

(2000) 12 CAL CK 0044

In the Calcutta High Court

Case No : M.A.T. No's. 2773 of 1997, 371 of 1999, 4285 of 2000, 58, 391 (W) ,
and 3883 of 2001

Director of School Education

APPELLANT

Vs

Bibhuti Sarkar

RESPONDENT

Date of Decision : 14-12-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16
West Bengal Primary Education Act, 1973 — Section 106
West Bengal Primary Schools Teachers Rules, 1991 — Rule 2, 35, 5, 6, 9

Citation : (2001) 2 ILR (Cal) 555

Hon'ble Judges : Ashok Kumar Mathur, C.J.;Subhro Kamal Mukherjee, J

Bench : Division Bench

Advocate : Rabilal Moitra, T.D. Maiti, in M.A.T. No. 4285 of 2000 and M.A.T. No. 58 of 2001, T.P. Haider, in M.A.T. No. 22733 of 1997, Kashinath De, Sandip De, in W.P. No. 3931 W of 2001, S.C. Ukil, Sridhar Panja, in M.A.T. No. 3883 of 2001 and Santi Das, in M.A.T. No. 371 of 1999, for the Appellant;D.K. Banerjee and R.K. Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Kumar Mathur, C.J.—In all these cases common questions of law arise, therefore, they are disposed of by common judgment.

2. The question which arises for consideration in all these appeals and writ petition is that whether the Junior Basic Training/Primary Teachers Training Certificate is equivalent to B. Ed, degree or not. In brief the common facts are that the writ Petitioners were not given the benefit of B. Ed, degree as no marks were given for trained teachers i.e. B. Ed. Therefore, all these writ petitions were filed. In the first writ petition, which was decided by B.P. Banerjee, J. (As He then was), His Lordship allowed the writ petitions and directed the authorities to give credit for B. Ed, in selection of primary teachers. Against that the appeal being M.A.T. No. 4285 of 2000 (Chairman, Ad-hoc Committee, D.P.S.C. v. Bibhuti Sarkar and Ors.) was filed. Following this judgment the Learned Single Judges

allowed the writ petitions against that remaining appeals have been filed. The appeal filed by the State being M.A.T. No. 3883 of 2001 (Director of School Education v. Bibhuti Sarkar and Ors.) is against the judgment of the Justice Chattopadhyay and is barred by 341 days but against same judgment another appeal being M.A.T. No. 58 of 2001 (District Primary School Council, Nadia v. Arun Kumar Das) has been filed within time. However, on question of delay on state appeal we shall address later.

3. It may be relevant to mention that the appointment of teachers in the primary school is governed by the rules known as the Recruitment and Leave to Teachers in Primary Schools in West Bengal Rules of 1991 (hereinafter referred to as Rules of 1991). These rules have been framed in exercise of power conferred under Sub-section (1) of Section 106 of the West Bengal Primary Education Act, 1973 (hereinafter referred to as the Act). Rule 2 deals with the definitions. Rule 2(b) defines "appointment" as appointment of teachers of primary schools in accordance with the provisions of the Act and the Rules. Rule 2(c) defines "council" which reads as under:

(c) "council" means a primary school council established under the act.

Rule 2(d) defines "Board" as under:

2(d) "Board" means the West Bengal Board of Primary Education established under the Act.

Rule 2(k) defines "Panel" which reads as under:

"Panel" means a list of names of eligible and selected candidates for appointment as teachers in Primary Schools, prepared by the Council according to Rules.

Rule 2(m) defines "Teacher", which reads as under:

"Teacher" means a person who holds a teaching post in a primary school or in a Junior Basic School, appointed in the prescribed manner on a regular and full time basis, and is paid either wholly or in part from the funds under the control of the State Government in the Education Department.

Rule 2(n) defines "Trained Candidate", which reads as under:

"Trained Candidate" means a candidate who has obtained a Junior Basic Training/ Primary Teacher Training Certificate or equivalent issued under the authority of the Director or any other officer empowered in this behalf by the government.

