

2611
2024

TUESDAY

Court : 08
Item : DL-43
Matter : FAT
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Bench ID : 266048
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 1022 of 2024

with

CAN 1 of 2024

CAN 2 of 2024

MITALI DAY

Vs.

THE STATE OF WEST BENGAL & ORS.

MR. UJJWAL ROY, ADVOCATE

.....for the Appellant

MR. ARINDAM GHOSH, ADVOCATE

.....for the State

CAN 1 of 2024

1. This is an application for condonation of delay in preferring the instant appeal.
2. The Stamp Reporter put his report on the reverse of the first page of the memorandum of appeal indicating that the appeal is filed within the period of limitation.
3. The application thus appears to be surplusage.
4. Learned Counsel for the appellant submits that, in such event, he is not pressing the instant application.
5. Thus, the application for condonation of delay being **CAN 1 of 2024** is '**dismissed as not pressed**'.

FMA 1022 of 2024

6. At the very outset, we must record that the Writ Court ought not to have usurped the power of the administrative authority who has

not taken any decision on the application for transfer filed by the appellant, in deciding an application for transfer and returning a finding that the grounds enumerated therein are not satisfactory.

7. Obviously, the earlier two applications for transfer filed by the appellant on the ground of medical infirmities were rejected by the authorities as the ailment which the appellant alleged to have been suffering, does not instill confidence that the transfer is to be effected. After a gap of two years, a further application was filed for transfer, which is construed by the Single Bench to have been based upon the same ailment.
8. The Single Bench found that once the earlier two applications for transfer on the selfsame ground are rejected by the authorities, the further application based upon the selfsame ailment is not entertainable.
9. At the first blush, we find that the findings made by the Single Bench cannot be faulted with. An employee cannot be permitted to make successive applications on the selfsame ground when on an earlier occasion the employer after taking into consideration the materials so disclosed, rejected the same. It would not be proper for such employee to embarrass the employer for inviting the similar order at all material point of time.
10. Be that as it may, the application was taken out

after a gap of two years from the date of last preceding application. Obviously, the ailment might have aggravated or may not be in existence because of the proper treatment given by a Doctor having an expertise thereupon. It appears that the similar medical documents sought to be relied upon, which in fact, were relied upon in an application filed in the year 2022 and, therefore, we do not find any infirmity in the findings of the Single Bench that such repetitive application do not deserved to be entertained by the authorities.

11. However, we noticed that apart from the medical ground, the appellant has also indicated that she is at a distance of 143 K.M.s from her residence where her husband and minor child is residing and, therefore, it is evident that the subsequent application was filed on twin grounds namely the medical and distance. Once a composite ground has been mentioned, if any of one appears to be convincing to the authorities, it is not proper to proceed on the other ground for the purpose of dismissal of the said application.
12. We could have directed the authorities to consider the said application but we find that the composite application of such nature would create an anomaly and, therefore, it is desirable that the applicant should make an application afresh on the ground of distance for consideration by the authorities.

13. Without interfering with the impugned order, we grant liberty to the appellant to make a fresh application for transfer on distance ground and, in the event, such application is taken out, the respondent no. 2 will take a conscious decision thereupon within a fortnight from the date of such application in accordance with law and shall communicate the same to the appellant within one week thereafter.
14. For abundant precaution, it is hereby made clear that the authority shall not be swayed by the fact that the writ-petition filed by the petitioner was rejected and as a consequential effect, the application for transfer filed on a composite ground also stood rejected as the consideration on the ground of distance is completely different and, therefore, the observations made in the impugned order as well as by this Court shall not have any persuasive effect.
15. With these observations, the appeal being **FMA 1022 of 2024** and the connected application being **CAN 2 of 2024** are **disposed of**.

(HARISH TANDON, J.)

(PRASENJIT BISWAS, J)

