

31.01.2024
SI No.6
Court No.8
(gc)

MAT 2322 of 2023
CAN 1 of 2023
CAN 2 of 2023

Suratun Begum
Vs.
The State of West Bengal & Ors.

Mr. Partha Sarathi Das,
Md. Hafiz Ali,
Ms. Shanta Sarkar
...for the Appellant.
Mr. Arjun Roy Mukherjee, A.G.P.,
Ms. Amrita Panja Moulick
...for the State.

Re: CAN 1 of 2023

1. This is an application for condonation of delay. There is a delay of 33 days in presenting the memorandum of appeal.
2. The delay being sufficiently explained and that we are satisfied with the explanation offered for not being able to present the appeal within the period of limitation, we allow the application for condonation of delay.
3. The delay of 33 days in presenting the memorandum of appeal is hereby condoned.
4. Accordingly, the application for condonation of delay is disposed of.
5. The appeal shall be registered if it is otherwise in form.

**Re: MAT 2322 of 2023
CAN 2 of 2023**

6. By consent of the parties, the appeal and the application are taken up together and disposed of by this common order.
7. The appellant/petitioner belongs to the OBC category. However, she has applied under the general category because no vacancy was declared under the OBC category. There were 17 vacancies in the unreserved category, 8 vacancies in the SC category and 2 vacancies in ST category for the promotional post of Anganwadi Worker (AWW). However, 3 candidates who were selected against the vacancies in unreserved category belonged to SC category. This migration was by reason of the said 3 candidates outperforming in the selection process. By reason of such migration to the general category, the number of vacancies in the General category gets reduced by 3. The contention of the petitioner is that by reason of this migration of three candidates to unreserved category, the candidature of the petitioner may be considered under the SC category.

8. The learned Counsel, however, does not dispute that if the reserved category candidates are found more meritorious than the unreserved category candidates, they would be considered for appointment against the vacancies which are earmarked for general category candidates. Anyway, the law is well-settled in this point and we may profitably refer to the decision of the Hon'ble Supreme Court in ***Indra Sawhney Vs. Union of India & Ors.*** reported at ***AIR 1993 SC 477, Paragraph 811*** and ***Bharat Sanchar Nigam Limited & Anr. Vs. Sandeep Choudhary & Ors.*** reported at ***(2022) 11 SCC 779, Paragraphs 17 to 31.***
9. In view of the fact that there is no declaration of vacancy in the OBC category and the fact that the appellant has applied under the general category, the appellant/petitioner cannot be considered for the vacancy caused due to migration of 3 SC candidates to the general category.
10. We accordingly affirm the view of the learned Single Judge.
11. The appeal, accordingly, stands dismissed.

12. In view dismissal of the appeal, the application also stands dismissed.
13. However, there shall be no order as to costs.
14. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)