
(2018) 07 CAL CK 0036

In the Calcutta High Court

Case No : M.A.T. No. 972 of 2017, CAN 5754, 5753 of 2017

State Of West Bengal & Ors.

APPELLANT

Vs

Sabita Guha (Sarkar) & Ors.

RESPONDENT

Date of Decision : 06-07-2018

Acts Referred:

Limitation Act, 1963 — Section 5
Constitution of India 1950 — Article 226, 309

Citation : (2018) 07 CAL CK 0036

Hon'ble Judges : DEBASISH KAR GUPTA, J; SHAMPA SARKAR, J

Bench : Division Bench

Advocate : Pantu Deb Roy, Arindam Deb Roy, Robiul Islam

Final Decision : Disposed Of

Judgement

In Re: CAN 5754 of 2017

This is an application filed under Section 5 of the Limitation Act for condonation of delay of about 43 days in preferring this appeal. Having heard the

learned Advocate appearing on behalf of the respective parties as also considering the statements made in paragraphs 8 to 13 of the said application,

this Court is satisfied that sufficient reasons have been assigned for condoning the delay in preferring the above appeal. We are also of the opinion, for

ends of justice, the delay be condoned.

Accordingly, the application for condonation of delay stands allowed and delay stands condoned. The application for condonation of delay being CAN

5754 of 2017 is, thus, disposed of. There will be, however, no order as to costs.

In Re: CAN 5753 of 2017

This is an application filed in connection with the appeal preferred against the

judgment and order dated March 24, 2017 passed in the writ application with a direction as follows: "Therefore, I direct the Joint Secretary (FW) & Additional Mission Director (NHM) to take immediate step to approve the petitioner's engagement for the post of ASHA against any vacant post under Chakdah block without raising any objection regarding age bar within four weeks from the date of communication of this order. After approval, the Block Medical Officer of Health, Chakdah, Nadia, the respondent no.7 will take step for engagement of the petitioner to the said post of ASHA within one week thereafter. This order will not create any precedent in future. Let the written instruction handed up by Mr. Deb Roy be kept on record. With this direction, the writ petition is disposed of. No order as to cost. Urgent photostat certified copy of this order, if applied for, be furnished on priority basis."

Having heard the learned Advocate appearing on behalf of the respective parties as also after considering the facts and circumstances of this case,

we find that the respondent no.1 participated in a selection process for appointment to the post of Accredited Social Health Activist (hereinafter

referred to as "ASHA") Karmee under Silinda-1 Gram Panchayat, District "Nadia on the basis of a notice issued under Memo No.331/F-129

dated August 16, 2011. According to the above notice, the eligibility criteria for a candidate to participate in the above selection process was the age

limit from 30 years to 40 years for the candidates belonging to general category. The respondent no.1 intended to participate in the above selection

process under general category. She was over-aged.

In the above circumstances, the respondent no.1 filed an application under Article 226 of the Constitution of India in the matter of Sabita Guha

(Sarkar) Vs. "The State of West Bengal & Ors. (In Re: W.P. No.18686 (W) of 2010) for a direction upon the appellants to allow her to

participate in the above selection process condoning the age bar. The above writ application was disposed of by an order dated September 21, 2010

and the above order is quoted below:

"As all that the petitioner wants is to appear at the interview to be held for filling up to the post of ASHA, let the petitioner be permitted to

participate in the interview for the said post. The appointment will be solely on the satisfaction of the eligibility criteria, including the age relaxation,

which has been granted approval by the authorities concerned. With the aforesaid direction, this writ petition is disposed. As no affidavit-in-opposition has been filed, the allegation contained in the petition is not admitted. Urgent photostat copy of this order, if applied for, be given to the parties subject to compliance with all requisite formalities.â??

Thereafter, the respondent no.1 was allowed to participate in the above selected candidates, the respondent no.1 moved a further application under

Article 226 of the Constitution of India in the matter of Sabita Guha (Sarkar) â?"Vs. â?" The State of West Bengal & Ors. (In Re: W.P. No.15655

(W) of 2013). The above writ application was disposed of by an order dated January 7, 2014 and the same is quoted below:

â??It is submitted by the learned advocate for the petitioner during the course of hearing of the matter that the petitionerâ??s grievance has been

redressed to some extent by the concerned respondent authority which has forwarded his name as a selected ASHA Karmee to the appropriate State

authority. In such circumstances, this Court is of the view that no useful purpose will be served in keeping the writ petition pending, which is disposed

of with a direction upon the concerned State authority to take appropriate steps in the matter expeditiously, in accordance with law. The writ petition

stands disposed of accordingly.â??

