

(2012) 09 CAL CK 0124

In the Calcutta High Court

Case No : W.P.S.T. No. 2019 of 2008 with W.P.S.T. 1123 of 2008; W.P.S.T. 2005 of 2008; W.P.S.T. 1042 of 2008; W.P.S.T. 107 of 2012 ; W.P.S.T. 25 of 2012; W.P.S.T. 263 of 2008; W.P.S.T. 696 of 2008; W.P.S.T. 699 of 2008; W.P.S.T. 702 of 2008; W.P.S.T. 909 of 2008; W

Surajit Das

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 06-09-2012

Acts Referred:

Constitution of India, 1950 — Article 141, 309

Citation : (2013) 1 CHN 294

Hon'ble Judges : Nishita Mhatre, J;Anindita Roy Saraswati, J

Bench : Division Bench

Advocate : Saptangshu Basu and Somnath Roychowdhury in W.P.S.T. 2019 of 2008, Tapbrata Chakraborty and Sufi Kamal in W.P.S.T. Nos. 1123 and 909 of 2008, Kishore Dutta and Supriyo Chattopadhyay in WPST Nos. 696, 699, 909, 702, 954, 952 and 951 of 2008, WPST Nos. 201-206 of 2012, WPST Nos. 236-238, 250-251, 268-272 and 282-284 of 2012, D.N. Ray and S.N. Ray in WPST Nos. 1042 and 2005 of 2008, Shibaji Kumar Das in WPST Nos. 107, 37, 217 and 231 of 2012, Bikash Goswami and Amar Kumar Sinha in WPST No. 518 of 2010 and Supriyo Chattopadhyay in WPST No. 307 of 2012, for the Appellant;Ashoke Banerjee, Learned Govt. Pleader, Subrata Talukdar and Abdul Momen in all the matters, Abdul Momen in all the matters, except and Jawarlal De and Shyamal De in WPST No. 25 of 2012 and Jawarlal De and Shyamal De in WPST No. 25 of 2012, for the Respondent

Final Decision : Allowed

Judgement

1. This bunch of petitions arises from the order passed by the West Bengal Administrative Tribunal on 11th July, 2006. It is a common order passed in about 538 original applications. By the impugned order all the applications were dismissed by the Tribunal. Before we proceed further, we must note that some of the applicants, who were aggrieved by the order which is impugned in the present petitions, had filed writ petitions before this Court. Those writ petitions

were decided by a Division Bench of this Court (K.J. Sengupta and Mrinal Kanti Sinha, JJ) on December 5, 2007. The Division Bench allowed some petitions while dismissing others on the issue of limitation. Both the State of West Bengal and the aggrieved petitioners approached the Supreme Court by preferring special leave petitions. The Supreme Court has dismissed those special leave petitions as it found no merit in them. Review petitions were preferred before the Supreme Court, which were also dismissed.

2. The question of law which has arisen before us is whether the Commissioner of Police, Calcutta could by a notification introduce certain tests for the purpose of short-listing candidates for recruitment to the Calcutta Police. (We are using the nomenclature Calcutta instead of Kolkata as the city had not been renamed at the relevant point of time.)

3. Recruitment for the Calcutta Police was based on rules which were framed initially in 1962. Those rules were framed in consonance with the Calcutta Police Act, 1866 and the Calcutta Suburban Police Act, 1866 and were named as Calcutta and Suburban Police (Subordinate Ranks Recruitment, Conditions of Service and Discipline) Rules, 1962 (in short Rules of 1962). In exercise of the powers conferred under the aforesaid Acts the Governor amended the schedule to the Rules of 1962 on 3rd June, 1967. By the amendment, special powers were vested in the Commissioner of Police to relax the physical measurements required by candidates to be appointed in the constabulary of the Calcutta Police. The Police Regulations of Calcutta were framed in 1968 (for short the PRC) The Rules of 1962 as amended in 1967 were incorporated in these regulations. Under these regulations, persons were to be recruited to the post of "Constable" by direct selection. The necessary qualifications for the candidates for the post of Constables and Sepoys was that (1) they should be strong and healthy young men aged between 18 and 25 years; (2) they were preferably able to read and write in the vernacular and (3) they had the minimum measurements with respect to the height, chest and weight as stipulated, depending on the class of the applicants and the tribe to which they belonged. The Commissioner was conferred the power to relax the physical standard with respect to the height and chest measurements in exceptional circumstances, for special reasons to be recorded in writing.

