

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

Before:

**The Hon'ble Justice Harish Tandon
and
The Hon'ble Justice Om Narayan Rai**

**MAT 308 of 2025
With IA No. CAN 1 of 2025
Keherul Islam
Vs.
The State of West Bengal & Ors.**

For the Appellant : Mr. Sudip Ghosh Chowdhury
Ms. Shreyeta Mitra
Ms. Debalina Chakrabortyadvocates

For the W.B.C.S.S.C : Dr. Sutanu Kumar Patra
Mr. Sunit Kumar Royadvocates

For the W.B.B.S.E : Ms. Koyeli Bhattacharyyaadvocate

Heard on : 17.03.2025

Judgment on : 19.03.2025

Om Narayan Rai, J:-

1. The instant appeal has been filed laying challenge to the order dated February 24, 2025 passed in WPA 2596 of 2025 whereby the learned Single Judge has dismissed the writ petition by holding that there was nothing on record to show that the petitioner took any step for redressal of his grievances during the lifetime of the panel and that the petitioner was a fence sitter who woke from slumber only after an order dated July 6, 2023 was passed in WPA 27054 of 2017 (*Masadul Hossain vs. The State of West Bengal & Ors.*)

2. The Appellant - writ petitioner had filed the writ petition being WPA 2596 of 2025 praying inter alia for issuance of a writ of mandamus commanding the respondents to treat the petitioner as an “in service” contractual teacher and to recommend the appointment of the petitioner as an Assistant Teacher in Work Education.
3. The case run in the writ petition (as also in the application for stay) is that the writ petitioner had been in service as a guest vocational teacher at Maniknagar High School, Murshidabad at the time when the selection process for appointment of Assistant Teachers was set in motion by advertising the 12th Regional Selection Test, 2011 (hereafter “RLST” for the sake of brevity). The Appellant - writ petitioner has further contended that his appointment as a vocational teacher had been duly approved by the West Bengal State Council of Vocational Education and Training and that he was entitled to the benefit of reservation available to the “in service” Assistant Teacher/Para Teacher/Contractual Teacher/Part Time Teacher teachers as there was a 10% quota reserved for such Teachers. The Appellant- writ petitioner has asserted that the petitioner qualified in the written test, was called for interview and was ultimately empanelled for the post in question with his name being placed at the 471st position in the list called ‘Combined merit list under 12th RLST (AT), 2011’ published by the West Bengal School Service Commission. The petitioner complains that despite the petitioner being so empanelled, the petitioner was not recommended by the respondent no. 3 on the ground that the in service vocational teachers were not entitled to the aforesaid reservation available to

the “in service” Assistant Teacher/Para Teacher/Contractual/Part Time Teachers. The Appellant- writ petitioner has further pleaded that he is entitled to similar orders as those passed on April 09, 2021 in WPA 3780 of 2015 (Sri Dibya Jyoti Paul vs. The State of West Bengal & Ors.) heard with WPA 3781 of 2015 (Sri Rajib Kumar Saha vs. The State of West Bengal Ors.) and on July 06, 2023 in WPA 27054 of 2017 (Masadul Hossain vs. The State of West Bengal).

4. The learned Advocate for the appellant - writ petitioner presses for setting aside the order impugned by submitting that the said order has been passed without properly appreciating the effect of the order dated July 6, 2023 passed in WPA 27054 of 2017 and that the Appellant was/ is entitled to similar relief as the petitioner in the said other writ petition. The learned Advocate for the Respondent West Bengal Central School Service Commission, on the other hand has reiterated the stand taken before the learned Single Judge and has submitted that the writ petition has rightly been dismissed as the panel itself had expired and that the order under appeal requires no interference by this Court.
5. We have heard the learned Advocates appearing for the respective parties and considered the material on record. We find that the order impugned in the present appeal is unexceptionable and the reasons therefore are as follows:

- a) It appears to be an admitted position that the panel of the selected candidates expired on March 24, 2015. We say admitted because the order impugned records the contention of the Respondent West Bengal Central School Service Commission to the effect that the panel expired

on March 24, 2021⁵ and such contention has not even been feebly attempted to be rebutted by the Appellant- writ petitioner either before the learned Single Judge or before us. The writ petition came to be filed on or about January 31, 2025 i.e. almost a decade thereafter. The learned Single Judge has while relying on the judgments rendered in the case of ***State of Uttar Pradesh vs. Harish Chandra*** reported at **(1996) 9 SCC 309** and ***Girdhar Kumar Dadhich and Anr. vs. State of Rajasthan & Ors.*** reported at **(2009) 2 SCC 706** declined the writ petitioner's prayers on the ground that the writ petitioner had approached the Court after expiry of the panel. We concur with such view of the learned Single Judge.

