

24
18.6.2025
Ct. No. 8
SB

MAT 1844 of 2024
CAN 1 of 2024 (Section 5)
CAN 2 of 2024
CAN 3 of 2025 (for Stay)
CAN 4 of 2025 (addition of party)

Shyam Tudu & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Sarajit Sen
Mr. Parag Mitra ... for the appellants

Mr. Mrinal Kanti Sardar ..(in CAN 4 of 205)

Mr. Debashis Saha, ... for the added respondents

Mr. Kaushik Chowdhury ... for WBBPE

Mr. Avishek Parasad ... for DPSC Malda

Soumen Sen, J. (Oral):

1. The prayer for leave to prefer an appeal and with a prayer for condonation of delay are heard together.

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2. There is a delay of 111 days in filing the appeal.
3. We are satisfied with the explanation offered for not being able to file the appeal within the period of limitation. The delay of 11 days is condoned.
4. Accordingly, the application for condonation of delay is allowed and disposed of.

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5. It appears that the appellants filed their writ petitions after April 25, 2024 although it is claimed that it was affirmed on 19.4.2024.

6. It appears from the submission of Mr. Prasad, learned counsel appearing on behalf of the D.P.S.C. Malda that persons similarly placed and situated as that of the present appellants have filed writ petition being WPA 25712 of 2022 regarding the recruitment process initiated in the year 2009 and the said writ petition was dismissed as it was filed after 25.4.2024. The learned Single Judge directed that all the writ petitions filed until 25.4.2024 may be considered and cannot be extended beyond such time and the said order was challenged before the Hon'ble Supreme Court unsuccessfully.

7. It appears that the said issue came up for consideration before a co-ordinate Bench. While affirming the order dated 26.4.2024 passed by the learned Single judge in WPA 25712 of 2022, it was inter alia observed that ;-

"It was categorically observed in the said Judgment that all the candidates who were called for the interview in the said recruitment process and have filed the writ petitions before this Court till 25th April, 2024, they shall be entitled to appointments against the existing and future vacancies. It was further observed that even the applications for addition of party having filed before the said timeline, the proposed added candidates shall stand on the same footing with that of the writ petitioners and shall be extended the same benefit. The petitioner's claim was rejected by the Court solely on the ground that his writ petition came to be filed beyond the deadline set up in the said order.

Indubitably the writ petition was affirmed on 25th April 2024 but was filed on 3rd May, 2024. Precisely the date of filing

was considered by the Single Bench in arriving at the conclusion that the benefit of the order dated 26th May, 2024 passed in WPA 25712 of 2022 cannot be extended. It is revealed in course of the hearing that though the recruitment process for the year 2009 was initiated in the year 2010 but because of the procedural hassles and the decision taken by the authorities on the basis of several litigations filed before the Court and orders passed therein, the panel of the successful candidate was published in the year 2021. The writ petitions came to be filed on and from the year 2022 and some in the year 2024 as well.

The moot question involved in the instant appeal whether an affirmation of a writ petition would constitute the filing of the writ petition or in other words the filing date of the writ petition would relate back to the date of affirmation of the said writ petitions. The answer is unambiguous and simple that the proceeding shall be treated to have been filed on a date when it is presented for its acceptance and assigned the appropriate number by the department. There is no rule as of now that the filing date would be treated on the basis of date of affirmation. There is no constrain on the part of the litigant in not filing the legal proceedings before the Court after the same is affirmed if he chose not to pursue the matter any further. Taking a view that the presentation of the writ petition before the competent authority to receive the same would be treated to have filed on the date when the affirmation is done, would frustrate the very purpose of the institution of the proceeding on a particular date and,

therefore, this Court does not find any substance in this regard.

The reliance placed upon the Judgment of the Supreme Court in *State of Uttar Pradesh & ors. Vs. Arvind Kumar Srivastava & ors.* reported in (2015) 1 SCC 347 by the appellant does not have any relevance to a clenching issue involved in the instant matter. It is beyond cavil of doubt that once the benefit is extended to a person, such benefit should also be extended to all persons who stands on a same pedestal. The act of discrimination is always viewed seriously as infringement of fundamental right guaranteed under Article 14 of the Constitution of India. However, an exception is carved out in relation to an approach to the Court at belated stage. In the said Judgment the Apex Court has also held that if there is a delay and laches attributable to the conduct of the litigant, even if it may have made out a case that he is a similarly circumstance persons that of the other, the Court may deny such relief in the following:

“22The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under.

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the

wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C. Sharma v. Union of India [K.C. Sharma v. Union of India, (1997) 6 SCC 721 : 1998 SCC (L&S) 226]). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.”

In fact the petitioner intended to avail the benefit of the Judgment dated 26.04.2024. The moment the Court has restricted the benefit at a particular date and the said order attend 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.

As held above mere affirmation on a particular date cannot be construed as the filing of the proceeding before this Court, the petitioner, therefore, is not entitled to the benefit of the said Judgment and, therefore, we do not find any illegality in the impugned order.”

8. The aforesaid order is binding on us.

9. Mr. Prasad, has submitted that the aforesaid cut off date fixed by the learned Single Judge also was confirmed by the Hon'ble Supreme Court in Civil Appeal No (S). 853 of 2025 [Rimpa Saha & Ors. Vs. District Primary School Council, Malda & Ors.] on 20.01.2025.

10. However, we find that while disposing of the said Civil Appeal the Hon'ble Supreme Court made the following observation;-

"6. Therefore, the impugned order is hereby set aside and the order dated 26th April, 2024 is hereby restored. We make it clear that the parties aggrieved by the said order can always challenge the said order in accordance with law.

7. We are informed across the Bar that a writ petition filed by the applicants in IA No. 1970/2025 is pending. That is the contention raised by the learned senior counsel for the applicants in the said application. If the writ petition filed by the applicants in the application is still pending, they can prosecute the petition in accordance with law."

11. On such consideration leave to prefer an appeal is rejected.

The appeal and the connected application, as a consequence thereof, also stand dismissed.

12. Learned counsel appearing on behalf of the appellants submits that a writ petition is pending. All vacancies have not be filled up in the meantime.

13. Since the appellants have already filed the writ petitions it has to be decided in accordance with law.

14. The appeal is disposed of.

(Soumen Sen, J.)

(Smita Das De, J)