4. The Commissioner of Police, Calcutta issued a notification on 4th July, 1994 which was published in the Calcutta Police Gazette, stipulating that in order to test the health and strength of the candidates for the post of constable a physical efficiency test should be held. This test consisted of a sprint of 100 metres, a run of 800 meters and a long jump for which the time and the distance, respectively were stipulated. Besides this, it was directed that an interview of 100 marks should be held with 50 marks being allotted for reading and writing in the vernacular and in English and 50 marks for general knowledge and current affairs.

5. All the petitioners contend that the introduction of the physical efficiency test and the interview is illegal and in breach of the PRC. They contend that the

Commissioner of Police had no power to amend the rules of recruitment which had been framed under Article 309 of the Constitution of India and in consonance with the acts governing the Calcutta Police. On the other hand, it is the contention of the State Government that introduction of these tests was only with a view to short-list the candidates as thousands apply for the post of constable. According to the State by the incorporation of the aforesaid criteria all possible nepotism, favouritism and mal practices during the recruitment process would be eliminated.

6. The petitioners had applied for recruitment as Constables in the Calcutta Police in the various recruitment drives which have been undertaken from 1990 till 2003. Since they had all been rejected, having either failed in the physical efficiency test, the interview or the requisite physical measurements, they approached the West Bengal Administrative Tribunal by preferring original applications. The Tribunal has dismissed those applications on two counts, namely, (i) the applications were barred by limitation, and (ii) the introduction of tests for the purpose of short-listing of candidates was not illegal in view of the various provisions of the aforesaid Acts and the power conferred on the Commissioner of Police, Calcutta.

7. We have been informed that several other candidates, who were aggrieved by the method of recruitment adopted by the State Government on the introduction of the physical efficiency test and an interview, have challenged the mode of recruitment before the Tribunal. Many applications have been dismissed by the Tribunal while others were allowed. Several writ petitions were filed by the aggrieved parties which have already been decided by this Court.

8. The first case which came up before the Division Bench of this Court for consideration of the powers vested in the Police Commissioner was W.P.S.T. No. 352 of 1999 in the case of State of West Bengal and others vs. Yasin Molla and others. In this case, the question whether the Commissioner of Police, Calcutta had the power to issue any directions and his order dated 4th July, 1994 were scrutinised by the Court. The Division Bench upheld the view of the Tribunal and concluded that the order issued on 4th July, 1994 by the Commissioner of Police, Calcutta could not by any stretch of imagination be said to be an administrative or executive instruction which could be relied on in certain situations to fill in any "gap or vacuum" in the recruitment rules. The Court accepted the view taken by the Tribunal that any amendment to the PRC, 1968 could only be made by the Governor in exercise of the powers conferred upon him under the proviso to Article 309 of the Constitution of India. The Court, therefore, held that the recruitment based on the order of the Commissioner of Police dated 4th July, 1994 was illegal. This judgment was challenged by the State before the Apex Court by preferring a special leave petition, which was dismissed on 19th January, 2004.

9. Thereafter in another petition being W.P.S.T. No. 841 of 2003 in the case of Md. Abdur Rahim Sardar vs. State of West Bengal & others the selection process

for the post of Constable which again was based on the order of the Commissioner of Police on 4th July, 1994 was challenged. The Division Bench dismissed the petition of the candidate by concluding that the petitioner in that case, having failed to prove his merit in reading and writing in the vernacular, was not entitled to the relief claimed by him. The Division Bench held that short-listing of candidates was permissible and, therefore, dismissed the contention of the petitioner that he was wrongly excluded from the recruitment process. This decision was rendered on 6th April, 2004 and is apparently in conflict with the judgment of the Division Bench in the case of Yasin Molla. However, we have already noted that the decision in Yasin Molla's case (supra) was tested before the Supreme Court and by an order dated 19th January, 2004, the decision of the Division Bench confirming the judgment of the Tribunal, was upheld.

