

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Harish Tandon
&
The Hon'ble Justice Partha Sarathi Chatterjee

MAT 47 of 2025

IA No. CAN 1 of 2025

IA No. CAN 2 of 2025

The District Inspector of Schools (SE),
North 24 Parganas
Versus

Smt. Shila Kabiraj and Others.

For the appellant : Mr. Sanjib Das.

For the writ petitioner/respondent no. 1 : Mr. Biswarup Biswas,
Mr. Pradip Kumar Ghosh,
Ms. Nupur Choudhuri.

Hearing is concluded on : 17th February, 2025

Judgment On : 18th March, 2025

Partha Sarathi Chatterjee, J.

1. With a view to resuscitating the time-barred *lis*, the present application has been filed by the State of West Bengal and its functionaries, seeking condonation of a delay of 1,389 days in filing the proposed appeal, which aims

to challenge the ex-parte order dated 11.03.2019 passed in WPA 18015 of 2019.

2. The order dated 11.03.2019 mandated the respondents/applicants to grant a higher scale of pay to the petitioner, who joined the School with a Post Graduate degree in Physical Education, and to fix her salary accordingly, effective from 16.01.2009, within a specified time-frame. Additionally, the order directed the payment of both current and arrear salaries within the prescribed time. The order further stipulated that if the arrears and current salary were paid within the specified time, no interest would be payable. However, in case of failure to comply, the petitioner would be entitled to simple interest at the rate of 10% per annum from 16.01.2009 until the actual payment, in addition to proceeding of contempt of court.
3. The capsulated form of the facts, as unfurled in the writ petition, is that the petitioner participated in the 1999 Regional Selection Test organized by the West Bengal Central School Service Commission for the post of Assistant Teacher in Physical Education (Southern Region). The petitioner emerged as a successful candidate and, accordingly, was recommended for the post at Saptagram Kishore Bharati Girls High School, Bishorpara, 24 Parganas (North) (hereinafter referred to as the 'School').
4. Based on a letter of appointment, the petitioner joined the post on 23.02.2001. Her appointment was subsequently approved by the District Inspector of Schools through Memo No. 275/G dated 28.06.2001. Prior to joining, she had completed her M.P.Ed. degree. Therefore, under the applicable ROPA Rules, she was entitled to a higher scale of pay. Consequently, she made a representation through the proper channel to the

competent authority, praying for the grant of the higher scale of pay. However, despite receiving her representation, it was left unattended, which prompted the petitioner to approach this Court by filing the writ petition, citing inaction by the concerned authority in considering her prayer for the higher scale of pay.

5. The order sought to be challenged in this appeal indicates that the learned Single Bench felt the writ petition needed to be decided after the exchange of affidavits. Accordingly, the applicants were directed to file an affidavit-in-opposition. However, they failed to file the affidavit, and even on 11.03.2019, when the writ petition was taken up for hearing, the State remained unrepresented. As a result, the learned Single Bench decided the writ petition by passing the ex parte order on 11.03.2019. Aggrieved by this order, the applicants filed the proposed appeal. However, as the appeal was filed 1389 days beyond the statutory period of limitation provided therefor, this application for condonation of delay has been made.
6. Mr. Das, learned advocate representing the applicants, submits that the delay was caused by unavoidable circumstances beyond the control of the applicants. He argues that the order sought to be challenged in this appeal was passed ex parte, and as a result, the applicants had no knowledge of the order. Upon learning about the order, the applicants decided to file the appeal, but due to the COVID-19 pandemic, they were unable to do so within the prescribed period of limitation. He contends that initially, the applicants engaged one advocate to prefer the appeal but he failed to do so within the prescribed period and as such, the learned advocate-on-record was engaged to prefer appeal. He urges that taking note of these factors, a leeway be granted

to the applicants and delay in preferring the appeal be condoned. To lend support to his submission, he refers to the judgment delivered in Miscellaneous Application No. 21 of 2022 in Miscellaneous Application 665 of 2021 in *Suo Moto Writ Petition (C) No. 03 of 2020* with Miscellaneous Application No. 29 of 2022 in Miscellaneous Application 665 of 2021 in *Suo Moto Writ Petition (C) No. 03 of 2020*. In this judgment, the Hon'ble Court, taking suo motu cognizance of the difficulties faced by litigants across the country due to the COVID-19 pandemic, directed that the period from 15.03.2020 to 28.02.2022 be excluded for the purposes of limitation under any general or special laws concerning all judicial or quasi-judicial proceedings.

7. In rebuttal, Mr. Biswas, learned advocate representing the respondent, argues that there was enormous delay caused by the appellants in preferring the appeal. He asserts that delay has not been adequately explained. He claims that the appellants were all along negligent and did not act diligently. Therefore, in his view, in the present case, it would be iniquitous to condone the delay. He relies on a decision, reported at *2024 INSC 932 (State of Madhya Pradesh vs. Ramkumar Choudhary)* for the proposition that in a case where a party is found to be negligent or to have not acted diligently, delay should not be condoned. He cites a decision, reported at *2024 INSC 262 (Union of India vs. Jahangir Byramji Jeejeebhoy (D) thr. His Lrs.)* which emphasizes that delay should not be excused as a matter of generosity and rendering substantial justice is not to cause prejudice to opposite party. He also refers to certain other decisions, reported at *2024 INSC 891 (Rajneesh & Anr. vs. Ved Prakash)*, *2024 SCC OnLine SC 513 (Pathapati Subba Reddy*

(Died) by *Lrs. & Ors. vs. Special Deputy Collector*) and one unreported decision of a Hon'ble Division Bench of this Court (in which, one of us (Harish Tandon J. was a member) rendered in MAT 679 of 2018 on 19.07.2024.