- b) From the pleadings made in the writ petition and the submissions made before us it becomes more than clear that the writ petitioner approached this Court only after orders disposing of WPA 3780 of 2015 (Sri Dibya Jyoti Paul vs. The State of West Bengal & Ors.) with WPA 3781 of 2015 (Sri Rajib Kumar Saha vs. The State of West Bengal Ors.) and WPA 27054 of 2017 (Masadul Hossain vs. The State of West Bengal) came to his notice. The writ petitioner was therefore never the champion of his own cause. He waited at the fence and hedged his bets for about a decade. Such practice has been deprecated by the Hon'ble Supreme Court time and again. In fact there is a long line of authoritative dicta of the Hon'ble Supreme Court on the said proposition but for the present moment reference to the case of ***Rup Diamonds v. Union of India*** reported at **(1989) 2 SCC 356** would suffice. Paragraph 8 of the report is instructive and the same is extracted herein below:

“8. Apart altogether from the merits of the grounds for rejection — on which it cannot be said that the mere rejection of the special leave petitions in the cases of M/s Ripal Kumar & Co., and M/s H. Patel & Co., could, by itself, be construed as the imprimatur of this

Court on the correctness of the decisions sought to be appealed against — there is one more ground which basically sets the present case apart. Petitioners are re-agitating claims which they had not pursued for several years. Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. Their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also an unexplained, inordinate delay in preferring this writ petition which is brought after almost an year after the first rejection. From the orders in Ripal Kumar & Co. case and H. Patel & Co. case it is seen that in the former case the application for revalidation and endorsement was made on 12-3-1984 within four months of the date of the Redemption Certificate dated 16-11-1983 and in the latter case the application for revalidation was filed on 20-6-1984 in about three months from the Redemption Certificate dated 9-3-1984.

(Emphasis supplied by us)

- c) It is by now very well settled that an aspirant for public employment does not acquire any right of appointment merely upon his/her name being included in the merit list. That however does not mean that any authority answering the definition of a State within the meaning of Article 12 of the Constitution of India would for such reason be entitled to act arbitrarily, pick and choose and discriminate against any aspirant. If any authority acts arbitrarily or in a discriminatory manner, a writ at the instance of an empanelled candidate would certainly be entertainable but then such is not the case made out by the Appellant. The right that the writ petitioner seeks to assert in the present proceedings can at best be said to be equitable in nature and in order to seek enforcement of

such a right, the right remedy must be sought at the right time because delay defeats equity. Writ remedy under Article 226 of the Constitution of India is principally discretionary and the Writ Court would ordinarily not entertain stale claims more so when there is no justifiable explanation of the delay occasioned. In the instant case, the Appellant-writ petitioner has provided no explanation whatsoever, to justify his highly belated approach to the writ court. Reference in this connection may be made to a recent judgment of the Hon'ble Supreme Court rendered in the case of **Mrinmoy Maity v. ChhandaKoley** reported at **2024 SCC OnLine SC 551**.

- d) Insofar as reliance placed on the order dated July 06, 2023 passed in WPA 27054 of 2017 (Masadul Hossain vs. The State of West Bengal) by the appellant is concerned, we are in agreement with the observations of the Learned Single Judge that such reliance is misplaced. The learned Single Judge has rightly noted that *“On perusal of the order passed by the coordinate bench on 6th July, 2023 in Masadul Hossain (supra), it appears that within the lifetime of the panel petitioner in that matter preferred writ petition in 2013 and in terms of the order passed in the first writ petition an order was passed on 29th October, 2013 rejecting the prayer of the petitioner namely, Masadul Hossain which triggered subsequent writ petition being WPA 27054 of 2017”*. We also find that the aforesaid order dated July 06, 2023 has been passed while relying on the common order dated April 09, 2021 passed in WPA 3780 of 2015 (Sri Dibya Jyoti Paul vs. The State of West Bengal & Ors.) with WPA 3781 of 2015 (Sri Rajib Kumar Saha vs. The State of West Bengal Ors.). We have gone through the facts of cases narrated in the aforesaid orders and we are satisfied that none of the said orders enure to the benefit of the appellant – writ petitioner. The writ petitioners in all the three cases aforesaid were vigilant enough and they had approached the Court well in time, while the panel was alive. In fact the writ petitioners in all the

three cases had approached this Court earlier i.e. Sri Dibya Jyoti Paul and Sri Rajib Kumar Saha had initially filed W.P.13815 (W) of 2014 and W.P.16395 (W) of 2014 respectively and Masadul Hossain had filed W.P.32241 (W) of 2013. The orders relied on by the appellant thus came to be passed by the Court in the second round of the litigation. Contrastingly, the Appellant-writ petitioner in the instant case did nothing for several years and suddenly sprung up with the writ petition in the year 2025 that too after the panel had expired.

6. For all the reasons aforesaid, the appeal and the connected application are dismissed and the impugned order dated February 24, 2025 is affirmed. There shall, however, be no order as to costs.
7. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(Harish Tandon, J.)

(Om Narayan Rai, J.)