10. There were various other petitions, as we have already noted, which came up for consideration before the Division Bench of this Court in which the same judgment as the one before us was challenged. The judgement of the Division Bench has been reported in the case of Badiuzzaman vs. State of West Bengal & others (2008) 2 WBLR (Cal) 89. The Division Bench has considered the case of Abdur Rahim Sardar Vs. State and Others, . After analysing the judgments in Yasin Molla's case and Md. Abdur Rahim Sardar's case, the Division Bench has accepted the view taken in Yasin Molla's case especially since the Supreme Court had confirmed the judgement.

11. In the case of Badiuzzaman vs. State of West Bengal & others, the Division Bench has concluded that the Commissioner of Police, Calcutta was not conferred with any power to change the mode of recruitment and, therefore, the notification dated 4th July, 1994 was ultra vires. The Court observed that the Commissioner of Police had no power to issue a notification in view of the amendment of the provisions of the Calcutta Police Act. It was held that it is only the State Government which is empowered to amend or change the recruitment rules and since the Commissioner of Police cannot be considered to be the State Government, the notification of 4th July, 1994 was bad in law.

12. Mr. Banerjee, the learned Government Pleader and Mr. Talukdar, for the State in all these petitions submit that several Division Benches of this Court have accepted the introduction of the physical efficiency test and the interview for short-listing the candidates for recruitment to the post of Constable, and therefore, it would be appropriate for us to refer the issue before a larger bench. They urge that this would be in consonance with judicial propriety and discipline as there are conflicting views expressed by various Division Benches with respect to the introduction of the physical efficiency test and the interview in the process of recruitment of Constables for the Calcutta Police. The learned counsel, by relying on the judgment of the Supreme Court in the case of Rajasthan Public Service Commission and Another Vs. Harish Kumar Purohit and Others, , are at pains to point out that this would be the only course open for us to adopt.

13. Ordinarily, that would be the path to follow as there are apparently

conflicting judgments on the issue. However, a close scrutiny of these judgments would reveal that except in the cases of Yasin Molla (supra) and Badiuzzaman (supra), the Division Benches have not examined the power of the Commissioner of Police to issue the notification of 4th July, 1994. The Division Benches have proceeded on the footing that such a power was validly vested in the Commissioner of Police and that it had been properly exercised. The Division Benches have only considered whether the introduction of the efficiency test and interview was in any way illegal. The view taken by these Division Benches is that introduction of such tests cannot be faulted if it is only for the purpose of short-listing of candidates. They have held that since all the candidates who were similarly situated were subjected to these tests, they could have no grievance. Furthermore, it has been held that the candidates having participated in the selection process they could not challenge the same, after failing in the efficiency test and interview.

14. In the present case it would not be possible for us to accept the view which is contrary to the decisions in the cases of Yasin Molla (supra) and Badiuzzaman (supra). This is because in the case of Badiuzzaman (supra) the judgment of the Tribunal which was under scrutiny before the Division Bench was the same as is challenged before us in these petitions. When one Division Bench has already held that the judgment impugned before us was bad and that the introduction of the tests by issuance of a notification by the Commissioner of Police violated the provisions of the Calcutta Police Act and the PRC of 1968, it is not possible for us to take a different view. We would have to act in consonance with the judicial propriety and discipline. Once one Division Bench has taken a particular view about a judgment of the Tribunal which is a common judgment in respect of several applicants, we cannot take a different view. It is trite that persons similarly situated must be treated equally. We are, therefore, bound by the view taken by the Division Bench in the Badiuzzaman's case (supra). Furthermore, both the cases of Yasin Molla and Badiuzzaman were subjected to scrutiny by the Supreme Court. The Supreme Court dismissed the special leave petitions in limini. However, in Badiuzzaman's case the order reads as follows:

Heard learned counsel for the parties.

