

09.06.2025.
Item No. 33.
Court No. 13
ap

M.A.T. No. 741 of 2016
With
I.A. No. CAN 1 of 2016 (Old CAN 7169 of 2016)
And
I.A. No. CAN 2 of 2016 (Old CAN 7170 of 2016)

State of West Bengal & Ors.
Versus
Pintu Kumar & Ors.

Mr. Pinaki Dhole,
Mr. Avishek Prasad.

...For the appellants.

Re: CAN 1 of 2016 (Condonation of delay)

1. This is an application filed under Section 5 of the Limitation Act, 1963 for condonation of delay of about 331 days in filing the instant appeal.
2. Having heard the learned Advocate appearing on behalf of the appellants as also considering the statements made in the said application, this Court is satisfied with the grounds indicated therein, as sufficiently explaining delay of 331 days in preferring the appeal.
3. Yet another reason for entertaining the instant appeal is that the impugned order is sound and the appellants have been deprived of an opportunity of employment well over 18 years.
4. In view of the above, the application for condonation of delay being CAN 1 of 2016 is allowed and disposed of.
5. There will be no order as to costs.

Re: M.A.T. No. 741 of 2016

6. The instant intra court appeal is directed against the order dated 8th May, 2015 passed by a learned Single Judge of this Court in W.P. No. 29287 (W) of 2008.

7. By the impugned order, the Court found that the order dated 16th October, 2007 passed by the Director of School Education, West Bengal to be illegal and arbitrary.

8. By the said order, the Director of School Education rejected the writ petitioner/respondent's case for compassionate employment as an Assistant Teacher under Burdwan District Primary School Council on the ground that he has completed the Secondary Examination (Madhyamik Pariksha) from the Bihar School Examination Board, Patna without passing English.

9. The writ petitioner's father died-in-harness at the age of 54 years on 13th December, 2004. Prior thereto, he was teaching at Bahula Free Primary No.2 School under Ukhra Circle, Burdwan. The writ petitioner thereupon immediately applied for compassionate employment in place and stead of his father.

10. It appears from the mark-sheet at page 79 to the stay application that the writ petitioner/respondent has obtained 20 marks against a total of 100 in English. There are no pass marks prescribed in Bihar

Board for English Examination. The writ petitioner secured a second division in Madhyamik Pariksha conducted by Bihar School Examination Board.

11. In view of the above, the finding of the Director of School Education is ex facie incorrect and contrary to the records.

12. Mr. Dhole, learned Counsel appearing on behalf of the appellants/State points out to a ground in the Memorandum of Appeal that it is the exclusive discretion of the Director of School Education to decide which State Madhyamik Board Examination is equivalent to Madhyamik Examination conducted in the State of West Bengal. While the proposition itself is ex facie illegal and arbitrary, the same does not appear to be a ground taken by the Director of School Education in rejecting the application for compassionate employment of the writ petitioner/respondent.

13. Admittedly, in the year 2008 the educational qualification required for being appointed as an Assistant Teacher in Primary Section of the State was the Madhyamik Examination.

14. The writ petitioner was therefore qualified for being appointed on compassionate grounds as an Assistant Teacher under the Burdwan District Primary School Council.

15. Let orders of appointment of the petitioner be issued forthwith. The length of service of the petitioner

shall be counted from 2008. His salary and emoluments shall be notionally calculated from 2008. He shall not receive any monetary benefits until his actual date of joining service.

16. For the reasons stated hereinabove, M.A.T. 741 of 2016 fails and is hereby dismissed.

17. In view of dismissal of the appeal itself, the connected application being CAN 2 of 2016 shall also stand dismissed.

18. There will be no order as to costs.

19. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)