

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

Present:

**The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Partha Sarathi Sen**

**MAT 1002 of 2024
With
IA No.: CAN 1 of 2024
With
IA No.: CAN 2 of 2024**

**Uttam Hira
Vs.
The State of West Bengal & Ors.**

For the appellant : Mr. Sankar Paul
Mr. Gautam Malik

For the Registrar General, : Mr. Saikat Banerjee
High Court at Calcutta. Mr. U.K. Roy

Heard & Judgment on : June 19, 2024

PARTHA SARATHI SEN, J.:-

In Re.: IA No.: CAN 1 of 2024

1. This is an application for condonation of delay of 19 days in preferring the instant appeal.

2. We have perused the petition for condonation of delay.
3. We have also heard the learned Advocates for the contending parties for and against the prayer for condonation of delay.
4. In our considered view, the delay in preferring the instant appeal has been properly explained and the same is hereby condoned.
5. Accordingly, the prayer for condoning the delay of 19 days in filing the appeal is allowed.
6. **IA No.: CAN 1 of 2024** is disposed of.

In Re.: MAT 1002 of 2024

With

IA No.: CAN 2 of 2024

7. The instant appeal is at the instance of an employee of the Judgship of District Nadia who is the writ petitioner before the learned Single Judge.
8. In this appeal, the order dated March 19, 2024 as passed by the learned Single Judge in WPA 23525 of 2023 has been assailed on behalf of the writ petitioner. From the materials as placed before us it appears that the writ petitioner was appointed as Lower Division Clerk on August 6, 2012 and subsequently on August 6, 2015 he was confirmed in service. Materials have been placed before us to show that on October 1, 2015, the writ petitioner was promoted to the post of Upper Division Clerk.
9. It is submitted at the bar that it is the usual practice of the Judgship of Nadia to publish gradation list of all categories of the employees on year

to year basis. It is the grievance of the petitioner that in respect of gradation list of the year 2016 an objection was raised by the writ petitioner on April 11, 2016 but the same was not considered favourably. Subsequently, another objection was raised by the writ petitioner on July 29, 2019 since the writ petitioner was not satisfied with his position in the gradation list of the year 2019. Admittedly, though the writ petitioner was aggrieved with the gradation lists of 2016, 2019 and 2021 but for some reason or other which is best known to the writ petitioner, the writ petitioner did not ventilate his grievance before any Court of law challenging the legality and validity of the correctness of the gradation lists especially with regard to his position in such gradation lists.

10. Materials have been placed before us that the petitioner felt aggrieved again with the draft gradation list of the clerical cadre of the year 2023. On April 26, 2023 he through his learned advocate raised written objection with regard to his position in the said draft gradation list of 2023. According to the writ petitioner his objection to the said draft gradation list of 2023 was ignored.
11. Feeling aggrieved, the writ petitioner challenged the said draft gradation list of the year 2023 before this High Court by filing a writ petition being WPA 12648 of 2023. On June 20, 2023 a Single Bench of this High Court disposed of the said writ petition being WPA 12648 of 2023 directing the learned District Judge, Nadia to consider the representation/objection of the petitioner within 6 weeks from the date of

passing of the said order after giving an opportunity of hearing to the petitioner prior to disposal of his representation.

12. Records reveal that learned District Judge, Nadia thereafter constituted a committee of three learned Judicial Officers of the said district and the said committee duly considered the representation of the writ petitioner and had unanimously resolved that the representation/objection filed by the writ petitioner has got no merit and as such the same was rejected. By an administrative order dated September 14, 2023 learned District Judge, Nadia accepted the said report of the committee and on the same day final gradation list of clerical cadre as on 01.01.2023 was published by the Judgeship of Nadia wherein the writ petitioner was placed at Sl. No 59 under 'Grade III Bench Clerk' which according to the petitioner is wrong and on the contrary the writ petitioner claimed that he ought to have come at Sl. No.44 of the said final gradation list of the year 2023 under the 'Head Clerk, Nazir or Additional Supervisor Level of Head Clerk.'

13. It is the contended on behalf of the petitioner who is appellant before us that on account of such wrong placing in the revised gradation list of 2021, the petitioner was not able to come under the zone of consideration for his proposed promotion. It is, thus, submitted that the learned Single Judge while disposing the writ petition has failed to consider that the revised gradation list dated 01.01.2021 and the subsequent gradation lists were not prepared as per 50 point roster and at the same time,

learned Single Judge has failed to visualize the defect in the said revised gradation list of the year 2021 and also of the subsequent gradation lists including the final gradation list of 2023 as published by the aforesaid Judgship.

14. We have heard the learned Counsels appearing for the parties at length. We have perused the entire materials as placed before us. We have also gone through the order which has been impugned before us.
15. On perusal and consideration of the entire materials as placed before us, it appears to us that publication of gradation list by the Judgship of Nadia on year to year basis are being done because of the retirement of the employees as well as the recruitment of the new employees in order to facilitate grant of promotion and posting of the employees in different Courts and departments as per their gradation. There is no difficulty in understanding that when a gradation list is published it has a strong bearing with the previous gradation list and for which the District Judiciary before publication of a final gradation list usually publishes draft gradation list inviting objections. Admittedly, in the case before us, the writ petitioner raised his objection in the year 2016 and in the year 2019 either with regard to the draft gradation list or with regard to the final gradation list as published in those years but such objections have not been considered favourably by the said Judgship and the writ petitioner never approached any Court of law challenging non-consideration of his earlier two objections. It is pertinent to mention

herein that subsequent thereto several gradation lists of the employees of the Judgship have been published and no materials have been placed before us as well as before the learned Single Judge that the present petitioner has raised any objection with regard to the said subsequent gradation lists.

16. It appears to us that the gradation list which has been challenged before us as well as before the learned Single Judge is a continuous process exercised by the District Judgship and there occurred inordinate delay on the part of the writ petitioner in challenging the correctness of the gradation lists as rightly noticed by the learned Single Judge and further on account of a publication of successive final gradation lists in respect of the employees of the Judgship of Nadia, several promotional and retirement benefits have already been disbursed.
17. It is well settled that the Law of Limitation do not apply to exercise of jurisdiction under Article 226 of the Constitution of India. Relief under Article 226 of the Constitution of India being discretionary the Courts might in their discretion refuse to entertain the writ petition, where there is gross delay on the part of the writ petitioner, particularly, where relief sought would, if granted, unsettle which are already settled.
18. In view of the discussions made hereinabove, we have no hesitation to hold that the learned Single Judge is very much justified in holding that delay of 2 years in raising objection against the draft gradation list, would

be fatal to the claims of the petitioner as regards the gradation list published in the year 2021.

19. In considered view of us, for the self same reason the objection of the writ petitioner against the final gradation list of 2023 also cannot be entertained.

20. Considering the entire aspects of the matter, we do not find any justification to interfere with the finding of the learned Single Judge for the reasons stated supra.

21. We, thus, hold that the instant appeal is devoid of any merit and is, thus, dismissed without any order as to costs.

22. Accordingly, **MAT 1002 of 2024** is dismissed.

23. With the dismissal of the instant appeal, all interim applications are also disposed of accordingly.

(Partha Sarathi Sen, J.)

21. I Agree.

(Debangsu Basak, J.)

(AD)