We find no merit in all the special leave petitions and they are dismissed accordingly.

15. The review petition met with the same fate. Therefore, in our opinion, it is not possible for us to take any other view but the one taken by the Division Bench in Badiuzzaman's case (supra).

16. It has been submitted by the counsel for the State that dismissal of the special leave petitions in Yasin Molla's case and Badiuzzaman's case cannot act as a binding precedent as they were dismissed in limini. Reliance has been placed on the judgment in the case of Ajit Kumar Rath Vs. State of Orissa and Others, , State of Manipur Vs. Thingujam Brojen Meetei, and Government of

India Vs. Workmen of State Trading Corporation and Others,

17. The view taken by the Supreme Court in these decisions is that when it passes a non-speaking order, dismissing a special leave petition, it would not be a binding precedent. The Court has also held that a non-speaking order which does not set out the facts and circumstances in which the order was passed or the reasons for the conclusions or directions, cannot be treated as a binding precedent. It has been held that the effect of a non-speaking order of dismissal, without anything more, would only mean that the Court had decided that it was not a fit case where special leave to appeal should be granted. Such an order would not constitute law laid down by the Supreme Court for the purposes of Article 141 of the Constitution of India.

18. It has been argued by the learned counsel for the petitioners that since the words used in the order of the Supreme Court while dismissing the special leave petitions in Badiuzzaman's case are "there is no merit", it would amount to a decision of the Supreme Court on considering the merit of the petitioner's case and would, therefore, be a binding precedent. According to them, the order merges with that of the Supreme Court. Reliance has been placed on the judgment of the Supreme Court in the case of Kunhayammed and Others Vs. State of Kerala and Another, . In this case, the Supreme Court has observed that once leave to appeal has been granted and the appellate jurisdiction of the Supreme Court has been invoked, the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation. An order refusing special leave to appeal could be a non-speaking order or a speaking one, observed the Supreme Court. In either case it does not attract the doctrine of merger.

19. In the case of K. Rajamouli Vs. A.V.K.N. Swamy, , following the decision of the Supreme Court in the case of Kunhayammed's case the Court observed as follows:

Following the decision in the case of Kunhayammed and Others Vs. State of Kerala and Another,) we are of the view that the dismissal of the SLP against the main judgment of the High Court would not constitute res judicata when a SLP is filed against the order passed in the Review Petition provided the review petition was filed prior to filing of SLP against the main judgment of the High Court. The position would be different where after dismissal of the SLP against the main judgment a party files a review petition after a long delay on the ground that the party was prosecuting remedy by way of special leave petition. In such a situation of filing of review would be as abuse of the process of the law. We are in agreement with the view taken in Abbai Maligai Partnership Firm and Another Vs. K. Santhakumaran and Others, that if High Court allows the review petition filed after the SLP was dismissed after condoning the delay, it would be treated as affront to the order of the Supreme Court. But this is not the case here. In the present case, review petition was filed well within time and since the review petition was not being decided by the High Court the appellant filed the SLP

against the main judgment of the High Court. We therefore, over-rule the preliminary objection of the counsel for the respondent and hold that this appeal arising out of SLP is maintainable.

20. It is true that the special leave petitions arising out of the judgments of this Court in the case of Yasin Molla's case and Badiuzzaman's case have been dismissed in limini. The orders of the Supreme Court in both these cases may not act as binding precedent. The doctrine of merger would not be applicable. However, we are bound by the decision of the Division Bench in Badiuzzaman's case as it relates to the very judgment which has been impugned in the present petitions.

21. It may be permissible to short-list candidates by introduction of tests as held by the Supreme Court in the case of Hoshiar Singh Vs. State of Haryana and Others, . However, such tests would have to be introduced in consonance with the provisions of law, including the recruitment rules. The physical efficiency test and the interview have been introduced for recruitment by the Commissioner of Police by exercising powers which are beyond those conferred on him under the Police Acts and the PRC. Therefore, it is not possible to accept the submission of the learned Counsel appearing for the State that these tests are valid and that they are only an aid to streamline the recruitment process.

