

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 1347 of 2024
IA No. CAN 1 of 2024
IA No. CAN 2 of 2024

Deblina Jana
Vs.
State of West Bengal and others.

For the Appellant : **Mr. Biswarup Biswas,**
Mr. Kamal Mishra,
Mr. Pratap Sanfui,
Mr. Subhadeep Maitra.

For the State : **Mr. Ovik Sengupta.**

For the SSC : **Sunit Kumar Roy**

Heard on : 07.08.2024

Judgment on : 7th August 2024.

The Court:

Re: CAN 1 of 2024

This is an application for condonation of delay in preferring the instant appeal beyond the period of limitation provided therefor.

It is averred in paragraph 3 of the instant application that after noticing certain typographical errors crept in the order dated 5th April 2024, the matter was mentioned before this Court for correction, which, in fact, was done on 3rd May 2024. The certified copy was applied on 7th May 2024 and was made ready and, in fact, delivered on 27th June 2024. It is further averred that though the appellant was diligent in proceeding with the instant matter, but because of the circumstances beyond her control, the delay in filing the instant appeal should be condoned.

Taking into the submissions advanced before us and the explanations so offered, we are satisfied that the appellant was prevented by sufficient cause in not preferring the appeal within the period of limitation.

Accordingly, the delay in preferring the instant appeal is hereby condoned.

The instant application is allowed.

The office is directed to formally register the appeal.

By the consent of parties, we invited the attention of the appearing Counsels to address on the merit of the instant appeal.

An application for transfer filed by the appellant was allegedly kept under suspended animation by the competent authority, which constrained the appellant to move before this Court under Article 226 of the Constitution of India.

The allegations running in several paragraphs indicate that in terms of the statutory Rules i.e. West Bengal School Service Commission (General Transfer, Transfer on Special Grounds and Reallocation) Rules, 2015 (hereinafter referred to as “said Rules”), the application for transfer is to be routed through various tiers of filtration and, in fact, reached to its highest tier, but the School

Service Commission was keeping tight over the matter and did not take any conscious decision.

The Single Bench invited the respondents to disclose the reasons for keeping the said application in abeyance and not taking a conscious decision. It was communicated to the Single Bench that the choice of schools, which the appellant opted in the application for transfer, does not have a vacancy in the said subject and, therefore, the application cannot be allowed.

Obviously, after introduction of the West Bengal School Service Commission Act, the said Commission is vested with the powers to make a recommendation relating to the appointment, be it for the first time, after conducting the recruitment process or on the basis of an application for transfer; obviously bearing in mind the vacancies available in different educational institutions set up within the State. The moment the posts have been sanctioned by the Government in a subjectwise or otherwise, the recommendation cannot be made beyond the sanctioned strength, which does not need any further discussion in this regard. Even if the other authorities have forwarded the applications having found the grounds reasonable and plausible, does not mean that such processing of an application by the other authorities is sacrosanct and binds the School Service Commission.

Obviously, the reason being that the other authorities have no database relating to a vacancy in the different schools, which is maintained by the School Service Commission having entrusted with the primary duties of recommending the names for being appointed in a particular school.

The Counsel for the appellant vociferously submits that Rule 6 Sub-rule 4 of the said Rules provides a complete mechanism for processing the application for transfer and the criteria to be

adhered to, which, in fact, has been flouted and/or not followed by the authorities. Clause (h) of Sub-rule (4) of Rule 6 is placed in support of the contention that if the application for transfer comes within the peripheral of Rule 4(e), the Central Schools Service Commission if found that the said school has a sufficient and excess teachers in the subject, may reject the same. The aforesaid provision is cited that the authorities have not taken decision nor communicate the reasons and, therefore, the Writ Court should not usurp the powers of the authorities and proceeded to dismiss the application holding that the application for transfer is unmeritorious.

Clause (i) is also placed that in the event the application for transfer is founded upon other grounds and in the event more than one application for transfer for a single vacancy is made, the seniority is to be followed based upon the marks obtained by each of such intending candidates in terms of the modalities provided therein.

There appears to be a misconception in the mind of the Counsel for the appellant that the aforesaid provision mandates the thing to be done in a particular manner and have its application even in a case where there is no vacancy in the school.

The opening words of the said provisions conveys the laudable intention that the District Inspector shall consider the said application only when there is a vacancy available at the time of consideration. Even Clause (h) and (i) are the repository of the aforesaid intention where the Central School Service Commission may reject the said application if there are sufficient or excess number of teachers in the subject in the said school. Clause (i) can only be pressed in action when there is a single vacancy in the subject in a particular school and more than one application for transfer is filed by the teacher. In such event, the teacher, who

obtained more marks would be preferred to the teacher obtaining lesser marks.

The facts emerged in the instant case is completely reversed where the School Service Commission has communicated to the Court that the choice of schools indicated in an application for transfer does not have a single vacancy in the subject and, therefore, there is no scope for taking any decision. The moment the disclosure is made in course of a proceeding, which cannot be said to be irrational or unreasonable and in tune with the statutory provisions, it would be a futile exercise to direct the authorities to take the same decision and communicate to the appellant. It would simply burden the authorities to write the reasons and communicate to the appellant when such reason is unchanged and cannot be said to be contrary to the statutory provisions.

We are not unmindful of the proposition that the Court should not usurp the power of administrative authorities nor should substitute itself into the arm chair of the administrative authority as they are the best person to take decision, but once the decision is communicated to the Court, which appears to be in tune with the provisions of the statutory Rules, we do not find that the rejection of the writ petition can be said to be infirm or illegal.

We, thus, do not find any grounds warranting interference. The appeal and the connected application being CAN 2 of 2024 are dismissed.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

ab

(Prasenjit Biswas, J.)

