

21.01.2026
Item No.10
Court. No. 11
Avijit Mitra

**MAT 1577 of 2025
with
IA No.CAN 1 of 2025
with
IA No.CAN 2 of 2025**

**The State of West Bengal & ors.
- Versus -
Ram Prasad Mondal & ors.**

Mr. Shamim ul Bari
....for the appellants
Mr. Biswarup Biswas
....for the writ petitioner/respondent no.1

In re : IA No.CAN 1 of 2025

The present application has been preferred for condonation of delay of 216 days in filing the present appeal.

Mr. Bari, learned advocate appearing for the appellants submits that the order impugned was communicated to the appellants in the month of February, 2025 and considering the same together with the relevant government orders, the respondent no.3 issued a letter dated 5th March, 2025 to the learned Legal Remembrancer with a request to take steps for obtaining certified copy of the order. A further memo was issued by the respondent no.3 on 17th March, 2025 to the respondent no.2 with a request to take all necessary steps for filing an appeal. Subsequent

thereto, the certified copy was obtained and was forwarded to the respondent no.3 by the learned Legal Remembrancer *vide* memo dated 11th April, 2025. Thereafter, the Additional Government Pleader was appointed as the State advocate for preferring the appeal against the said order and the papers were handed over to the learned advocate on 22nd July, 2025. However, the original certified copy of the order was misplaced and as such a fresh application for certified copy was made on 1st September, 2025 and after obtaining the same on 4th September, 2025, the appeal was filed on 11th September, 2025. From the said sequence of facts, it would be explicit that the appellants took all effective steps to prefer the appeal and it cannot be urged that there had been any inordinate delay on the part of the appellants in preferring the appeal. Such cause shown and the degree of acceptability of the explanation is material and not the length of the delay.

Mr. Biswas, learned advocate appearing for the writ petitioner/ respondent no.1, however, denies and disputes the contention of Mr. Bari and submits that the order impugned in the present appeal was passed in the presence of the learned advocate representing the State respondents and that as such it cannot be urged on their behalf that they had no knowledge about the said order

till the same was communicated. Through the pleadings in the application for condonation of delay, the appellants have only sought to highlight an excuse and not a proper explanation.

Upon hearing the learned advocates appearing for the respective parties and considering the materials on record, we are of the opinion that the delay which has occurred towards preference of the present appeal, is neither *mala fide* nor intentional and it cannot be said that appellants adopted any dilatory tactics.

Acceptance of the explanation furnished should be the rule and refusal an exception. The expression '*sufficient cause*' within the meaning of Section 5 of the Limitation Act should receive a liberal construction moreso when no negligence or inaction or want of *bona fide* is imputable to the appellants.

Applying such proposition of law to the facts of the case, we are of the opinion that no dilatory tactics have been adopted by the appellants in preferring the appeal and, accordingly, the delay is condoned and the application being IA No.CAN 1 of 2025 is disposed of.

**In re: MAT 1577 of 2025
&
IA No.CAN 2 of 2025**

The present appeal has been preferred by the State and its functionaries challenging an order

dated 8th January, 2025 passed the learned single Judge in a writ petition being WPA No.24092 of 2017. In connection with the said appeal, an application for stay being IA No.CAN 2 of 2025 has been filed. With the consent of the parties, the appeal along with the application for stay are taken up for final hearing.

Shorn of unnecessary details the facts are that the writ petitioner/respondent no.1 herein, namely, Ram Prasad Mondal (hereinafter referred to as Ram) was appointed in the year 2004 to the post of Assistant Teacher in Physical Education and Work Education in the Chaturesh Palli High School (H.S.) (hereinafter referred to as the said school). Prior thereto, he was enrolled for the M.P.Ed. course. After obtaining the said Master degree, the respondent no.1 represented before the authorities for consideration of his claim towards grant of post graduate scale of pay. Such representation of Ram was considered and rejected by the respondent no.3 *vide* memo dated 27th November, 2006 observing, *inter alia*, that *‘the undersigned is not in a position to – considered the said matter in the light of Act of Control of Expenditure’*. Aggrieved by the said order, Ram preferred a writ petition being WP 27547 (W) of 2006, which was disposed of by an order dated 1st December, 2016 observing that the *‘authorities*

*will, therefore consider the application of the petitioner dated August 23, 2006 for higher scale of pay and will grant the same in accordance with law'. It was also observed that 'they will award the higher scale of pay from the day following the date of the last day of the final examination for the post-graduate Course'. Upon communication of the said order of this Court, the respondent no.3 again passed an order on 1st September, 2017 refusing Ram's prayer for post graduate scale of pay observing, *inter alia*, that 'as the qualification of the petitioner is mentioned as B.Sc. & B. P.Ed. in the recommendation letter of School Service Commission so in terms of G.O. No.155-SE(B) dated 13/07/1999 of School Education Department the petitioner is not entitled to get post graduate scale of pay for his higher qualification acquired after his appointment'.*

Mr. Bari, learned advocate appearing for the appellants submits that Ram was appointed as an Assistant Teacher against a post meant for graduate scale of pay in Physical Education and Work Education group after getting recommendation from the West Bengal Regional School Service Commission (hereinafter referred to as Commission) as a candidate holding a graduate degree. Having thus appeared in a selection process with a graduate degree, Ram cannot claim

post graduate scale of pay on the rudiments of the Master degree obtained subsequent to appointment moreso when such degree was not obtained with prior permission of the competent authority being the respondent no.3.

