. Arindam Ghosh

.... for the State in MAT
994 of 2024

Mr. Jayanta Santra
Mr. Tapas Ballav Mandal

.... For the State in MAT
996 of 2024

The aforesaid two matters are taken up together
having filed against the similar and identical order.

The dispute pertains to the recruitment process
initiated way back in the year 2009 for the post of
Assistant Teacher in the District of Malda. The spate of
litigations in relation to other Districts including the
District of Malda came to be filed before this Court and

ultimately the bunch of writ petitions pertaining to the District Malda were decided by the Single Bench on 26th April, 2024.

It was categorically observed in the said Judgment that all the candidates who were called for the interview in the said recruitment process and have filed the writ petitions before this Court till 25th April, 2024, they shall be entitled to appointments against the existing and future vacancies. It was further observed that even the applications for addition of party having filed before the said timeline, the proposed added candidates shall stand on the same footing with that of the writ petitioners and shall be extended the same benefit. The petitioner's claim was rejected by the Court solely on the ground that his writ petition came to be filed beyond the deadline set up in the said order.

Indubitably the writ petition was affirmed on 25th April 2024 but was filed on 3rd May, 2024. Precisely the date of filing was considered by the Single Bench in arriving at the conclusion that the benefit of the order dated 26th May, 2024 passed in WPA 25712 of 2022 cannot be extended. It is revealed in course of the hearing that though the recruitment process for the year 2009 was initiated in the year 2010 but because of the procedural hassles and the decision taken by the authorities on the basis of several litigations filed before the Court and orders passed therein, the panel of the successful candidate was published in the year 2021.

The writ petitions came to be filed on and from the year 2022 and some in the year 2024 as well.

The moot question involved in the instant appeal whether an affirmation of a writ petition would constitute the filing of the writ petition or in other words the filing date of the writ petition would relate back to the date of affirmation of the said writ petitions. The answer is unambiguous and simple that the proceeding shall be treated to have been filed on a date when it is presented for its acceptance and assigned the appropriate number by the department. There is no rule as of now that the filing date would be treated on the basis of date of affirmation. There is no constrain on the part of the litigant in not filing the legal proceedings before the Court after the same is affirmed if he chose not to pursue the matter any further. Taking a view that the presentation of the writ petition before the competent authority to receive the same would be treated to have filed on the date when the affirmation is done, would frustrate the very purpose of the institution of the proceeding on a particular date and, therefore, this Court does not find any substance in this regard.

The reliance placed upon the Judgment of the Supreme Court in **State of Uttar Pradesh & ors. Vs. Arvind Kumar Srivastava & ors.** reported in **(2015) 1 SCC 347** by the appellant does not have any relevance to a clenching issue involved in the instant matter. It

is beyond cavil of doubt that once the benefit is extended to a person, such benefit should also be extended to all persons who stands on a same pedestal. The act of discrimination is always viewed seriously as infringement of fundamental right guaranteed under Article 14 of the Constitution of India. However, an exception is carved out in relation to an approach to the Court at belated stage. In the said Judgment the Apex Court has also held that if there is a delay and laches attributable to the conduct of the litigant, even if it may have made out a case that he is a similarly circumstance persons that of the other, the Court may deny such relief in the following:

***“22.** The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.*

***22.1.** The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.*

***22.2.** However, this principle is subject to well-recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees*

cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. *However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C. Sharma v. Union of India [K.C. Sharma v. Union of India, (1997) 6 SCC 721 : 1998 SCC (L&S) 226]). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”*

In fact the petitioner intended to avail the benefit of the Judgment dated 26.04.2024. The moment the Court has restricted the benefit at a particular date and the said order attend finality having passed in presence of the parties, such date is inflexible and the benefit can only be extended to such persons who comes within the ambit thereof and cannot be extended to the others solely on the ground that they stand on a same footing that of the others.

As held above mere affirmation on a particular date cannot be construed as the filing of the proceeding before this Court, the petitioner, therefore, is not

entitled to the benefit of the said Judgment and, therefore, we do not find any illegality in the impugned order.

Accordingly, both the appeals and applications are dismissed without any order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)