

12.08.2025

Item no. DL 4
Court No. 08

Asraf, A.R.(Ct.)

In the High Court at Calcutta

Civil Appellate Jurisdiction

Appellate Side

Case No. **FMA 903 of 2025**
with
CAN 1 of 2025

In the matter of :

SMT. TARULATA ROY SINHA

.... Appellant

VS.

THE STATE OF WEST BENGAL & ORS.

....Respondents

For the Appellant :

Mr. Habibur Rahman

....Advocate

For the Respondent / State :

Mr. Vimal Kumar Shahi, AGP (via VC)

Mr. SM Samim Ullah

....Advocates

1. With the consent finally heard.
2. This Intra-Court Mandamus Appeal takes exception to the order of learned Single Judge dated 03.04.2025 passed in WPA 4803 of 2025 whereby the writ petition filed by the appellant was dismissed in limine.
3. Learned counsel for the appellant / writ petitioner submits that the petitioner was selected as an Accredited Social Health Activist by engagement letter dated 19.09.2023 (Annexure 'P-3'). In obedience of that order, the petitioner submitted her joining letter on 29.09.2023 before the B.M.O.H, Islampur BPHC, Ramganj, Uttar Dinajpur. The said joining letter dated 29.09.2023 (Annexure

‘P-4’) was accepted by endorsing “Allowed to join on 29/09/23(A/N)”.

4. Thus, petitioner’s joining was accepted and, therefore, she occupied a post pursuant to a selection. If petitioner had not joined the training because of death of her mother, she promptly informed it by communication dated 03.10.2023 (Annexure - P7).
5. Heavy reliance is placed on the endorsement which reads that “unable to do training due to mother expired”. On this communication dated 03.10.2023, the Government official recorded “training to be rescheduled”.
6. We find substance in the argument of learned counsel for the appellant that there is no inordinate delay in approaching the Court. Article 226 of the Constitution does not prescribe any period of limitation. The Constitution Bench of Supreme Court in **AIR 1964 SC 1006 (State of MP vs. Bhailal Bhai & Ors.)** opined that if writ petition is filed assailing any order / action within a time limit prescribed for civil suit for assailing such order / action, the writ petition can be treated to be filed within reasonable time. The relevant portion reads thus :

“Learned counsel is right in his submission that the provisions of the Limitation Act do

not as such apply to the granting of relief under Art 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable."

In view of this Constitution Bench judgment, learned Single Judge was not right in dismissing the petition on the ground of delay.

7. Learned counsel for the State supported the impugned order and urged that petitioner had not joined the training and, therefore, no fault can be found in the impugned order.
8. In rejoinder submission, learned counsel for the appellant / writ petitioner submits that this Court being an Appellate Court can itself hear the matter and it is not necessary to remand the matter before the learned Single Judge.
9. We have heard the parties on this aspect.
10. A plain reading of order of learned Single Judge shows that learned Single Judge has not

considered material / relevant aspect that petitioner in furtherance of engagement order had already joined at the relevant place and her joining was accepted. Thus, prima facie a right was crystallized in favour of the petitioner.

11. The learned Single Judge dismissed the writ petition solely on the ground of delay. We are unable to give our stamp of approval to this order because there is no such delay on the part of the petitioner.
12. Thus, we deem it proper to set aside the order dated 03.04.2025.
13. Accordingly, we are not inclined to hear this matter at appellate stage because writ petition was dismissed in limine and the other side was not put to notice enabling them to file their counter. In this backdrop, learned Single Judge is best suited to decide the matter on merit.
14. Accordingly, while setting the order dated 03.04.2025 we restore WPA 4803 of 2025 to its original file and number with further direction to the State to file its affidavit-in-opposition within four weeks positively. Affidavit-in-reply (if any) may be filed without two weeks therefrom. In addition, it will be open for the writ petitioner to pray for an interim relief before the learned Single Judge.

15. With the aforesaid finding and without expressing any conclusive opinion on merit, the instant appeal is disposed of.
16. All parties shall act on the basis of server copy of this order duly downloaded from the official website of this Hon'ble High Court.
17. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties expeditiously after complying with all requisite formalities.

(Sujoy Paul, J.)

(Smita Das De, J.)