4. Chapter III deals with the "Selection and appointment", which is relevant for our purpose, Rules 5, 6, 9 and 35 which are relevant for our purpose read as under:

5. Appointing Authority? The Chairman of the respective Council shall be the Appointing Authority.

6. Qualifications?

(a) No person shall be appointed by the Council as a teacher unless he satisfied the conditions:

i) that he is a citizen of India; and ii) that he is not below 18 years of age and above 40 years of age; and iii) that he possesses the minimum educational qualifications as mentioned in Sub-rule (b);

(b) The required educational qualifications for the post of teacher shall be-i) School Final/Madhyamik pass or equivalent, or;

ii) Higher Secondary (XI-Class) pass under the West Bengal Board of Secondary Education or equivalent.

c) The decision of the State Government on the question of equivalence for the purpose of Sub-rule (b) shall be final ;

d) No extra credit shall be given for higher academic qualification at the time of selection of a teacher;

Provided that a trained candidate shall be given extra credit in the manner prescribed under Sub-rule (c) of Rule 9.

e) A trained candidate belonging to schedule tribe category who have not passed Madhyamik examination or its equivalent shall be eligible for appointment as teacher in Primary School.

5. The selection procedure is defined in Rule 9 which reads as under:

9. Selection procedure- (a) On after the names of the candidates for the posts of teachers are obtained from the employment exchange, all candidates shall be communicated in writing to produce testimonials certificates for computation of their marks in the score sheets prepared for the purpose of such selection.

b) Credit shall be given and computed in the following manner:

i) there shall be 100 marks in total as full marks;

ii) the full marks shall be allotted to four different aspects of the candidate" eligibility in the following manner:

1. Academic qualification 65 marks

2. Training 20 marks

3 Written Test/Oral Interview 10 marks

4 Co-curricular activity 5 marks

Total: 100 marks

iii) the percentage of marks to the total full marks obtained by the candidate in School Final/ Madhyamik/Higher Secondary (XI Class) shall be computed as

percentage of 64 and recorded in the score sheet, and if a candidate has passed two of the above public examinations, the better result only shall be computed;

iv) the percentage of marks to the total full marks obtained in Junior Basic Training Certificate Examination or equivalent shall be computed as percentage of 20 (twenty) and recorded in the score sheet;

v) marks obtained in the interviews shall be recorded in the score sheet;

vi) in awarding marks for co-curricular activities one mark shall be credited for each of the certificates mentioned below:

A) a certificate that he/she has represented the district in State level games, sports, issued by district level sports authority;

B) a certificate that he/she has shown excellence in cultural activities representing the district in State level competitions issued by district level authority;

C) minimum "A" certificate of National Cadet Corps;

D) a certificate of successful participation in literacy for the illiterates by a district level officer; and E) a diploma/certificate in Music/Arts and Craft on completion of a course of at least one year's duration from any University/recognised Government institutions;

Provided that the maximum of such marks to be credited shall not exceed five.

vii) 18 (eighteen) marks shall be credited for academic qualification to an eligible candidate belonging to Scheduled Tribe category who have required qualification as mentioned in Sub-rule (c) of Rule 6. Awarding of marks for training, interview and co-curricular activities shall be done in accordance with Clauses (iv), (v) and (vi) respectively.

(c) (i) The total marks obtained by each candidate for academic qualification, training and co-curricular activities shall be computed in the manner prescribed in Clauses (iii), (iv) and (vi), and a list of names of all candidates of each category, namely, Scheduled Caste, Scheduled Tribe, physically handicapped and others shall be prepared in descending order of total marks obtained by them;

ii) The Staff Selection Committee, in its meeting shall finalize the total number of candidates from the top of the lists mentioned in Clause (i) of Sub-rule (c), to be called for interview. The number of candidates to be called for interview shall be five times the number of vacancy unless the total number of candidates is insufficient for the same;

iii) The candidate selected for interview shall be intimated the date, time and place for their interview.

d) After the interview all the scores shall be recorded and the marks obtained by a candidate shall be added up and the names of candidates shall be arranged

according to marks obtained in a descending order;

e) After the process as laid down in Sub-rule (b) is complete, the Selection Committee shall arrange the names serially down from the top of the list. A panel of such number of candidates as there are vacancies plus 10% of such vacancies shall be prepared. The reservation for Scheduled Castes, Scheduled Tribes and physically handicapped persons shall have to be strictly maintained in the panel. The panel shall show separately names of Scheduled Tribe, Scheduled Caste, Physically handicapped, and other eligible candidates;

f) Thereafter the panel thus prepared shall be placed in the meeting of the Council for passing and the total number of eligible candidates included in the panel shall be the same as the number of vacancies plus 10% of such existing vacancies.