22. The next issue which we have to consider is whether all the petitions can be allowed. Learned counsel for the State points out that all the applications were dismissed by the Tribunal as they had been filed after the period of limitation prescribed under the Administrative Tribunals Act. That period is one year from the date of the order impugned before the Tribunal or six months after a representation made to the authorities has been rejected. Learned counsel for the State relies on the judgment in the case of Chairman, U.P. Jal Nigam and Another Vs. Jaswant Singh and Another, , to submit that the petitioners must be denied relief when they had failed to approach the Tribunal within the prescribed period of limitation. The Apex Court has observed that if relief is sought, the claimants must approach the Court immediately. It has held that when a person is not vigilant about his rights and acquiesces with the situation, the person's writ petition cannot be heard after the delay on the ground that the same relief should be granted as was granted to persons similarly situated, who were vigilant about their rights.

23. On the other hand, it has been argued by the learned counsel for the petitioners that the State should not be permitted to take a technical advantage of a wrong committed by it and the delay in filing the original applications should not be a bar to granting equitable relief to the petitioners. Reliance has been placed on the judgment in the case of Union of India (UOI) and Others Vs. Shantiranjana Sarkar, . The Supreme Court has observed that the Union of India as a benevolent litigant cannot be permitted to take the advantage of its own wrong.

24. We have noticed that the Division Bench while deciding the case of Badiuzzaman (supra) and other connected matters has condoned the delay in filing applications before the Tribunal where the delay was of two years. No relief has been granted where the applicant approached the Tribunal two years after the Selections were held. The Supreme Court has approved of this approach of the Division Bench. We will have to examine whether each petitioner before us is entitled to relief by considering every petition separately. We have been greatly assisted by the charts prepared by the learned Counsel for the State Government indicating the reasons for rejecting each candidate as also the anomalies in some petitions:

W.P.S.T. 2019/08

The petitioner preferred the Original Application before the Tribunal in the year 2004 that is almost two years after he had failed in the selection for the post of Police Constable. Although, there is a delay beyond the period prescribed in the Administrative Tribunal Act in filing the application before the Tribunal the same standards which were applied by the Division Bench in Badiuzzaman's case for condoning the delay will have to be made applicable to the petitioner. In that case the delay of two years had been condoned by this Court and the judgement has been upheld by the Supreme Court.

In the present case, therefore, the Tribunal was not right in dismissing the application both on the ground of delay and on merits. Apart from this we have noticed that although the decision of the Tribunal is dated 11th July 2006 the petitioner has approached this Court on almost one and a half years later, on 15th December 2008. An explanation has been given by petitioner for approaching this Court belatedly. We are satisfied that it was because of the impecunious circumstances of the petitioner that he was unable to approach this Court earlier.

In these Circumstances the petition is allowed.

W.P.S.T. 1123/2008

All the petitioners in this petition have failed either the interview or the physical efficiency test held for recruitment as constables with the Calcutta Police. They approached the Tribunal in less than two years of the declaration of results of the selection. Therefore, applying the test laid down in Badiuzzaman's case, it cannot be said that there was any delay in approaching the Tribunal. There is no doubt that the petitioners approached this Court two years after the judgement rendered by the Tribunal. An explanation has been given by the petitioners for the delay in approaching this Court. The reasons mentioned by the petitioners are sufficient and acceptable. The petitioners are over the age of 35 years; in fact petitioner No. 1 is 41 years today.

Therefore, the petition is allowed. However, considering the age of P1 we are of the view that the interest of justice would be subserved by directing the State to

pay him compensation of Rs. 1,00,000/- (Rupees One lakh only) instead of issuing him an appointment letter.

W.P.S.T. 2005/2008

This petition arises from the order passed in O.A. No. 1399 of 2003. The Original Application has been dismissed by the Tribunal in terms of the order passed on 11th July 2006 in T.A. No. 119 of 2000 and other connected matters.

