

21.11.2025
Item No.11
Court No.11
Avijit Mitra

MAT 323 of 2025
with
IA No.CAN 1 of 2025
with
IA No.CAN 2 of 2025
with
IA No.CAN 3 of 2025

Amrita Chaki
- versus -
Md. Asiruddin & ors.

Mr. Amitabha Roy,
Mr. Arkadipta Sengupta,
Mr. Tirthankar Dey
...for the applicant
Mr. Avishek Prasad,
Mr. Sourodeep Singha
...for the DPSC, Malda

Affidavit-of-service, as filed, be kept on record.

The present application being IA No.CAN 1 of 2025 has been preferred seeking leave to prefer an appeal against the order dated 26th April, 2024 passed by the learned single Judge in the writ petition being WPA 25712 of 2022 which was heard analogously with other writ petitions. In connection with the said application, an application for condonation of delay being IA No.CAN 3 of 2025 and an application for appropriate order being IA No.CAN 2 of 2025 have been preferred.

As we have invited the learned advocates to advance their arguments on merits, the delay is condoned and the application being IA No.CAN 3 of 2025 is disposed of.

Mr. Sengupta, learned advocate appearing for the applicant submits that the applicant participated in the recruitment process towards appointment of primary teachers of the year 2009, which was ultimately concluded in the year 2021. Pertaining to the said recruitment process, the writ petition being WPA 25712 of 2022 was preferred seeking appointment in the left over vacancies under the District Primary School Council, Malda (hereinafter referred to as the said DPSC). The applicant herein was a participant in the said recruitment process and he also had a right to be accommodated in the left over vacancies and such right could not have been denied for not filing a writ petition prior to 25th April, 2024.

He contends that by the said order dated 26th April, 2024, the learned single Judge ought not to have restricted the entitlement towards appointment against existing or future vacancies only amongst the candidates, who were called for interview and had filed writ petitions until 25th April, 2024. Service jurisprudence postulates that all persons similarly

situated should be treated similarly. Reliance has been placed upon a judgment delivered in the case of *State of Karnataka & ors. Vs. C. Lalitha* reported in (2006) 2 SCC 747.

Mr. Prasad, learned advocate appearing for the said DPSC submits that the applicant was not similarly situated with the writ petitioners and was not a necessary or proper party in the said writ petition. The said DPSC challenged the order dated 26th April, 2024 in an intra-court appeal which was dismissed by a judgment dated 29th August, 2024 with an observation that such dismissal will not prevent the appellants to pursue the remedies, in accordance with law. In view of such observation, a review application was filed before the learned single Judge and the order was recalled. The said order was assailed before the Hon'ble Supreme Court and the order dated 26th April, 2024 was restored.

He further submits that a writ petition was also preferred by one Rakhi Chakraborty seeking the benefit of the order dated 26th April, 2024 but the same was dismissed by an order dated 13th May, 2024 and an intra-court appeal preferred against the same was also dismissed observing *inter alia*, that '*the moment the Court has restricted the benefit at a particular date and the said order had attained finality*

having passed in presence of the parties, such date is inflexible and the benefit can only be extended to such persons who comes within the ambit thereof and cannot be extended to the others solely on the ground that they stand on a same footing that of the others’.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, the applicant was unsuccessful in the recruitment process of 2009. The issue as regards sustainability of the order dated 24th April, 2024 passed on consent travelled upto the Hon’ble Supreme Court and it was held that the said order ought not to have been reviewed. The issue urged, in the present proceedings, that the learned single Judge ought not to have restricted the entitlement towards appointment against existing or future vacancies only amongst the candidates who were called for interview and had filed writ petitions until 25th April, 2024, was also considered in an independent writ petition filed subsequently but the said writ petition was dismissed and the said order was not interfered with in an intra-court appeal. The judgment delivered in the case of *State of Karnataka & ors. (supra)*, is also distinguishable on facts.

In the said conspectus, we are unable to grant any relief to the applicant herein and the application being IA No.CAN 1 of 2025 and IA No.CAN 2 of 2025 are dismissed. Consequently, the appeal being MAT 323 of 2025 is also dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)