6. Rest of the provisions are not relevant. Rule 35 deals with repeal, which reads as under:

All rules and orders made under the Bengal (Rural) Primary Education Act, 1930, and the West Bengal Urban Primary Education Act, 1963 and the West Bengal (Rural) Primary Education (Temporary Provisions) Act, 1969 regarding appointment of teachers, contrary to the provisions of these rules are hereby repealed in the districts where the West Bengal primary Education Act, 1973 (43 of 1973) has come into force;

Provided that appointment of all teachers made with the approval of the Director prior to the framing of these rules, shall be deemed to have been approved under these rules.

7. Therefore, according to the rules for appointment to the post of primary school teacher a candidate should possess School Final/Madhymik certificate or equivalent or Higher Secondary (XI Class) certificate with Junior Basic Training or Primary Teachers Training Certificate or equivalent issued under the authority of the Director or any other officer empowered in this behalf by the Government. It further contemplates that no extra credit shall be given for higher academic qualification, but the trained candidate shall be given extra credit in the manner prescribed under Sub-rule (c) of Rule 9.

8. Rule 9 defines the selection procedure and Rule 9(b) lays down how credit shall be given and computed and that there shall be 100 marks in total and the maximum marks prescribed for academic qualification is 65, training- 20 marks, written test/oral interview - 20 marks and co-curricular activity - 5 marks.

9. Clause (iv) of Rule 9(b) says that the percentage of marks to the total full marks obtained in Junior Basic Training Certificate Examination or equivalent shall be computed as percentage of 20 (twenty) and recorded in the score sheet.

10. Therefore, as per this procedure we have to consider that whether a candidate who has obtained a B. Ed, degree can be made eligible for

appointment in the Primary Schools where a trained teacher means a Junior Basic Training/Primary Teachers Training Certificate holder or equivalent thereof.

11. The Learned Single Judge, Justice B.P. Banerjee (as he then was) allowed the writ petitions and held that a person who has obtained a B. Ed, degree is eligible for appointment of a Primary School Teacher irrespective of the fact that whether he has obtained a certificate of Junior Basic Training or Primary Teachers Training Certificate or not. The broad contention was that B. Ed, is decidedly a higher degree. Therefore, a person who possesses B. Ed, degree shall in all respects be suitable for appointment to this post irrespective of the fact that whether he possesses the Junior Basic Training or the Primary Teachers Training Certificate or not. Apparently the argument appears to be very attractive that a person holding a B. Ed, degree can certainly be said to be possessing higher qualification than a person who is possessing a junior Basic Training; therefore, it will not be proper to deprive him of that benefit of possession of higher degree. But we regret to say that we are not misled by such an attractive proposition because after probing into the matter deeply we respectfully disagree with the views taken by justice B.P. Banerjee, Justice Amitava Lala and Justice Pranab Kumar Chattopadhyay sitting singly.

12. The service conditions of these teachers is governed by the rules framed by the West Bengal Government u/s 106 of the West Bengal Primary Education Act, 1973 i.e. Rules are of 1991 referred to above. These rules laid down the service condition of the teachers in the primary schools. Therefore, we have to examine the whole controversy with reference to these rules and not to be misled by general or broad proposition that a person holding higher qualification is always better than a person possessing lesser qualification. But in the present case a trained candidate has been defined in Rule 2(n) reproduced above. This Clause lays down that a trained candidate in the context of the appointment in the primary school means a person who possesses Junior Basic Training and/or Primary Teachers Training Certificate (for short JBT/PTTC), Sub- rule (d) of Rule 6 clearly lays down that no extra credit shall be given for higher academic qualification at the time of selection of a teacher. Reading these two together what emerges is that for appointment of a teacher in primary school only the person with the academic qualification prescribed above with Junior Basic Training/Primary Teachers Training Certificate shall be considered and their higher academic attainment shall not be given any credit. Therefore, person having higher academic qualification or a person possessing a B. Ed, degree can not claim extra credit. A teacher may be eligible for applying with the higher qualification like B.A., M.A. & B. Ed, but he shall not be entitled to a credit for possessing a higher academic qualification. A person possessing Junior Basic Training or Primary Teachers Training Certificate will be entitled to the full marks for training because that is the basic qualification for appointment. Simply because he is possessing B. Ed, degree he will not be entitled to a benefit of that qualification as in the scheme of the rules for appointment of teacher in primary school a person possessing the Junior Basic Training or Primary Teachers Training

Certificate is made eligible for appointment as teacher in primary school. There appears to be a philosophy behind it. Teachers who are appointed to teach in the primary schools have to be taught the ways and means to teach the primary school students, whereas the persons who are trained in B. Ed, would be competent to teach the students of higher classes. The syllabus of the B. Ed, and that of the Junior Basic Training is also vastly different. The teachers who are appointed in the primary schools have to be trained keeping in view of the tender age of the students in the primary school, their mental level, their psychology and the equipment to grasp what has been taught to them. This is something special for teaching of the primary school teachers. Therefore, in order to appreciate this question we shall hereinafter refer to the syllabus and curriculum of both the course that is Junior Basic Training and Primary Teachers Training Certificate and that of B. Ed. The primary teachers training syllabus which reads as under:

Aim and Object: Special Knowledge: Formation of scientific idea about child and it's environment, child's demand, child's growth and child's development.