Thereafter a panel of 340 successful candidates was prepared. According to the respondent no.1, her name appeared on top of the above panel in

respect of Sub-Centre concerned. Since the name of the respondent no.1 was not approved by the Appellate Authority, the third writ application in the

matter of Sabita Guha (Sarkar) â?"Vs. â?" The State of West Bengal & Ors. (In Re: W.P. No. 24220 (W) of 2014) was filed by her. The above writ

application was disposed of by an order dated March 24, 2017 and the operative portion of the above order is quoted below:

â??Therefore, I direct the Joint Secretary (FW) & Additional Mission Director (NHM) to take immediate step to approve the petitionerâ??s

engagement for the post of ASHA against any vacant post under Chakdah block without raising any objection regarding age bar within four weeks

from the date of communication of this order. After approval, the Block Medical Officer of Health, Chakdah, Nadia, the respondent no.7 will take step

for engagement of the petitioner to the said post of ASHA within one week

thereafter. This order will not create any precedent in future. Let the written instruction handed up by Mr. Deb Roy be kept on record. With this direction, the writ petition is disposed of. No order as to cost. Urgent photostat certified copy of this order, if applied for, be furnished on priority basis.â??

The above order is impugned to this appeal. Having heard the learned Advocate appearing on behalf of the respective parties as also after considering

the facts and circumstances of this case, we find that the subject matter for consideration of the learned Single Judge was that whether the

respondent no.1 could be appointed in respect of the vacant post concerned condoning the age bar because the respondent no.1 was more than 40

years of age at the material point of time. After considering the judgment impugned to this appeal, we find that the learned Single Judge directed the

Appellate Authority to take immediate steps to approve engagement of the respondent no.1 for the post concerned condoning the age bar, no reason is

assigned in the judgment impugned to this appeal for giving such direction upon the Appellate Authority for condonation of age bar.

No material is produced before us by the learned Advocate appearing on behalf of the respondent no.1 to show that there was a provision for

relaxation of upper age limit for engagement in the post of ASHA. It is settled principles of law that the Recruitment Rules and/or eligibility criteria for

selection process are to be followed strictly and not in breach. Reference may be made to the decision of Dr. M.A. Haque & Ors Versus Union of

India & Ors., reported in 1993 (2) SCC page 219 and the relevant portion of the above decision is quoted below:

â??We are also conscious of the fact that candidates in service have a disadvantage as against the fresh candidates in the tests particularly when

they face the tests after a long lapse of time. As against this, however, we cannot lose sight of the fact that the recruitment rules made under Article

309 of the Constitution have to be followed strictly and not in breachâ??

The above principles of law was repeated and reiterated by the Honâ??ble Supreme Court of India in the matter of Arundhati A. Pargaonkar Vs.

State of Maharashtra reported in AIR 1995 SC 962, the same ratio is applicable in this case with its all rigors so far as the point of law is concerned

and the relevant portion of the above decision is quoted below :-

6. Since the Government has been treating the class II on post in purview of Public Service Commission and these posts were not included in the

notification issued on 8th October 1965 by the State Government the Tribunal did not commit any error in recording the finding that the post of

Lecturer in Dentistry in the State of Maharashtra even in 1978 was within purview of the Public Service Commission. Even otherwise the 'temporary

Government Services Regularisation Rules issued by the Government in 1975 should not be held, in the larger interest, to be applicable to those cases

Where the post specially class on service is in purview of the public Service Commission. In Dr. M.A. Haque v. Union of India, (1993) 2 sec 213

(219) it was observed by this Court:

..... we cannot lose sight of the fact that the recruitment rules made under Article 309 of the Constitution have to be followed strictly and not in

breach. If a disregard of the rules and the by passing of the Public Service Commissions are permitted, it will open a back-door for illegal recruitment

without limit. The fact this Court has, of late, been witnessing a constant violation of the recruitment rules and a scant respect for the constitutional

provisions requiring recruitment to the services through the Public service commission. It appears that since this Court has in some cases permitted

regularization of the irregularly recruited employees, some Governments and authorities have been increasingly resorting to irregular recruitments. The

result has been that the recruitment rules and the public Service Commissions have been kept in cold storage and candidate dictated by various

considerations are being recruited as a matter of course.

The claim of the appellant therefore, that she stood regularised under 1975 Resolution can not be accepted. In view of the above settled principles of

law, we are of the opinion that there was no scope for the appellants to approve engagement of the respondent no.1 in the post of ASHA relaxing the

upper age limit prescribed for the above post. Therefore, the judgment impugned to this appeal cannot be sustained in law.

In Re: M.A.T. No. 972 of 2017

Since no other point remains to be decided in this appeal, this appeal is treated as on day's list and the same stands allowed quashing and setting

aside the order impugned to this appeal. In view of disposal of the appeal itself, the connection application being CAN 5753 of 2017 is also disposed

of. There will be, however, no order as to costs. Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.