

01.12.2025
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FMA 700 of 2021
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IA No.: CAN 1 of 2022
Shashi Sinha @ Shashi Kiran
- Versus -
The State of West Bengal & Others

Mr. Tarapada Das,
Mr. Chandan Dutta (through V.C.)
... for the Appellant.

The present appeal has been preferred challenging an order dated 27th January, 2021 passed by the learned single Judge in the writ petition, being WPA 17210 of 2019.

Mr. Das, learned advocate appearing for the appellant submits that the appellant is the widow of the deceased teacher, namely, Govind Prasad Sinha (in short, Govind), who retired from his service on 31st December, 2008 and ultimately expired on 20th February, 2019. Prior to his death, Govind preferred a writ petition, being WP No. 29090 (W) of 2017 challenging *inter alia* an order dated 25th November, 2013 passed by the respondent no.2 directing deduction of three annual increments. The said writ petition stood abated due to the death of Govind.

He further submits that after the death of Govind, the appellant preferred the writ petition being WPA 17210 of 2019 praying for issuance of necessary direction upon the respondents to grant all consequential benefits upon setting aside the order dated 25th November, 2013 passed by the respondent no.2.

Mr. Das argues that while considering the merits of the writ petition being WPA 17210 of 2019, the learned single Judge erred in law in observing that the same was not maintainable as there was an inordinate delay on the part of Govind in preferring the earlier writ petition, being WP No. 29090 (W) of 2017. Such observation frustrates the appellant's right to proceed with the earlier writ petition preferred by her husband upon substitution.

We have heard Mr. Das and considered the materials on record.

Indisputably, Govind preferred a writ petition being W.P. No.29090 (W) of 2017 challenging *inter alia* the order dated 25th November, 2013 passed by the respondent no.2. During pendency of the said writ petition, Govind expired but without filing any application for substitution and for setting aside

the abatement upon condonation of delay, the appellant preferred a fresh writ petition.

When a proceeding abates, no fresh proceeding can be brought on the same cause of action. In view thereof, the writ petition being WPA 17210 of 2019 preferred by the appellant was not maintainable.

However, it is open to the appellant to prefer applications for substitution and for setting aside abatement upon condonation of delay in the writ petition preferred by Govind. If the observation that Govind's writ petition suffered from an inordinate delay is left untouched, then no purpose would be served even if the appellant succeeds in her applications for substitution and setting aside abatement upon condonation of delay.

In view thereof, the order impugned is modified to the effect that in the event applications for substitution and setting aside abatement along with an application for condonation of delay are filed by the appellant in Govind's writ petition, being W.P. No.29090 (W) of 2017 and if the said applications are allowed, then the writ petition being W.P. No.29090 (W) of 2017 shall be decided on merits.

With the above observations and directions, the appeal and the connected application for appropriate order are disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

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