View point and mentality: To be a affection and sympathetic towards the child and to grow interest on child study.

To grow mentality on the role of education.

IIInd Chapter Education cum Evaluation Teacher's training syllabus has been classified into four groups ;

- A) Professional knowledge;
- B) Professional Expertness, practical knowledge of primary school book;
- C) Practical knowledge;
- D) Different stages of primary education.

IIIrd Chapter A) Professional knowledge:

- i) Modern concept of primary education and it's problem.

Aim & Syllabus

- ii) Child psychology and child study.

Syllabus:

- i) development of child:
 - a) Childhood; b) Boyhood; c) Adolescence; Early adolescence.

Physical development, mental development, working development, social development, speaking development.

- 2. (A) At different stages child's demand, problem and it's remedy;

3. Learning? What is learning?. Value of learning in human life, (a) Initial experience, (b) Preservation of experience, (c) Review of experience, (d) marked off memory.

4. Learning condition- (a) Inspiration and attention, (b) Repetition and repeated study. Learning method- recitation and meaning in total or part.

5. Classification of learning- Knowledge learning, data collection experience gather, idea.

6. Different process of learning method:

(a) learning through copy, (b) learning through endeavour, learning through under changeable process.

7. Classification of students:

(a) advanced child, (b) general child, (c) backward child, cause of backwardness and its remedies. Special arrangement for advanced child.

8. Child Philosophy: Why child philosophy and why?

Different process of child philosophy:

(a) Observation, (b) Child's surroundings (home, school and society) Explanations.

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13. Chapter III deals with professional knowledge on modern concept of primary education and its problem.

14. As against this in B. Ed, curriculum the child psychology is not a matter to be specially studied or being taught in the curriculum. Here the curriculum largely deals with subjects like the principle of education curriculum studies, educational psychology, development of education in modern India, social organisation and instructional science, content-cum-methodology of teaching Bengali, instructional methods and evaluation, contents and methods of teaching English, content-cum-methodology of teaching Mathematics, content-cum-methodology of teaching Physical Science, content-cum-methodology of teaching History, Economics and Civics, Psychology, Educational and Mental Measurement, Comparative Education, Social and abnormal Psychology, Education in ancient and medieval India, mental hygiene, history of education in British India, content-cum-methodology of teaching Geography etc. But in all these curriculum and syllabuses there is no emphasis on the teaching of the child psychology and the modern concept of primary education and its problem. Therefore, in the comparison of the two curriculums and syllabus of the teaching which is imparted to B. Ed, teachers and for the Junior Basic Training and Primary Teachers Training Certificate it can be safely concluded that they were vastly different.

15. In the case of the Junior Basic Training and Primary Teachers Training

Certificate the emphasis is on the development of child. The primary education is upto IVth standard. Thereafter there is middle education and then secondary and higher secondary education. But in the primary school one has to study the psychology and development of child at tender age. The person who is trained in B. Ed, degree may not necessarily be equipped to teach a student of primary class because he is not equipped to understand psychology of a child at that early stage. This is only peculiar to the curriculum of the Junior Basic Training Course and Primary Teachers Training Certificate Course. Therefore, looking to the curriculum one can appreciate the distinction between the two courses and same policy is reflected in rules framed by the State in exercise of its statutory power. To generalize a proposition that a person who holds a B. Ed, degree, that is, higher degree cannot be deprived appointment is not correct. In this context one has to appreciate the distinction of the trained teachers for primary schools and for higher schools. These rules were framed primarily for recruitment of the teachers for primary schools and in that context the rules were designed to give a credit to the persons who are specially trained to teach in primary schools. The idea behind the framing of these rules was that the Junior Basic Training and Primary Teachers Training Certificate trained teachers should be appointed so that they can do proper justice with the teaching. This policy is properly reflected in the rules. In Clause (iv) of Rule 9(b), which lays down procedure for selection, provides that the percentage of marks to the total full marks obtained in Junior Basic Training Certificate or equivalent shall be computed. This shows that the policy of the State is to employ teachers in primary school who possess this training only. Similarly, there is prohibition contained in Rule 6(d) that no extra credit shall be given for higher qualification. These factors amply exhibits the intentions of the rule framing authority.

