

7
07.01.2026
Ct. No. 11
rrc

MAT 848 of 2025
with
IA No. CAN 1 of 2025
and
IA No. CAN 2 of 2025
(The State of West Bengal & Ors. Vs. Sanjay Pal & Ors.)

Mr. Shamim Ul Bari
.... For the appellants

Mr. Siva Prasad Ghose
Ms. Neha Roy
..... For the respondents/writ petitioners

This proposed appeal has been filed to question the legality of the order dated 3rd June, 2013 passed in the writ petition being WP 1377 (W) of 2007. By the said order, the writ petition was disposed of, directing the competent authority to convert the petitioner's appointment from Assistant Teacher (Work Education Group) to Assistant Teacher (Bio Science) and to grant approval to such conversion.

The writ petitioner was initially appointed as an Assistant Teacher in the Work Education Group. Subsequently, he improved his qualification by obtaining a postgraduate degree in Geology. The Managing Committee, by adopting a resolution, allotted six classes per week to the petitioner. After rendering service for a considerable period of time, he made an application for conversion of his appointment from Assistant Teacher in the Work Education Group to Assistant Teacher in Biology.

Since his prayer was not ultimately accepted by the competent authority, he was constrained to file the writ petition. By the order sought to be assailed in the present appeal, the writ petition was allowed.

As indicated in the report of the Additional Stamp Reporter, there is a delay of 3,644 days in preferring the appeal; in addition thereto, certain other defects relating to the joinder of parties have also been pointed out in the report dated 13th June, 2025.

Liberty is granted to Mr. Bari, learned advocate representing the appellants, to remove the defects regarding the joinder of parties in the appeal, as indicated in the said report.

As noticed earlier, there is a delay of 3,644 days in preferring the appeal. In justification thereof, it has been averred in the application for condonation of delay, being CAN 1 of 2025 (hereinafter referred to as the application), that the order was passed ex parte and was communicated to the State respondents in the month of September, 2013. The appellant/applicant applied for a certified copy of the said order on 3rd February, 2014. Subsequently, by a memo dated 18th May, 2015, Ms. Chaitali Bhattacharya, learned Advocate, was engaged to prefer an appeal challenging the order dated 3rd June, 2013.

In the meantime, a contempt petition being CPAN 422 of 2015 was filed alleging wilful violation of the said order dated 3rd June, 2013. However, the contempt petition was contested by the alleged contemnor.

It was further averred in the application that due to the busy schedule of Ms. Bhattacharya, the appeal could not be preferred, and in the meantime, the earlier District Inspector of Schools was transferred. Lastly, there was a fresh engagement of Mr. Shamim ul-Bari, learned advocate, in the month of May, 2025, and a fresh application for a certified copy was made on 23rd May, 2025. Upon receipt of the said certified copy on 23rd May, 2025, the present appeal was preferred on 9th June, 2025. In the entire process of obtaining the certified copy, preparation of the memorandum of appeal, and its filing, there was a delay of 3,644 days.

Mr. Bari further submits that a degree of flexibility should be granted to the State respondents, taking into account the factors unique to their functioning, such as bureaucratic processes and procedural delays in decision-making. Moreover, he submits that, in accordance with law, the petitioner is not entitled to the benefit of such conversion.

Mr. Bari asserts that the appellant has a fair chance of success in the appeal and, according to him, such a meritorious matter should not be thrown out at the threshold of the temple of justice merely on the technical ground of its belated presentation. In support of this submission, he relied on the decision, reported at (2023) 10 SCC 531(*Sheo Raj Singh (deceased) thr. Lrs. & Ors. vs. Union of India & Anr.*).

