

21.08.2024
rpan/06

WPST 135 of 2024
Suman Paul
- Versus -
The State of West Bengal & Others

Mr. Biswajit Tiwari
... for the Petitioner.

Mr. Tapan Kumar Mukherjee,
Ms. Sangeeta Roy
... for the State/Respondents.

The present writ petition has been preferred challenging an order dated 10th June, 2024 passed by the learned Tribunal in a restoration application being MA 51 of 2024 filed in connection with OA 774 of 2018. Records would reveal that the said OA was dismissed for default by an order dated 6th May, 2024.

Mr. Tiwari, learned advocate appearing for the petitioner submits that the petitioner's prayer for restoration was refused observing *inter alia* that on previous four dates of hearing on 6th May, 2024, 3rd January, 2024, 24th November, 2023 and 26th July, 2023, none had appeared on behalf of the petitioner. However, the records would reveal that on 26th July, 2023, the learned Tribunal adjourned the matter as the petitioner's learned advocate-on-record was ill. The learned advocate of the petitioner could not appear before the learned Tribunal on 6th May, 2024 as he went to his home town Malda to cast his vote. Such absence was neither intentional nor deliberate.

He submits that the original application is of the year 2018 and the pleadings have already been exchanged by the parties and the matter is ready for hearing. The period of pendency of the matter stood intervened by a period lost due to the pandemic and the series of orders passed by the learned Tribunal would reveal that the petitioner was represented on most of the occasions and in the said conspectus, the prayer for restoration ought to have been allowed.

Mr. Mukherjee, learned Additional Government Pleader enters appearance on behalf of the State respondents.

Records reveal that the original application was filed in the year 2018. On almost all the dates, on and from 4th April, 2019 to 5th April, 2023, the petitioner was represented by his learned advocate. The parties have already exchanged their pleadings and the matter is ready for hearing.

On 26th July, 2023, the learned Tribunal adjourned the matter due to the illness of the learned advocate-on-record of the petitioner and such fact ought to have weighed with the learned Tribunal while passing the orders dated 6th May, 2024 and 10th June, 2024 and in the impugned order it ought not to have been observed that on the said date none appeared on behalf of the petitioner.

In the said conspectus and as for the fault of the learned advocate, the petitioner cannot be made to suffer,

we are of the opinion that the learned Tribunal ought to have exercised discretion in favour of the petitioner.

In view thereof, the order dated 10th June, 2024 passed by the learned Tribunal in MA 51 of 2024 is set aside. The order of dismissal for default dated 6th May, 2024 is recalled and the OA 774 of 2018 shall stand restored to its original file and number.

The present writ petition, being WPST 135 of 2024 is, accordingly, disposed of.

Needless to observe, that the learned Tribunal shall make a sincere endeavour to dispose of the original application, as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)