16. In this connection the Court below have made reference to two circulars in terms of Memo No. 306-SC/ 1 dated February 7, 1997 and Memo No. 3283(16)SC/P dated July 27, 1971 issued by the Director of Public instructions in which the teachers in the primary schools were considered as "A" category teachers, but both these circulars only make a reference with regard to permitting the incumbents to draw higher pay scale because they are teaching for a long time in the institution without qualification of JBT/PTTC. Therefore, as a measure of grace this was permitted. But this cannot be inferred that the qualification for appointment of teachers has been relaxed or B. Ed, has been declared to be equivalent to Junior Basic Training/ Primary Teachers Training Certificates. Permitting candidates who are in service and the granting of benefit of higher scale on a compassionate ground that they are teaching in the primary school for a long time without possessing Junior Basic Training/Primary Teachers Training Certificate, it does not mean that the same should be read as a qualification for direct recruitment. Direct recruitment stands on a different footing and permitting persons to draw higher scales stands on different footing. However, both the circulars of 1967 and 1971 have no application after the rule of 1991 has been framed. It may be relevant here to mention that those circulars

stand repealed because of Rule 35 of 1991 rules. Rule 35 has already been quoted above which clearly lays down that any appointment of teacher or service condition of a primary teacher which is contrary to the provisions of these rules are repealed. Therefore, those two circulars on which reliance have been placed by the Court below is totally mis-conceived as the rules of 1991 has categorically laid down and defined the trained teachers in the context of the primary schools. Rule 2(n) will govern and hold the field and not the so-called circular issued by the Director prior to coming into force of the rules of 1991.

17. In this connection our attention was invited to file case of United Bank of India v. Debts Recovery yribuhtt and Ors. (1994) 4 S.C.C. 69 wherein it was contended that one should not follow dictionary meaning or common parlance meaning or trade meaning when the term is already defined en the statute. Therefore, what has been defined in the definition clause should be followed and not the general meaning or common interpretation. In this case the question was with regard to creation of Debts Recovery Tribunals. In that context their Lordships held that the definitions given in the Act should be followed instead of adopting the dictionary meaning or the meaning being given in common parlance. It was observed:

Interpretation of Statutes External aids- Dictionary meaning or common parlance meaning or trade meaning- Not relevant when the term is already defined in the Statute- Definition clause- Meaning provided by- Not necessary then to find out the general meaning of that term.

18. It is true that in the common parlance one would be impressed by the argument that when a person-is holding a higher qualification like B. Ed, than the JBT and PTTC, he should have been preferred. But when the "trained candidate" has been defined in cl.2(n) to mean a candidate possessing a Junior Basic Training/Primary Teachers Training Certificate or equivalent then no other interpretation can of given. We have to follow the meaning as defined in the Rules and the Rules cannot be interpreted by the common understanding. Therefore, submission of the Learned Counsel cannot be accepted and the views taken by the Learned Single Judges sitting singly cannot be accepted.

19. The view which we have taken stands fully supported by a Full Bench decision of the Bombay High Court in the case of Smt. Jayashree Sunil Chavan Vs. The State of Maharashtra and Others, In that case the appointment for the primary teachers in the Maharastra Employees of Private Schools (Conditions of Service) Rule, 1981 came up for consideration. It was observed that the policy of the Government to insist for appointment of a person who hold a diploma that is D. Ed. in primary schools cannot be said to be bad. It was observed:

Maharastra Employees of Private Schools (Condition of Service) Regulation Act (3 of 1978), Section 16-Maharastra Employees of Private Schools (Condition of Service) Rules, 1981, Rules 2(1)(j), 6- Education in primary school policy of Govt., to insist for appointment of D. Ed, teachers.? No interference Since D. Ed,

is requisite qualification for teaching students in primary schools- B. Ed, qualification cannot be treated as equivalent thereto.

20. It has observed that both the qualifications operate in separate and distinct fields. There is no question of there being one qualification higher than the other particularly with regard to the requirement of the primary school. B.Ed, being a Bachelor's Degree is higher than D. Ed, being a diploma. But appointment in primary school cannot be made.

