

02.04.2025
SI No.2-3
Court No.8
(gc)

MAT 1833 of 2015
CAN 1 of 2016 (Old No: CAN 98 of 2016)
CAN 2 of 2016 (Old No: CAN 99 of 2016)

Md. Jiaur Rahaman
Vs.
The State of West Bengal & Ors.

With

FMA 236 of 2016
CAN 1 of 2016 (Old No: CAN 100 of 2016)

Md. Jiaur Rahaman
Vs.
The State of West Bengal & Ors.

Mr. Rudranil De,
Mr. Ziaul Haque
...for the Appellant.
Mr. Jahar Lal De, Ld. A.G.P.,
Mr. Somnath Banerjee
...for the State.
Mr. Md. Sarwar Jahan,
Mr. Sk. Nayeemul Haque,
...for the DPSC, Murshidabad.

1. Both the appeals and the applications are taken up together and disposed of by this common order.
2. Apart from the fact that MAT 1833 of 2015 is hopelessly barred by limitation as it appears that the appeal was filed after 1311 days of the impugned order. The reason for filing the said appeal at this stage is not difficult to understand as in the subsequent appeal, the learned Single Judge has relied upon the

order passed in MAT 1833 of 2015. The appellant had realized that in the event the finding in the previous writ petition is not challenged now, that is the order dated 27th January, 2012, it would be a fait accompli for the appellant/petitioner in the second appeal in FMA 236 of 2016 since the finding in the first writ petition has been relied upon by the learned Judge in deciding the second writ petition. Moreover, there is no sufficient explanation offered for the delay of 1311 days in preferring the appeal from the order dated 27th January, 2012 passed in W.P. No. 21911(W) of 2011. There is a clear finding by the learned Single Judge in the order dated 27th January, 2012 in W.P. No.21911(W) of 2011 that the absence of the petitioner from the institution was voluntary and we do not find any reasonable explanation for absence from duty for almost five years from September 3, 2010 to March 23, 2015. The facts have been accurately stated in both the impugned judgments. We do not wish to narrate those facts. Both the Courts have arrived at a finding that the petitioners could not offer any plausible explanation for not attending the school. The petitioner after having lost in the first round of litigation in

which there was a finding that the writ petitioner did not attend the school voluntarily for the period commencing from September 3, 2010 till the date of the order, The complaint on which reliance has been placed by the learned Counsel for the petitioner of 29th February, 2012 to show that the petitioner could enter the school and take classes does not create any right in favour of the petitioner in order to claim arrear salary in view of earlier finding at least for the period for which he did not attend the school prior to 29th February, 2012 as the absence was found to be voluntary. There was no finding in the second writ petition that the writ petitioner was unable to attend the school due to some reason nor any direction was passed upon the respondents to pay the arrear salary on a satisfaction being recorded that the writ petitioner was prevented from attending the school.

3. On such consideration, we do not find any reason to interfere with the order passed by the learned Single Judge.
4. In view of the fact that the appellant has joined the school, the authorities shall take appropriate decision with regard to the

regularization of the leave in accordance with law.

5. With the aforesaid observation, both the appeals and the connected applications are disposed of.
6. However, there shall be no order as to costs.
7. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Soumen Sen, J.)

(Smita Das De, J.)