

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

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***M.A.T. 1227 of 2024
(CAN 1 of 2024)***

***Monoranjana Das
-Vs-
The State of West Bengal & Ors.***

For the Appellant : Mr. Mukteswar Maity, Adv.

Heard on : 24.07.2024

Judgment on : 24.07.2024

Joymalya Bagchi, J. :-

1. Appellant has approached this court assailing order dated 11.06.2024 whereby the Hon'ble Single Bench had refused to entertain the writ petition.

2. The factual matrix giving rise to the appeal is as follows :-

Appellant was issued licence as an MR Dealer. Due to ill health he surrendered his licence. After recovering from his illness he made a prayer for issuance of fresh licence which was turned down.

Being aggrieved by the said order, appellant approached this court in an earlier writ petition.

3. The writ petition was dismissed and appellant appealed against the said order. A Co-ordinate Bench while disposing of the appeal observed as follows :-

“2. The learned Counsel for the appellant submits that on 9th August, 2023, the Government has invited an application for grant of licence against the vacancy and the petitioner may be allowed to apply in respect of such vacancy.

3. The learned Counsel for the appellant has submitted that in view of the pendency of the appeal, no application was filed.

4. This was not the issue before the learned Single Judge. The learned Counsel for the State has submitted that if the vacancy still exists the application of the petitioner if filed could be considered. In view thereof we dispose of the appeal with the observation that if the petitioner is eligible to apply and the vacancy still exists in terms of Memo dated 9th August, 2023 as disclosed at page 32 of the application, the application of the petitioner, if filed in the meantime, may be considered.

5. We make it clear that we have not gone into the eligibility of the petitioner to apply in terms of the Notification dated 9th August, 2023.”

3. Thereafter the appellant applied for grant of licence against the invitation vide Memo No.315/SC/FS/KDP/VACANCY/2023 dated 09.08.2023. Respondent authorities refused his prayer on the ground that the application had not been made within stipulated time. Appellant challenged this order before the Hon’ble Single Bench. His prayer being turned down, he has approached us.

4. Mr. Mukteswar Maity for the appellant contends in view of the observations in MAT 466 of 2021 permitting the appellant to take out an application if vacancy still exists, his application ought not to have been dismissed as barred by time.

5. Nobody appears for the State-respondents. Affidavit-of-service filed in court be kept with the record.

6. We have considered the submissions of the appellant in the light of the aforesaid materials on record.

7. Respondent authorities issued a notice inviting applications vide Memo No. 315/SC/FS/KDP/VACANCY/2023 dated 09.08.2023. Last date for making the application was 18.09.2023. Admittedly appellant had not submitted his application within the stipulated time. However, a Coordinate Bench in MAT 466 of 2021, inter alia, observed if the appellant is eligible to apply and the vacancy still exists, his application, if filed in the meantime may be considered. The said observation was made on 06.03.2024 whereas the appellant made an application on 11.03.2024 after passing of the said order.

8. If one carefully reads the observation of the Coordinate Bench, it would appear the Bench had permitted any pending out of time application to be considered against existing vacancy. This liberty cannot be enlarged to include a subsequent application for filling up of vacancies.

9. For these reasons, we do not find any merit in the appeal.

10. The appeal is accordingly, dismissed.

11. In view of dismissal of the appeal, connected application being CAN 1 of 2024 is also disposed of.

12. Needless to mention in the event fresh notification for filling up fresh vacancies is issued, it shall be open to the appellant to apply, if he is otherwise eligible.

13. There shall be no order as to costs.

14. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

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