

MAT 1456 of 2024
with
IA No. CAN 1 of 2024
(Subrata Pal Vs. The State of West Bengal & Ors.)

Mr. Sanjib Das
Mr. Madhusudan Mukhopadhyay
Ms. Sandhya Kumari
... For the appellant

Mr. Pantu Deb Roy, AGP
Mr. Pannalal Bandyopadhyay
..... For the State

Mr. Subir Sanyal, Sr. Adv.
Mr. Ratul Biswas
..... For the DPSC, Howrah

Affidavit-of-service, as filed, be kept on record.

Upon hearing the learned advocates appearing for the respective parties and considering the materials on record, we are satisfied with the explanation given for the delay in preferring the present appeal.

Accordingly, the application for condonation of delay is allowed and delay in preferring the present appeal is condoned. The application for condonation of delay being CAN 1 of 2024 is, thus, disposed of.

Almost ten years after the conclusion of the selection process, a candidate claiming entitlement to appointment to the post of Assistant Teacher in a primary school under the District Primary School Council, Howrah (hereinafter referred to as 'the Council'), approached this Court by filing a writ petition, being WPA 15588 of 2023. The learned Single Judge, by order dated 26th April, 2024, dismissed the said writ petition on the ground

that it was hopelessly barred by delay and laches. Aggrieved by the said order dated 26th April, 2024, the present appeal has been preferred.

Mr. Das, learned advocate representing the appellant, submits that in the year 2006, a selection process was initiated by the Council to fill up certain posts of Assistant Teacher in primary schools in the district of Howrah, and accordingly, a requisition was sent to the concerned Employment Exchange to sponsor the names of eligible candidates for the post. Mr. Das claims that the name of the appellant, being an eligible candidate, was also sponsored for the post.

He further contends that, in terms of the direction passed by a learned Single Bench of this Court in a separate writ petition arising out of the same selection process, all candidates sponsored by the Employment Exchange were required to be appointed to the said post.

He submits that, by the interim order passed in the writ petition being WPA 15588 of 2023, the entire selection process was stayed until 2012. He contends that there was also an element of corruption and that the appellant has been illegally deprived of appointment to the said post.

He submits that, at the initial stage, a different learned Single Bench of this Court admitted the writ petition, being WPA 15588 of 2023, and directed the Council to submit a report dealing with the issues raised therein. However, the report submitted by the Council did not reflect the correct factual position. He further submits that these discrepancies were

brought to the notice of the learned Single Bench at the time of final hearing of the writ petition; however, the same were glossed over and no finding was returned thereon.

Mr. Sanyal, learned senior advocate representing the Council, vehemently opposes the contentions advanced by Mr. Das. Referring to a reply given by the Council in response to an application filed by the petitioner under the relevant provisions of the Right to Information Act, 2005 (hereinafter referred to as “the RTI Act”), he submits that the petitioner could not secure the cut-off marks fixed for eligibility to appear in the written test. He further submits that, since the petitioner failed to secure the cut-off marks, he was not called to appear in the written test, and therefore, there is no scope for consideration of the appellant’s candidature for the post.

Heard the learned advocates. Perused the materials on record.

As submitted on behalf of the parties, the selection process was initiated in 2006 and, due to the intervention of this Court, the same was stayed. However, the said selection process was ultimately concluded in 2013, and the writ petition was filed in 2023.

Needless to say, no period of limitation has been prescribed within which a writ petition must be filed, and the Limitation Act, 1963, does not directly apply to a writ petition. However, the doctrine of delay and laches is applicable. A writ Court may refuse to entertain a writ petition and grant relief if there is an

inordinate delay in preferring the petition and such delay is not satisfactorily explained.

In the present case, as noted earlier, the writ petition was filed almost ten years after the conclusion of the selection process, and the appellant has failed to furnish any plausible and acceptable explanation for such delay. Therefore, the finding of the learned Court below regarding inordinate delay in filing the writ petition cannot be disregarded.

Even if such technical or procedural aspects are overlooked and the matter is examined on merits, it is evident that although the appellant's name was sponsored by the concerned Employment Exchange for the post, he secured only 38.33% marks in the Madhyamik Examination, whereas the cut-off marks for eligibility to appear in the written examination were fixed at 48.66%. Consequently, the appellant was not called to appear in the written test and, therefore, his candidature could not be considered.

Mr. Das also could not produce any documents or convincing material to contradict the submissions or the facts reflected in the reply given by the Council in response to his application under the RTI Act. The appellant has also failed to produce any material to establish that mere sponsorship by the Employment Exchange confers any right to appointment.

Due to this reason, we do not find any merit in the appellant's claim and, therefore, see no justification to interfere in the present appeal.

Accordingly, the appeal is dismissed.

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.)