

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 04.12.2025
DELIVERED ON: 04.12.2025

**CORAM:
THE HON'BLE ACTING CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE JUSTICE PARTHA SARATHI SEN**

W.P. CT. 6 of 2024

**Union of India & ors.
Vs.**

Dr. Asok Kanti Sanyal & Ors.

Appearance:-

Mr. Partha Ghosh, Adv.

Mr. madhu Jana, Adv.

.....For the Petitioners

Mr. Phatick Ch. Das, Adv.

.....For the respondent nos. 1 & 3 to 11

Mr. Soumya Majumder, Sr. Adv.

Mr. Kinnor Ghosh, Adv.

.....For the respondent no. 2

JUDGEMENT (ORAL):

Per, Sujoy Paul, ACJ.:-

1. The petitioners/department has questioned the legality, validity and propriety of the order of Central Administrative Tribunal (hereinafter referred to as 'tribunal') passed on 25.05.2023 in OA 350/1259/2022 whereby relief claimed by respondents/applicants before tribunal was granted.
2. The applicants therein prayed for extension of benefit of office order dated 24 of 2014 dated 25.02.2014. Accordingly, they claimed ante-dated *in situ* promotion in the department. They claimed parity with two similarly

situated employees, namely, S.Z. Siddiqi and Dr. S.K. Murti who succeeded from Tribunal, Hyderabad. Admittedly, names of both the persons find place in the same order. The tribunal, after completion of pleadings and hearing the parties, passed the impugned order, which became subject-matter of challenge before us.

CONTENTION OF THE WRIT PETITIONERS:

3. Learned counsel for petitioners submits that the tribunal has granted relief without taking into account the statutory recruitment rules framed under proviso to Article 309 of the Constitution. The Rule came into being on its publication in official gazette on 23rd September, 1987. This statutory rule has not been considered by any Court including Hyderabad Bench of tribunal, the High Court of Telangana and the Supreme Court. Thus, the orders of Hyderabad Bench of tribunal, High Court of Hyderabad and even the judgment of Supreme Court are *per incuriam* and therefore, could not have been a reason for extending the benefit in favour of the private respondents.
4. Second contention is that the department issued an annexure-E by which the order dated 25.02.2024, which is sought to be implemented was withdrawn. The tribunal has not paid any heed to this communication.
5. The next submission is that the judgment of Hyderabad Bench in OA 626 of 2012 decided on 24.07.2015 in the case of **S.Z. Siddiqi** cannot be pressed into service because of inordinate delay on the part of the present respondents. In **Siddiqi's case (supra)**, the tribunal decided the matter on 24.07.2015 and present respondents approached the Court in the year 2022. Although the Hyderabad High Court in WP 19103 of 2016 did not

interfere in the order of tribunal passed in the case of **S.Z. Siddiqi (supra)**, the fact remains that the respondents herein were 'fence sitters'. Thus, on the ground of inordinate delay and laches and for 'fence sitters', relief must be denied. Reliance is placed on the judgment of Supreme Court in the case of **State of Uttar Pradesh & Ors. vs. Arvind Kumar Srivastava & Ors., (2015) 1 SCC 347**.

6. Learned Counsel for the petitioner urged that the Apex Court in the case of **Dr. S.K. Murti (supra)** directed that Benefit of the judgment in that case be extended to all similarly situated employees whether or not they were litigants. It is submitted that the Hyderabad Bench of the Tribunal in **S.Z. Siddiqi (supra)** followed this finding and extended the benefit in favour of the petitioners therein. The same mistake is committed by the High Court while dismissing the petition of the department. The judgment in **S.K. Murti (supra)** is inapplicable and tribunal and High Court in the case of **S.Z. Siddiqi (supra)** erroneously applied the judgment of **Dr. S.K. Murti (supra)**.
7. In order to bolster the submission that the orders/judgments on which the reliance was placed by the respondents were *per incuriam*, the judgment of Supreme Court in the case of **Hyder Consulting (UK) Limited vs. Governor, State of Orissa (2015) 2 SCC 189** was relied upon.
8. In support of the contention that if there exists a conflict between the rule and the scheme, rule must prevail, the judgment of Supreme Court in the case of **The Employees' State Insurance Corporation vs. Union of India 2022 LiveLaw (SC) 78** was cited.

CONTENTION OF THE RESPONDENTS:

9. Respondents/applicants urged that the basic office order no. 24 of 2014 dated 25.02.2014 contains names of present respondents as well as S.Z. Siddiqi. The tribunal decided the matter in favour of S.Z. Siddiqi which was unsuccessfully challenged before the High Court. The order of tribunal/High Court in the said cases had attained finality.
10. There is no justification in not extending the same benefits, which were extended in favour of a similarly situated employee i.e. S.Z. Siddiqi.
11. Mr. Das submits that the judgment of S.Z. Siddiqi was based on the judgment of Supreme Court in the case of ***Union of India vs. S.K. Murti dated 02.05.2011***. The case of ***Union of India vs. Vinay Kumar (CA 6359 of 2016)*** was decided on 25.08.2021. A review petition filed by Union of India was pending till 22.02.2022. It was dismissed by Supreme Court and thereafter the respondents preferred representation for extending the same benefits on 14.05.2022 and when it could not fetch any result, approached the tribunal by filing the instant OA.
12. Mr. Das urged that neither before the tribunal nor before this Court, the department has raised any objection regarding delay in filing the matter. Argument of *per incuriam* was also not part of the pleadings before the tribunal or before this Court. In absence of any foundation in the pleadings, argument of *per incuriam* and delay must be discarded.
13. He strenuously contended that the respondents are similarly situated *qua* S.Z. Siddiqi and therefore, the tribunal has not committed any error of law in maintaining parity.
14. No other point is placed by the parties.