21. Similar view was taken by the Delhi High Court in the case of Atul Haque v. Government of N.T.C. of Delhi and Ors. 2001 Lab. I.C. 1280. It was observed:

Constitution of India, Articles 14, 16- National Education Policy (1986), Part V, CI. 5, 6- Appointment- Post of Assistant Teacher (Primary) in Municipal Corporation- Eligibility- Requisite qualification was ETE/JBT diploma- Candidates passing B. Ed, degree examination were prohibited from appearing for written test- ETE/JBT diploma holders are trained to teach primary school children- Both the qualifications operate in different fields and at different levels- B. Ed, is not a higher qualification than ETE/JBT- Order prohibiting B. Ed, degree holders from appearing in competitive examination is proper.

22. Their Lordships held that the requisite qualification was ETE/JBT diploma and those persons alone are eligible to appear in the test for appointment to the post of teachers in the primary schools and persons with B. Ed, degrees cannot be said to possess the requisite qualification.

23. As against this our attention was invited to the decision in the case of Manvinder Kaur v. State of Punjab 1991(2) S.L.R. 299. This was a case in which the appointment of a teacher under the Punjab Educational Service Class III School Cadre Rules, 1955 was to be made in Hindi and in that context it was observed that a person possessing a higher qualification in the subject cannot be considered to be ineligible for appointment. In this case the appointment was for Hindi Teacher and a person possessing the qualification of B. Ed, was not considered to be eligible for appointment. Therefore, His Lordship observed that the person with the higher qualification in the subject can be suitable though the minimum qualification laid down was matriculation. This was a case for appointment of a teacher in Hindi subject. There is no technical training in Hindi, but here we are concerned with the question with regard to teaching of the primary school teachers for which the qualification has been prescribed in Rule 2(n) to the effect that a candidate must have obtained a Junior Basic Training/ Primary Teachers Training Certificate or its equivalent. Therefore, this case is fully distinguishable on its facts.

24. In the case of Bimla Devi v. State of Haryana 1994 (6) S.L.R. 158 the question was that once a particular qualification has been considered to be equivalent for the purpose of initial recruitment then the equivalence would endure the entire service including promotion and not for initial recruitment only. But, in the present case, as already mentioned, the JBT has not been found to be

equivalent to that of the B. Ed, degree. This case hardly provides any assistance for deciding the controversy in the present case.

25. In the case of Amarjit Kaur (Smt.) v. State of Haryana 1994 (8) S.L.R. 672 the qualification for the appointment of teachers for the post of Hindi teacher was metric with proficiency in the language. The candidates who were M.A. in the subject and B. Ed., their appointments was sought to be terminated. In that context His Lordship held that the person with the qualification of M.A. and B. Ed, is eligible for appointment to the post of Principal. Therefore, this case also is of no assistance in so far as the present controversy is concerned.

26. In the case of Menino Furtado v. State Bank of India 1999 (2) S.L.R. 148 it was held by the Bombay High Court that a person who has passed M.A. without passing B.A. as a higher qualification cannot be denied increment because he was not a graduate. Their Lordships held that it is too technical and the application was allowed. This case is distinguishable on its facts and is of no assistance to the Petitioners.

27. Hence the view taken by the Learned Single Judge in Bidhubhusan Ghosh v. State of West Bengal 1998 (1) C.L.J. 554 does not lay the correct law and is overruled likewise in other cases.

28. Now coming to the State's appeal which is admittedly barred by 341 days. The explanation which has been given for condonation of delay is nothing but sheer exhibition of the negligence. Therefore, we are satisfied that the explanation given for condonation of delay in filing the appeal does not justify condonation of the inordinate delay in this case. Therefore, the State's appeal stands dismissed but that would not make any difference because we have analyzed the whole controversy above and we are of the view that the judgment of Justice Chattopadhyay cannot be sustained and the same is set aside.

29. Hence, as a result of the above discussion we are of the opinion that the view taken by the Courts below are not correct and all the appeals filed by the Appellants are allowed except the State appeal being M.A.T. No. 3883 of 2001 and the order passed by the Learned Single Judge in M.A.T. No. 2733 of 1997 is set aside. Similarly M.A.T. No. 4285 of 2000; M.A.T. No. 58 of 2001 and M.A.T. No. 371 of 1999 are allowed and judgment of Learned Single Judge is set aside and the writ petitions are dismissed. The writ petition being W.P. No. 3931 (w) of 2001 is dismissed for reasons mentioned above. There will be no order as to costs.

Subhro Kamal Mukherjee, J.

30. I agree.