

Form No. J (2)

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**RVW 43 of 2025
IA NO: CAN/1/2025
CAN/2/2025**

**Jainuddin Sk. & Ors.
Vs.
The State of West Bengal & Ors.
in
WP.ST 89 of 2023
Jainuddin Sk. & Ors.
Vs.
The State of West Bengal & Ors.**

For the Review
Applicants

: Mr. Raghunath Chakraborty, Advocate
Ms. Sabnam Sultana, Advocate
Ms. Amrita De, Advocate

For the State

: Mr. Tapan Mukherjee, Sr. Advocate
Ld. A.G.P.
Ms. Sangeeta Roy, Advocate

Heard on

: 16.06.2025

Judgment on

: 16.06.2025

DEBANGSU BASAK, J.:-

1. CAN/1/2025 is an application for condonation of delay in applying for review of the judgment and review dated September 14, 2023 passed in WP.ST 89 of 2023.

2. Learned advocate appearing for the review applicants submits that, a Special Leave Petition was preferred against the judgment and order under review. Two Special Leave Petitions filed. One dismissed on November 23, 2023 and the other admitted on January 2, 2024.
3. Learned advocate appearing for the review applicants submits that, the review applicants took the some time in considering the various materials on record. Thereafter, the learned advocate for the review applicants also took time and memorandum of review was filed subsequently.
4. State is represented.
5. Special Leave Petition of the review applicants was dismissed on November 23, 2023. Merits were not discussed in the order of dismissal. Judgment and order under review cannot be said to be merged with the order of dismissal of the Special Leave Petition. Review applicants tendered some amount of explanation for the delay. Court is concerned with the quality of the explanation and not with the quantity of the delay per se.
6. For the ends of justice, we deem it appropriate to condone delay in making and filing the application for review on the grounds stated in the condonation of delay application.
7. Review applicants seek review of the judgment and order dated September 14, 2023 passed in WP.ST 89 of 2023.

8. Learned advocate for the review applicants canvasses the point of commission of fraud by the State at the time of hearing of the WP.ST 89 of 2023 which resulted in the judgment and order under review.
9. Learned advocate appearing for the review applicants submits that, one document which was forming part of the proceedings in WP.ST 89 of 2023 was not taken into consideration. One other document was misconstrued and misapplied by the Court delivering the judgment and order under review.
10. Learned advocate appearing for the review applicants submits that, although, the State contended at the hearing that State is taking steps for the purpose of filling up the post of fire operators on permanent basis, in fact, the State did not take any steps with regard thereto.
11. State is represented in the review proceedings.
12. By the judgment and order under review dated September 14, 2023 passed in WP.ST 89 of 2023, we considered the provisions of the West Bengal Fire Services Act, 1950. We noted that, the submission of the learned Advocate General appearing for the State that, the cadre contemplated under Section 3A of the West Bengal Fire Services Act, 1950 which deals with auxiliary fire operators is yet to be formalized. We also noticed that, appointment to the posts of fire operators was to be made through the Public Service Commission. We noted that a number of vacancies existed at the material point of time and that, State undertook

the exercise of identifying the vacancies to the post of fire operators obtaining district-wise on a particular date and found 3,781 posts be vacant. We also noted the decision of the State to fill up 1,500 posts of fire operators.

13. By the judgment and order under review, we noted that, filling up of 1,500 post of fire operators would consume time and, therefore, the State decided to recruit 1,500 auxiliary fire operators till such time 1500 post of fire operators were filled up. We noted that, for the District of Birbhum, State decided to fill up 25 members of fire operators through the Public Service Commission and pending such filling up to appoint 25 fire operators on temporary basis. In such context, State issued notice dated July 20, 2017 which was the subject-matter of the proceeding in WP.ST 89 of 2023 resulting in the judgment and order under review.

14. So far as the District of Birbhum is concerned, we noted in our judgment and order under review that fire operators for 25 posts were appointed on August 6, 2023 through Public Service Commission on permanent basis and therefore, as on that date, auxiliary fire operators, who were appointed in terms of notice dated July 20, 2017 ceased to be in engagement. We held that, any other view, would militate against the contents of the notice dated July 20, 2017 and would advance a course of action which is not sanctioned in law. We also noted with contractual employment for declared vacancies in sanctioned posts cannot be continued with after the

vacancies in the sanctioned posts were filled up. Any attempt to continue with such appointments would be illegal.

15. Judgment and order under review was assailed by two Special Leave Petitions. One of the Special Leave Petition was dismissed on November 23, 2023.

16. One of the Special Leave Petition stands admitted on January 2, 2024.

17. Today as noted above, points canvassed are fraud on Court, non consideration of a document produced in proceedings and misconsideration of a document produced in the proceedings.

18. Particulars of fraud claimed to be perpetrated on behalf of the State, at best are sketchy, without material particulars. It is said that, State committed fraud by disclosing the number of vacancies and there attempt to fill up a portion of such vacancies on permanent basis. The contention is that, although, State claimed that 1,500 of the permanent posts will be filled up in a particular way, State is not doing so. Those vacancies are in respect of different districts. We are concerned with the Birbhum district of which only 25 vacancies on permanent basis were found which required to be filled up.

19. So far as the consideration of a document and nonconsideration of other is concerned, the same cannot be termed to be a valid ground of review. In any event, a Special Leave Petition stands admitted against the judgment and order under review.

20. Essentially the review applicants require us to sit in appeal or reappraise the evidence to arrive a new finding. This is not available in a review.
21. In such circumstances, we find no ground to review the judgment and order dated September 14, 2023 passed in WP.ST 89 of 2023.
22. **RVW 43 of 2025** alongwith connected applications are **disposed of** accordingly.

(Debangsu Basak, J.)

23. I agree.

(Md. Shabbar Rashidi, J.)