8. Notably, Law of limitation is founded on public policy. It has its origin in the maxim '*Interest reipublicae ut sit finis litium*' (it is for the general welfare that a period be put to litigation). Public interest dictates that there must be finality to a litigation. The Limitation Act prescribes specific timeframes from which the limitation period begins for initiating actions. Section 3 of the Limitation Act stipulates that any suit, appeal, or application filed after the prescribed time period should be dismissed. However, this provision does not destroy the right itself. It only extinguishes the ability to seek a remedy.
9. Section 5 of the Limitation Act, 1963, however, provides a general exception to Section 3 of the Act. It bestows the Court with discretion to admit an action if it is shown that a sufficient cause existed within the prescribed period that prevented the initiation of litigation. However, no straight jacket formula can be laid down to define which constitutes sufficient cause. Each case must be evaluated based on its own specific facts. Undoubtedly, the law of limitation is substantive, and it has significant consequences on the rights and obligations of the parties involved. If there is negligence, deliberate or gross inaction, or a lack of bona fide effort by a party or its counsel, there is no reason why the opposite side should be exposed to a time-barred appeal. A valuable right that may have accrued to one party, due to the other party's failure to explain the delay or its own conduct, should not be taken away merely upon the applicant's request, especially when the delay is a result of that party's negligence, default, or inaction. Justice must be equally administered to both

parties, as only then can the ends of justice be served. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and this principle cannot be entirely disregarded under the guise of a liberal approach.

10. Upon careful scrutiny of the averments made in the application explaining the delay, it is revealed that the order sought to be challenged in this proposed appeal was passed on 11.03.2019. The Department approved the proposal for filing the appeal through its letter dated 16.05.2019. The applicants contend that, due to the COVID-19 pandemic, the appeal could not be filed within the prescribed limitation period. However, the application for obtaining the certified copy of the order was made on 10.12.2024, and the copy was made available to the applicants on 09.01.2025. The proposed appeal was filed on 10.01.2025.
11. The applicants themselves have averred in the application (paragraph 5) that the first cases of COVID-19 were reported in Kerala on 30.01.2020, and the nationwide lockdown was announced with effect from 25.03.2020. The Hon'ble Supreme Court excluded the period from 15.03.2020 to 28.02.2022 for the purposes of limitation, as prescribed under any general or special laws, in respect of all judicial or quasi-judicial proceedings.
12. In a decision, reported at 20224 INSC 456 (*Delhi Development Authority vs. Tejpal & Ors.*) a three-judges Bench quoted the ratio laid down in the decision, reported at (2021) 2 SCC 317 (*Sagufa Ahmed vs. Upper Assam Plywood (P) Ltd.*) with approval that the benefits of order of 'In Re: Cognizance for Extension of Limitation (*supra*)' can be availed by the appellants only in a case where the period of limitation expired between

15.03.2020 and 28.02.2022. Therefore, the applicants cannot claim benefits of the order of 'In Re: Cognizance for Extension of Limitation (*supra*)'. (Emphasis supplied by us).

13. In that application, it was also stated that a learned advocate was initially entrusted with the task of filing the appeal, but he failed to do so. Subsequently, the learned advocate-on-record, who has now filed the proposed appeal, was engaged and filed the appeal on 10.01.2025.
14. In the judgment delivered in the case of *Rajneesh & Anr. (supra)*, referring to the proposition laid down in *Salil Dutta vs. T.M. & M.C. Private Ltd.*, reported in (1993) 2 SCC 185, it was ruled that an advocate is the agent of the party, and his acts are considered the acts of the principal (i.e., the person who engaged him). Although the Court may, in the interest of justice, set aside a dismissal order or ex-parte decree, notwithstanding the negligence of the advocate, if it finds that the client was an innocent litigant, there is no absolute rule that a party can disown its advocate at any time and seek relief. Absolute immunity cannot be recognized. Placing the entire blame on the advocate and attempting to portray the client as completely unaware of the nature or significance of the proceedings is a theory that cannot be accepted. It is a well-settled principle that the litigant must remain vigilant and cannot shift the blame entirely onto their advocate.
15. There is no explanation for the period between 11.03.2019 and 10.12.2024, during which the applicants took no action to apply for the certified copy of the order.
16. Therefore, based on the discussions in the preceding paragraphs, the inevitable conclusion is that the applicants have failed to demonstrate that a

sufficient cause existed that prevented them from filing the appeal within the prescribed limitation period. The explanation provided in the application is neither plausible nor acceptable. Based on this explanation, we believe it would be unjust to subject the respondent to a time-barred appeal.

17. Consequently, the application for condonation of delay is dismissed. However, there shall be no order as to costs. As a result, the appeal and its connected application are also dismissed.

(Partha Sarathi Chatterjee, J.)

(Harish Tandon, J.)