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Ct-08

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MAT 1050 of 2023

with

IA No. CAN 1 of 2023

CAN 2 of 2023

Shyamolima Bhaumik

Vs.

The State of West Bengal & Ors.

Mr. Benoy Brata Bhowmik

... For the Appellant

Mr. Sujit Kumar Koley

... For the W.B.S.E.D.C.L

Re: CAN 2 of 2023(Section 5)

1. There is a delay of 74 days in presenting the memorandum of appeal.
2. We are satisfied with the explanation offered for not being able to file the memorandum of appeal within the statutory period, we are inclined to condone the delay in presenting the memorandum of appeal.
3. The application for condonation of delay is, thus, allowed without any order as to costs.
4. CAN 2 of 2023 is thus disposed of.

Re: MAT 1050 of 2023

1. The appeal is arising out of an order dated 22nd February, 2023 passed in a writ petition in which the writ petitioner/appellant prayed for cancellation of the reasoned order of the authority concerned dated 22nd December, 2022

by which the prayer of the petitioner for appointment on compassionate ground was rejected by the Distribution Company, here the respondent no. 4.

2. The reasoned order dated 22nd December, 2022 was passed on the basis of the order passed by the learned Single Judge on 7th November, 2022 by directing the authorities to consider the application for compassionate appointment of the petitioner.

3. Learned counsel representing the appellant submits that the authorities concerned had rejected the prayer of the petitioner illegally, arbitrarily and irrationally in deciding the issue disregarding the fact that the writ petitioner was successful in examination no appointment letter was issued in her favour.

4. Per contra, Mr. Sujit Kumar Koley, learned counsel representing the W.B.S.E.D.C.L, has submitted that the writ petitioner was called for a selection test on 1st August, 2013 when she prayed before the authorities on 16th August, 2013 that she wanted to appear for the post of Class-III after completion of her graduation. Subsequently, the petitioner was called for another selection test on 15th September, 2015 where she was found

successful. The petitioner made an application on 27th June, 2016 requesting the authority for extension of time till 2017 to submit a computer course certificate that was required for the said post. However, the petitioner did not submit the same nor intimated the reason for non-submission. The prayer of the petitioner for compassionate appointment was then rejected by the authority on 6th January, 2020. Thereafter the petitioner, after a period of two years, on 16th June, 2022 made an application for appointment on compassionate ground.

5. The father of the petitioner died-in-harness on 14th August, 2011 and after 11years the prayer for compassionate appointment was made by the petitioner, which clearly shows that the writ petitioner need not have immediate financial help.

6. We have carefully read the writ petition and the reasoned order passed by the authorities pursuant to the direction of the learned Single Judge on 7th November, 2022. The judicial view of an order is restricted to find out whether the authority has proceeded with the matter rationally and has taken into consideration all the relevant factors. The process of arriving at a decision is also required to be taken into consideration. In the

instant case, the father of the petitioner died on 14th August, 2011 and thereafter the elder sister applied for employment on compassionate ground, however she did not pursue the same as she got permanent job of a teacher in G.D Birla Center for education in the year 2011. Subsequently, the writ petitioner applied for employment in 2013 but did not appear for the suitability test for employment as she wanted employment only in Class-III position but she was being offered employment in Class-IV post. At that time the family was receiving family pension as well as the salary of her elder sister. In the year 2015, she appeared for written test and viva voce test for Class-III post but neither submitted the required computer qualification certificate, nor made any communication with the authorities since 2016 to 2022. When she was called for selection test in 2013 for a non-technical post she refused to appear for the said post by a letter dated 16th August, 2013 and prayed for consideration of her candidature for Class-III post. However, considering her qualification, she was not eligible for Class -III post. Subsequently, she submitted another letter on 7th September, 2015 informing that she had completed B.A Part-III final

examination and requested for consideration of her candidature for Class-III post. However, in spite of her degree in specified computer course her prayer for consideration for the post of Office Executive she was requested to appear in the selection test for the post of Office Executive (Class-III non-technical post) and was directed to appear on 22nd September, 2015 and 23rd September, 2015 for written test and viva-voce with an advice to submit specified computer course certificate at the earliest so that her candidature could be proceeded with. She was found successful in written and viva-voce test.

7. On 27th June, 2016 the petitioner submitted an application informing that as per the advice of Distribution Company, she had taken admission in DOEACC “O” level course at the said Society and her course would be completed by early 2017 and on completion of the course she would inform the same to WBSEDCL authority. However, she did not make any further communication till 16th June, 2022 and in the mean time her candidature was forfeited vide memo dated 6th January, 2020 on account of exhaustion of immediate financial need, which is the main spirit of employment on compassionate ground. In the order passed by the

authority it has been recorded that the writ petitioner is seeking to reopen her candidature for compassionate appointment after 11 years from the date of expiry of the deceased employee and has repeatedly refused the offer of appointment made to her at a post that was lower than the post to which the petitioner had applied for. The non-submission of the computer certificate since 2016 without any intimation whatsoever was the reason for the authorities to come to a finding in January 2020 that the petitioner was not willing to retain her candidature to the post of the Office Executive under the died-in-harness category on compassionate ground.

8. In the writ petition the petitioner alleged that on account of COVID pandemic she was unable to communicate the authority. However, she could not explain why she could not communicate prior thereto. Before the learned Single Judge she made certain bald statement with regard to her ill health since 2016, which, however, not corroborated.

9. On such consideration, we are in agreement with the views expressed by the learned Single Judge that the authorities have shown enough indulgence to the petitioner by keeping her candidature pending since 2013 (when she was

first called for interview). Having considered the petitioner's request, after completing her studies, she was allowed to sit for a written test and viva-voce in 2015. The petitioner's application in 2016 for submission of computer certificate at a later date in 2017 was also accepted. The petitioner kept silent from 2016 till 2020 as to the reason for non-submission of the said document. Neither did she pray for extension of time for submission of the said document and only after her candidature was rejected on 6th January, 2020 she challenged the same in June 2022.

10. In the light of the aforesaid discussion we do not interfere with the order passed by the learned Single Judge. The appeal thus fails and is accordingly dismissed.

11. In view of dismissal of the appeal, nothing remains to be decided in the application for stay being CAN 1 of 2023 and the same is accordingly dismissed.

12. However, there shall be no order as to costs.

13. Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)

