

**MAT 478 of 2016**  
**CAN 1 of 2016 (Old CAN 3371 of 2016)**  
**CAN 2 of 2018 (Old CAN 2485 of 2018)**  
**(CAN 3 of 2024)**

The State of West Bengal & Ors.  
Vs.  
Aniruddha Sinha & Ors.

Mr. Tapan Kumar Mukherjee, learned AGP  
Mr. Somnath Naskar  
... for the State.

Ms. Mousumi Bhowal  
Mr. Aman Gupta  
Mr. Ishan Bhattacharya  
... for the respondent no. 1.

**CAN 2 of 2018 (Old CAN 2485 of 2018)**

This is an application for condonation of delay.  
  
There is a delay of 102 days in preferring the memorandum of appeal.

Sufficient cause being shown for not being able to file the instant memorandum of appeal within the time of limitation, the delay of 102 days in preferring the memorandum of appeal is condoned. The prayer for condonation of delay is allowed.

CAN 2 of 2018 (Old CAN 2485 of 2018) is, thus, disposed of.

The appeal is arising out of an order passed by the learned Single Judge on November 5, 2015 in a writ petition in which the writ petitioner claimed regularization.

The learned Single Judge relied upon a letter dated December 24, 1998 issued by the Secretary of Nanaskamana Jr. High School (subsequently named as Jhanjha Kumar Vidyapith) appointed the writ petitioner as "Peon" (Male) with the salary and allowances as per Rules on the approval of the service by the concerned District Inspector of Schools (SE) was of the opinion that the said appointment may be held to be illegal but can be irregular and the writ petitioner comes within the purview of the decision of the Hon'ble Supreme Court in Uma Devi reported in (2006) 4 SCC, page 1 directed the District Inspector of Schools (SE), Malda to approve the appointment of the writ petitioner as "Peon" (Male), Group-D post in the vacant post in Jhanjha Kumar Vidyapith (H.S.) within three months from the date of communication of this order. The State is aggrieved by this order. Mr. Tapan Kumar Mukherjee, learned advocate appearing on behalf of State has submitted that the matter was moved before the Vacation Bench without giving any sufficient opportunity to the learned advocate appearing for the State to obtain necessary

instruction the impugned order was passed. An application was served in the morning of November 5, 2015 and due to paucity of time, the learned counsel for the State could not obtain necessary instruction. However, lack of instruction as canvassed now does not appear to have been urged before the learned Single Judge at the time of hearing of the writ petition.

Notwithstanding the aforesaid, we feel that an opportunity should have been given to the State respondents to file affidavit to bring on record the relevant and material facts so as to enable the Court to decide as to whether the appointment was illegal or irregular or the benefit of Uma Devi (supra) could be extended to the writ petitioner. This factual aspect of the matter can only be decided by the authorities entrusted in the statute for considering the claim for approval for the said post. If it is shown that the petitioner was engaged by the school on December 24, 1998 and/or disposal of the materials is found that the appellant was merely irregular, the authority concerned may consider the case of the writ petitioner for regularization. On such consideration, we set aside the impugned order and direct the Commissioner of School Education to consider the prayer of the writ

petitioner for regularization in the school after giving a reasonable opportunity of hearing to the petitioner, the school and any other person and/or authorities, whose presence is required for complete adjudication of the issue. The petitioner may be allowed to be represented by learned advocate of his choice. We request the Commissioner of School Education to dispose of the writ petition within a period of eight weeks from the date of communication of this order by reasoned order, which shall be communicated to the petitioner within a fortnight thereafter. In the event the petitioner is entitled for regularization, age bar should not stand in the way as the appeal was pending for almost nine years.

In view of the above, the appeal succeeds.

MAT 478 of 2016 along with connected applications stands disposed of.

**(Soumen Sen, J.)**

**(Smita Das De, J.)**