15. We have heard the parties at length and perused the record.

FINDINGS:-

16. As per the contention of the Learned Counsel for the department, **S.Z. Siddiqi** got the benefit of the direction given in the case of **S.K. Murti**. The said direction reads thus:-

“Similar order shall be passed for all similarly situated persons despite the fact that they may not have approached the High Court questioning the order passed by the Tribunal. This direction is being given to avoid further litigation in the matter.”

(Emphasis Supplied)

17. In this round of litigation, we cannot examine the correctness of the order passed by the tribunal in the case of **S.Z. Siddiqi** as well as the judgment of Hyderabad High Court affirming the said finding.
18. It is not in dispute that present respondents are similarly situated qua **S.Z. Siddiqi** (supra). If pursuant to aforesaid direction of the Hon’ble Supreme Court in **S.K. Murti** (supra), the benefit was directed to be extended in favour of the **S.Z. Siddiqi**, we find no reason to deprive the present respondent. If order of **S.K. Murti (supra)** is considered in a particular way by Hyderabad Tribunal and High Court, the present respondents cannot be given a different treatment, more so, when their names figure in the same order date 25.02.2024
19. The Apex Court in **Inder Pal Yadav Versus Union of India, (1985) 2 SCC 648** held as under:

“Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court.”

(Emphasis Supplied)

20. Similar is the view taken in **Arvind Kumar Srivastava (supra)**. Relevant para reads thus:

“22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.”

(Emphasis Supplied)

21. In nutshell, in our considered Judgement, since petitioner and **S.Z. Siddiqi (supra)** were sailing in the same boat and Order dated 25th February, 2024 was passed in their favour, present petitioners cannot be given a step motherly treatment. If the Hyderabad Bench of Tribunal and High Court has extended the benefit of Order of Supreme Court in **Dr. S.K. Murti (supra)** in favour of similarly situated persons, we find no reason to take a different view. The reproduced portion of the order of **Dr. S.K. Murti (supra)** shows that the direction was to extend the benefit to all similarly situated persons. In that case, department cannot be permitted to raise its eyebrows on the ground of delay. The another limb of argument of Id. Counsel for petitioner was that pursuant to a file note, the basic order dated 25th February, 2014 has been cancelled. We have carefully examined the file note which is projected by Id. Counsel for the department as an ‘order’. The said document is a noting in the file and not an ‘order’. The noting in the file unless reduced in writing in the shape of an order and duly communicated to the effected employee cannot be treated to be an ‘order’.

The Apex Court in **1992 Supp (1) SCC 471** in **CCE vs. M.M. Rubber and Co.** held as under.

“The date of such order or decision is the date on which the order or decision was passed or made: that is to say when he ceases to have any authority to tear it off and draft a different order and when he ceases to have any locus paetentiae. Normally that happens when the order or decision is made public or notified in some form or when it can be said to have left his hand.”

(Emphasis Supplied)

22. Likewise in **(2012) 6 SCC 384** in **Bipromasz Bipron Trading SA vs. Bharat Electronics Limited (BEL)** it was poignantly held that Paragraph 33 reproduce below:-

“33. The aforesaid observations make it clear that an order passed by an authority cannot be said to take effect unless the same is communicated to the party affected. The order passed by a competent authority or by an appropriate authority and kept with itself, could be changed, modified, cancelled and thus denuding such an order of the characteristics of an final order. Such an uncommunicated order can neither create any rights in favour of a party, nor take away the rights of any affected party, till it is communicated.”

(Emphasis Supplied)

23. In view of the principle of law laid down in the said cases, we are unable to hold that Order No. 24 of 2014 dated 25th February, 2014 stood withdrawn or cancelled by way of said file note.
24. Another argument of Id. Counsel for department was that the statutory recruitment rules escaped the notice of Tribunal, High Court and Supreme Court and therefore said Order/Judgements are *per incuriam*. We do not see any merit in this contention for twin reasons. Firstly, even in this round before the Tribunal and before this Court, there exists no pleading and proof for bringing the said recruitments rules on record. Secondly, the Judgement of **Dr. S. K. Murti, Vinay Kumar, S.Z. Siddiqi** (*supra*) were based on a scheme (FTS). The scheme operates in a different field than the

statutory rule. For this reason also, the argument relating to *per incuriam* and Judgement cited in this regard deserves to be discarded.

25. To sum up, as per the argument of counsel for department, the direction to implement the order for similarly situated employees issued in the case of **Dr. S.K. Murti** (*supra*) was made applicable in the case of **S.Z. Siddiqi** (*supra*). We find no reason to interfere in the matter because petitioners and **S.Z. Siddiqi** (*supra*) are similarly situated and their names find place in Order No. 24 of 2014 dated 25th February, 2014. As per the directions in the case of **Dr. S.K. Murti** (*supra*), the similar benefit was required to be extended in favour of all similarly situated persons whether or not they are litigants. In this peculiar factual backdrop, the relief could not have been denied to original applicants on the ground of delay and laches or by treating them as 'fence sitters'. Thus, this argument advanced by ld. Counsel for department must also fail.
26. In view of foregoing analysis, we find no reason to interfere in the plausible view taken by the Tribunal. Resultantly, interference is declined. Petition is **dismissed**.
27. Urgent Photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(SUJOY PAUL, ACJ.)

I agree.

(PARTHA SARATHI SEN, J.)