

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

Present:

**The Hon'ble Justice Harish Tandon
And
The Hon'ble Justice Prasenjit Biswas**

MAT 1300 of 2024

with

CAN 1 of 2024

CAN 2 of 2024

CAN 3 of 2024

Bijoy Chakraborty & Ors.

Vs.

Santanu Sit & Ors.

For the Appellant : **Mr. Ashoke Kumar Banerjee, Senior Advocate
Mr. Pranit Bag Barat, Advocate
Mr. Debdatta Sana, Advocate
Mr. Subhamay Dewanji, Advocate**

For the Writ-Petitioners/
Respondents : **Mr. Dibyendu Chatterjee, Advocate
Mr. Pritam Majumdar, Advocate
Mr. Rahul Deb Goyenka, Advocate
Ms. Satabdi Das, Advocate
Mr. Mainak Singha Barua, Advocate**

For the WBBPE : **Mr. Subir Sanyal, Advocate
Mr. Dwarikanath Mukherjee, Advocate
Mr. Saikat Banerja, Advocate
Mr. Ratul Biswas, Advocate
Mr. Kaushik Chowudhury, Advocate**

For the Applicant
(CAN 4 of 2024) : **Mr. Sudipta Dasgupta, Advocate
Mr. Ali Ahsan Alamgir, Advocate
Ms. Rabia Khatoon, Advocate
Ms. Soma Mal, Advocate
Mr. June Modak, Advocate**

For the State : **Mr. Supriyo Chattopadhyay, Advocate
Ms. Iti Dutta, Advocate**

For the Applicant
(CAN 3 of 2024) : **Mr. Sudipta Dasgupta, Advocate
Mr. Asif Iqbal, Advocate**

Heard on : July 10, 2024

Judgment on : July 10, 2024

The Court:

CAN 1 of 2024

1. Though the Stamp Reporter has opined that there is no delay in filing the instant appeal but upon going through the record, we find that such report is not correct.
2. Learned Advocate for appellant has also accepted that there is a delay in filing the instant appeal and has taken out the instant application for condonation thereof.
3. Upon hearing the Counsel and after going through the averments made in the aforesaid application, we find that the appellant was prevented by sufficient cause in not filing the appeal within period of limitation provided therefor.
4. The delay in filing the instant appeal is hereby condoned. The application being **CAN 1 of 2024** is accordingly **disposed of**.

MAT 1300 of 2024

5. The orders dated 30.04.2024 and 03.05.2024 are assailed in the instant appeal on the premise that the Court of first instance ought not have ventured to decide the issues on merit, the moment the issue of maintainability of the writ-petition was raised at the threshold of the hearing.
6. According to Mr. Ahoke Kumar Banerjee, learned Senior Advocate appearing for the appellant, both the aforesaid orders are the reflection of a pre-determined mind and, in fact, the issue relating to maintainability of the writ-petition has been pushed at the back. To buttress the aforesaid submission, reliance is placed upon a judgment of the Apex Court in case of ***Director General of Police, CRPF, New Delhi & Ors. Vs. P.M. Ramalingam*** reported in **(2009) 1 SCC 193**.
7. Mr. Banerjee strenuously argued that it would be a futile exercise if the journey is embarked upon the issues or the questions framed in the impugned order, in the event, the Court found the issue relating

to maintainability in favour of his client. According to Mr. Banerjee, the Court should restrain itself in framing the questions/ issues founded on the facts pleaded in the writ-petition but should decide the issue of maintainability first.

8. We had an occasion to peruse the tenet of the orders passed on the aforesaid dates. We do not find any reflection of impinging the right of either of the parties nor could we persuade ourselves to agree with the stand of Mr. Banerjee that there is any interim order or protection passed or given in favour of either of the parties. It transpires that the Court after due application of mind expressed its view on the issues which may have some impact on the said writ-petition and to avoid any surprise to the appearing Counsel such questions/issues are recorded in the aforesaid orders.
9. It is not a case where the right of any of the parties is affected but mere recollections of the issues/points which emerged in course of the hearing. Both the parties or their respective Counsel are made aware of such points and/or issues so that the Court may be in a position to get adequate and meaningful assistance from the Bar in pursuit of rendering justice to the litigants. Had it been a case that an interim order is passed, the stand taken by Mr. Banerjee has a substance. Even the Apex Court in case of P.M. Ramalingam (*supra*), as relied by Mr. Banerjee, in unequivocal terms held that the moment the plea of maintainability of the proceeding is raised, it would be proper for the Court to decide the same first before it ventured to pass interim order to operate during the pendency thereof.
10. The judgment of the Apex Court appears to have been misplaced in the context of the instant case as in the report the plea of maintainability was raised but the Court kept such point to be decided at a later stage of the proceeding and proceeded to pass an interim order of *status quo* which would entitled the respondents therein to enjoy the benefits of the conditional promotion as well as

the benefit of three years of extra service. In the backdrop of the aforesaid fact, the Apex Court in paragraph 9 of the said report held that the High Court could not have passed the interim order which virtually means allowing the review petition without deciding the question of maintainability of the review petition. The judgment rendered in a case is decided on the facts involved therein. The ratio has to be culled out from the observations made in the context and not to be extracted in isolation thereof.

11. As indicated above, there is no interim order passed by the Single Bench in the impugned orders and, therefore, the judgment relied upon by Mr. Banerjee has no manner of application in the instant case.
12. Taking a clue from the ratio of law laid down in the said judgment, it is the ardent duty of the Court to decide the point of maintainability at the threshold and should not embark its journey by passing interim orders virtually affecting the rights of the parties. In course of hearing, we are informed that in a subsequent order passed in the said proceeding, the Court of first instance has expressly indicated that the point of maintainability would be taken first which, in our opinion, took care of the questions raised by the appellant in the instant appeal.
13. We hope and trust that the point of maintainability shall be decided by the Court of first instance as and when the same is raised or the occasion to decide the same arise before delving upon to decide the issue on merit or to pass any interim order in the instant matter.
14. The appeal being **MAT 1300 of 2024** and the connected applications being **CAN 2 of 2024** and **CAN 3 of 2024** are **dismissed**. No order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J)

