

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

HEARD ON: 09.06.2025

DELIVERED ON: 09.06.2025

**CORAM:
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)**

M.A.T. 115 of 2025

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I.A. No. CAN 1 of 2025

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CAN 2 of 2025

**The State of West Bengal & Ors.
Vs.
Sri Utpal Das**

Appearance:-

Mr. Biswabrata Basu Mallick, Ld. A.G.P.

Ms. Amrita Panja Moulick

.....For the Appellants/State

Mr. Utpal Das

.....Respondent in person

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

In Re. CAN 1 of 2025

1. This appeal has been filed by the State being aggrieved by the order and direction issued in W.P.A. 26316 of 2012 dated 21st May, 2024. The said writ petition was filed by the respondent herein, who is appearing in person challenging the action of the appellants in not sanctioning the pensionary benefits to him for the service rendered by him as Confidential Assistant to the Hon'ble Minister.

2. The learned Writ Court allowed the writ petition and directed the payment of pension of the writ petitioner commencing from 1st March, 2011 with annual interest at the rate of 6% within a time frame of six months. The State is aggrieved by such direction and they are on appeal before us.
3. The appeal is barred by time. There is a delay of 232 days. I.A. No. CAN 1 of 2025 has been filed to condone the delay in filing the appeal.
4. It is stated in the said affidavit that soon after the order was passed in the writ petition i.e. 21st May, 2024, immediately, the file was placed before the Department of Finance, Government of West Bengal with the proposal for challenging the said order and subsequently, the file was sent to the Legal Remembrancer, West Bengal for engagement of a learned State Advocate for filing of an appeal.
5. The Legal Remembrancer by order dated 26th November, 2024 approved the proposal of filing the appeal and also nominated a learned State Advocate to prefer the appeal. In the interregnum, the respondent/writ petitioner filed a review application in R.V.W. 242 of 2024 and the review application was disposed of by order dated 3rd December, 2024. Thereafter, the Legal Remembrancer issued a letter of engagement to the learned State Advocate enclosing all the documents vide Memo dated 5th December, 2024 requesting the learned advocate to take necessary action for preparation and filing of the appeal. In that process, it is stated that there occurred a delay of 232 days and this is unintentional and the delay has been duly explained.
6. The respondent/writ petitioner has filed an affidavit-in-opposition to the prayers for condonation of the delay and has reiterated that the delay has not been explained and that action was taken for filing the appeal by the State only after the writ petitioner issued a notice of contempt for non-compliance of the directions issued by the learned Single Bench.

7. The State has filed a reply affidavit denying and disputing the allegations therein. In the said reply affidavit there is an averment to the effect that the review application, which was filed by the writ petitioner was disposed of only on 3rd December, 2024, yet the delay has been computed from the date of the original order and there is no *mala fide* intention.
8. We have elaborately heard the learned Government Counsel appearing for the appellants/applicants and the respondent appearing in person.
9. From the facts set out in the affidavit filed by the State seeking for condonation of the delay read alongwith the reply affidavit filed to the affidavit-in-opposition of the writ petitioner, it can be stated that the delay in filing the appeal cannot be said to be with any *mala fide* intention but appears to be on account of certain procedural formalities, which are to be adopted by the State while filing of an appeal.
10. However, it has been held by the Hon'ble Supreme Court in several decisions that a separate law of limitation has not been framed for the State and State being the largest litigant in the country ought to be diligent in filing the appeal, if they so desire. However, taking note of the fact that the delay of 232 days is not being inordinate, apart from the matter to be considered, is the correctness of the directions issued by the learned Single Bench, as rejecting an appeal on a technical ground may be well-justified, but it is not always desirous.
11. It has been pointed out in several decisions that none benefits by lodging an appeal belatedly, unless and until it is clearly established that there was a *mala fide* intention in not preferring the appeal for certain reasons best known to the proposed appellant. Since, we do not find any such fact situation in the present case, we are inclined to exercise discretion in favour of the appellants and accordingly, the delay in filing the appeal is condoned and I.A. No. CAN 1 of 2025 is allowed.

In Re. M.A.T. 115 of 2025

12. As prefaced in the preceding paragraphs, the present appeal is by the State being aggrieved by the order passed by the learned Single Bench in the writ petition, wherein a direction has been issued to the State to grant pensionary benefits. The undisputed facts are noted hereinbelow:
13. The writ petitioner was appointed as a Confidential Assistant to the Hon'ble Minister and he has served under various Ministers till demitted office upon resignation from the said post on 4th February, 2011. Thereafter, he was appointed as an Assistant Teacher on 5th February, 2011, from which post he resigned on 19th March, 2012. The claim for pension made by the writ petitioner is for the period thereafter and not during the period while he was in service as an Assistant Teacher.
14. It is not in dispute that the Rules, there was, framed for the purpose of grant of pension to such incumbents called "West Bengal Special Assistants and Confidential Assistants to Ministers (Pension) Rules, 1996". It is further not in dispute that it is under the Rules, persons serving in the said post, such as Special Assistants and Confidential Assistants to Ministers are entitled for pension. Precisely for this reason, soon after the petitioner resigns from the Post, his application for disbursement of pension was processed by the Government. However, the pension was not paid for the reasons that the 1996 Rules was abrogated with effect from 1st March, 2013.
15. The test would be, whether by virtue of a subsequent abrogation of a Rule or a Legislation, the rights, which are accrued to the employees, who are serving during the relevant period when the Rule was in force can be effaced. The answer to this question would be a definite 'no' since the right to pension accrued to the incumbent while in service. Therefore, any such abrogation of

the Rules or abolition of the post has to be prospective and such abolition cannot efface the rights, which are accrued to the employees, who were serving when the Rule was in force and demitted office when the Rule was in force. That apart, the writ petitioner has brought out more than six instance, where similarly placed persons have been paid pension. In fact, the petitioner has produced the bank statement of one, Alok Basu, who continued to receive pension till his demise on 29th November, 2023.

16. Thus, we are of the view that the learned Single Bench was fully justified in issuing the direction as contained in the order dated 21st May, 2024 in W.P.A. 26316 of 2012.
17. Thus, for the above reasons, we find no good ground to interfere with the order and direction issued by the learned Single Bench.
18. Accordingly, the appeal fails and dismissed alongwith the connected application (CAN 2 of 2025).
19. The appellants are directed to comply with the direction issued by the learned Single Bench within a period of two months from the date of receipt of server copy of this order.
20. No costs.
21. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS), J.)