

1909
2024

THURSDAY

Court : 08
Item : DL-18
Matter : MAT
Status : DO
Bench ID : 266048
Transcriber : NANDY

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

MAT 1754 of 2024

with

CAN 1 of 2024

Suman Byapari

Vs.

The State of West Bengal & Ors.

Mr. Sudip Ghosh Chowdhury, Advocate

.....for the Appellant

Dr. Sutanu Kumar Patra, Advocate

Ms. Supriya Dubey, Advocate

.....for the WBCSSC

Mr. Himadri Sikhar Chakraborty, Advocate

Ms. Susnita Saha, Advocate

.....for the State

1. The transfer application was kept in suspended animation for more than four years. According to the learned Advocate for the appellant several reminders were given to the authorities so that the application for transfer can be processed and a decision may be communicated to him. Since there was no response to either of the communications, nor the fate of the said application was made known to the appellant, the writ-petition was filed.
2. It appears that immediately after an application for transfer was filed, the Secretary of the West Bengal Council for School Service Commission wrote a letter to the District Inspector of Schools (SE), Nadia on 09.01.2020 for disclosing the vacancy position in the Schools near the residence of the appellant and, in the event, it is not so, the vacancy within the said district.
3. Astonishingly, there was no response from the

District Inspector of Schools (SE), Nadia since last four years.

4. The Single Bench proceeded on the premise that since the vacancy position could not be ascertained since last four years, the writ-petition is liable to be dismissed and, in fact, dismissed the writ-petition. The relevant portion of the order is quoted below:-

“The learned Advocate representing the petitioner has placed before this Court one Memo dated 09.01.2020 issued by the Secretary, West Bengal Central School Service Commission addressed to the District Inspector of Schools (SE), Nadia seeking vacancy statement. However, considering Memo dated 09.01.2020, prayer of the petitioner for transfer cannot be allowed since vide said memo dated 09.01.2020, Secretary of the Commission merely asked for vacancy statement. After issuance of the Memo dated 09.01.2020, more than four years have passed. Therefore, what is present position with regard to vacancy relating to transfer of the petitioner cannot be ascertained.”

5. A litigant should not suffer for the lapses, laches and negligence on the part of the authority. The West Bengal Central School Service Commission asked for ascertainment and/or disclosure of the vacancies in a relevant medium and subject which does not appear to have been complied with by the District Inspector of Schools. At least, we do not find any document in the record in this regard as well.
6. The Law does not permit that the writ proceeding filed by the aggrieved person deserves dismissal because of the negligence and/or inaction on the part of the respondent authorities. There was no fault on the part of the writ-petitioner and if the

authorities have committed any fault, the writ-petitioner should not be penalized. Though the Counsel for the respondents tried to argue the matter taking a plea that there are sufficient grounds which would entail the dismissal of the writ-petition but we do not find that any such ground has been considered by the Single Bench and, therefore, we do not think that as an Appellate Court, we should consider the matter on merit.

7. We, therefore, set aside the impugned order.
8. Parties are relegated to the Single Bench.
9. Liberty is granted to the respective parties to disclose their stand on merit and if such disclosure is made, we expect that the Single Bench would consider the same on the merit.
10. With these observations, the appeal being **MAT 1754 of 2024** is **disposed of**. No order as to costs. The connected application also stands disposed of.

(Harish Tandon, J.)

(Prasenjit Biswas J)