He further argues that in view of the staff pattern, Ram could not have automatically claimed post graduate scale of pay and such claim is contrary to the government notifications. The issue of staff pattern has not been taken into consideration while delivering the judgment.

Mr. Bari strenuously argues that Ram's qualification is mentioned as B.Sc. & B.P. Ed. in the recommendation letter of the Commission and as such in terms of G.O. No.155-SE(B) dated 13/07/1999 of School Education Department Ram was not entitled to get post graduate scale of pay. The judgment delivered in the case of *Partha Chatterjee Vs. State of West Bengal & ors.*, reported in 2004 (2) CLJ 493 upon which reliance was placed by Ram, is not applicable to the facts and circumstances of the case since in that case, the writ petitioner was appointed prior to coming into effect in West Bengal School Service Commission Act. Such arguments, as advanced, were glossed over by the learned single Judge and no finding was returned on the same. Such

infirmity warrants interference in the present appeal.

Mr. Biswas, learned advocate appearing for Ram denies and disputes such contention and argues that the issue as regards entitlement of post graduate scale of pay to teachers in Physical Education and Work Education is no longer *res integra* and has been finally decided in the judgment delivered by the Hon'ble Special Bench in the case of *Utpal Kanti Karan Vs. State of West Bengal & ors.*, reported in (2024) SCC OnLine (Cal) 1274.

He further submits that there was no scope for the respondent no.3 to reject Ram's prayer for post graduate scale of pay after the writ Court categorically directed that the respondents will grant the post graduate scale of pay to Ram. Such conduct of the respondent no.3 needs to be deprecated.

He further argues that grant of post graduate scale of pay is also not contingent upon an application to be made by the teacher. It is a benefit which should be granted on the rudiments of the policy decision adopted by the State.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The issue as regards entitlement of post graduate scale of pay to teachers in the Physical Education and Work Education group has been considered in the judgment delivered in the case of *Baishali Banerjee Vs. State of West Bengal &ors* reported in (2008) 2 CLJ 472. Dealing with the judgments cited, the Court observed that in Physical Education there is no such distinction between pass category and honours category and that as such Physical Education teachers with Master degree in Physical Education would be entitled to post graduate scale of pay notwithstanding the fact that post graduate degree in Physical Education was not necessary for appointment as Assistant Teacher of Physical Education. The circulars operating on the date of appointment of Ram and the provisions of the ROPA Rules permitted grant of post graduate scale of pay.

Records would reveal that Ram's prayer was initially rejected by the respondent no.3 *vide* memo dated 27th November, 2006 on the ground that such benefit cannot be granted in the light of the West Bengal Schools (Control of Expenditure) Act, 2005. Such purported reasoning was found to be discrepant and in the earlier round of litigation the learned court negated such objection and also observed that as Ram was enrolled for the post

prior to the appointment as Assistant Teacher, no further permission is required from the respondent no.3. The said order dated 1st December, 2016 has not been assailed by the appellants and as such the directions contained in the same including the direction to grant post graduate scale of pay, is binding upon the respondents.

The argument on behalf of the appellants that in terms of G.O. No.155-SE(B) dated 13/07/1999 of School Education Department Ram was not entitled to get post graduate scale of pay was rightly discounted by the learned single Judge in view of the specific observation of the Hon'ble Court in the case of *Partha Chatterjee Vs. State and Ors.*, reported in 2004 (2) CLJ 4931 that the said circular has no force in the eye of law.

The circulars operating on the date of appointment of Ram and the provisions of the ROPA Rules permitted grant of post graduate scale of pay to teachers in the Physical Education and Work Education group and as such in view of the judgment delivered in the *Utpal Kanti Karan Vs. State of West Bengal & ors.*, reported in (2024) SCC OnLine (Cal) 1274, Ram's claim cannot be denied.

The learned single Judge upon considering the factual issues including the relevant government

notifications arrived at specific findings and we do not find any infirmity in the order impugned.

Accordingly, the present appeal and the stay application are dismissed.

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

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Biswaroop Chowdhury, J.) (Tapabrata Chakraborty, J.)