In rebuttal, Mr. Ghose, learned advocate representing the writ petitioner, contends that the delay has not been properly explained. He submits that delay cannot be condoned merely upon request and that the sufficiency of the cause must be

considered before granting such condonation. He further submits that the State respondents cannot be treated as preferred litigants and that, considering the facts and circumstances of the case, it would not be appropriate to condone the delay or to entertain the appeal. In support of his contentions, he relied upon the decisions reported in 2025 INSC 1104 (*Shivamma (Dead) by LRs vs. Karnataka Housing Board & Ors.* and *State of Madhya Pradesh & Ors. vs. Bherulal*) and (2020) 10 SCC 654 (*State of Madhya Pradesh & Ors. vs. Bherulal*).

Indisputably, the law of limitation is founded on public policy. It is enshrined in the maxim '*Interest reipublicae up sit finis litium*' which means '*it is for the general welfare that a period be put to litigation*'. There must be a life span for every legal remedy.

A court, while dealing with an application for condonation of delay, must maintain a balance between Sections 3 and 5 of the Limitation Act. Section 3 is mandatory in nature and creates a bar against entertaining any appeal or application beyond the prescribed period of limitation. However, Section 5 vests discretion in the Court to entertain such appeal or application if sufficient cause is shown.

Notably, the law of limitation is a substantive law and has definite consequences on the right and obligation of a party. These principles must be applied appropriately, depending on the facts and circumstances of each case. Once a vested right accrues in favour of one party due to the failure of the other party to explain the delay with sufficient cause, or due to its own

conduct, it would be unreasonable to take away such right merely at the request of the applicant, especially when the delay results from negligence, default, or inaction. It must be noted that justice must be done equally to both parties. Then only the ends of justice can be achieved. If an appellant has been grossly negligent in pursuing its rights and remedies, it would be equally unjust to deprive the other party of the accrued right which has come into existence in law as a result of its vigilance.

In the present case, the order sought to be assailed in this proposed appeal was passed way back in 2013, and the proposed appeal has been filed only in 2025, i.e., after 12 years. It has been stated that the appeal could not be filed within the prescribed period of limitation primarily due to the busy schedule of the learned Advocate engaged by the State respondents. Furthermore, it has been stated that due to the transfer of the District Inspector of Schools, appropriate steps could not be taken to prefer the appeal.

In the decision of **Sheo Raj Singh** (supra), the Supreme Court drew a clear distinction between an “excuse” and an “explanation”. An excuse is offered to evade responsibility when a party is under scrutiny, whereas an explanation seeks to clarify the circumstances surrounding an event and demonstrates that the occurrence was not attributable to the fault of the person concerned, provided such claim is genuine.

In **Bherulal** (supra), the Court held that the law of limitation binds everyone, including the Government, and that delay cannot be condoned unless a reasonable and acceptable

explanation is furnished for each day's delay, coupled with a bona fide effort to pursue the remedy.

In **Shivamma** (*supra*), it was held that the State, as a litigant, stands on the same footing as a private party. While courts may adopt a liberal approach where bona fides and due diligence are evident, delay cannot be condoned in cases of gross negligence, deliberate inaction, or casual indifference.

As noted previously, the busy schedule of a learned Advocate and the transfer of a functionary of the State cannot be regarded as a reasonable and acceptable explanation. Such an explanation cannot be held to constitute sufficient cause to persuade this Court to exercise its discretion in favour of the appellants/applicants, to condone the delay, and to entertain the belatedly filed appeal. Therefore, the judgment relied upon by the appellant/applicant cannot come to the rescue of the appellants/applicants and considering the explanation offered by the appellants to justify the delay, it can be held that it is nothing more than a lame excuse, and the same cannot be treated as sufficient cause or a valid explanation.

Therefore, applying the propositions laid down in the judgments of *Shivamma (supra)* and *Bherulal (supra)*, we are not inclined to accept the explanation offered by the appellants to justify the delay in preferring the appeal.

Accordingly, the application for condonation of delay, being CAN 1 of 2025, is dismissed. Consequently, the proposed appeal, along with the connected application, is dismissed as not admitted.

There shall, however, be no order as to costs.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

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