The writ petitioner appeared for the selection on 23rd August 2003 for recruitment to the Calcutta police as a Constable. He failed in the interview and therefore filed the Original Application immediately thereafter. There is no delay in preferring the same. The order impugned in the present petition had been passed on 6th February 2007 and the writ petition has been filed on 11th July 2008.

Considering our aforementioned view on the issues raised in the petition, it is allowed. The petitioner should be absorbed in service as a constable by issuing him an appointment order. The Writ Petition is disposed of accordingly.

W.P.S.T. 951/2008, 952/2008 & 1042/12

The petitioners in these petitions approached the Tribunal as they were denied the selection to the post of Police Constable. They appeared for the examination held in the year 2003. Two of the petitioners failed the interview while one failed the physical efficiency test. They approached the Tribunal within the period of limitation. However, the application was dismissed on the question of law involved. We have already decided that the introduction of the interview and the physical efficiency test was bad in law and, therefore, in our opinion, the petitioners in all these petitions are entitled to the relief claimed by them.

The petitions are allowed.

W.P.S.T. 107/2012

The Petitioner No. 1 had approached the Tribunal six years and one month after he failed in the selection held on 29 August 1997. In our opinion the Tribunal has rightly dismissed the application, as there was no acceptable reason for the delay in approaching the Tribunal. We have perused the copy of the application filed before the Tribunal and we are convinced that the Tribunal was right in dismissing the same. It appears from the conduct of the petitioner No. 1 that he was a fence sitter and waited till the Court passed an order in favour of those who had challenged the authority of the Police Commissioner well in time. Even while approaching this Court against the judgement of the Tribunal the petitioner No. 1 had displayed a lackadaisical attitude. No explanation has been furnished in the petition as to why the petition has been filed in 2012 against an order which was passed in 2006.

Petitioner Nos. 2 and 3 have filed their applications before the Tribunal eight months and three months respectively after they failed in the selection. Applying

the criteria laid down in Badiuzzaman's case (supra) the delay in approaching the Tribunal is condoned. However, there is no explanation in the writ petition as to why they were unable to approach this Court immediately after the impugned order passed by the Tribunal. They have approached this Court six years after the impugned order was passed.

In these circumstances the petition is dismissed.

W.P.S.T. 238/12, 699/08, 702/08, 25/12, 37/10, 250/12, 251/12, 217/12, 237/12, 269/12 & 283/12

The Petitioners in all these petitions filed applications before the Tribunal as they had not received any appointment order after appearing for the selections for recruitment as police constables. Each of them has failed either in the interview or in the physical efficiency test. However, their applications were filed well beyond the prescribed period of limitation. Some of the petitioners have not annexed the original applications to the petition and hence it is difficult for us to ascertain the reasons for the delay in approaching the Tribunal. Therefore, applying the criteria mentioned in Badiuzzaman's case (supra) the relief claimed by the petitioners cannot be granted. Apart from this some of the petitioners have approached this Court six years after the impugned order was passed by the Tribunal. The petitioners are thus guilty of delay and laches and hence the petitions are dismissed.

W.P.S.T. 909/2008

The application was filed on 4th August 2004 before the Tribunal. The petitioner has approached the Tribunal within two years of the selections. He failed in the selections, which were conducted on 10th August 2002, as he was unsuccessful in the interview. By applying the test in the case of Badiuzzaman's case the delay is condoned. The writ petition has been filed within two years of the impugned order being passed by the Tribunal. The petitioner is about 33 years of age today. In the circumstance of this case we deem it proper to grant relief to the petitioner and the petition is allowed.

W.P.S.T. 954/2008

The petitioner had filed the application before the Tribunal on 18th April 2004 against his failure in the selection held on 21st February 2003. Thus there was a delay of two months in approaching the Tribunal. In our opinion the Tribunal ought to have condoned this delay for the reasons mentioned in application. The petitioner was unsuccessful because he had failed in the interview. In these circumstances the petition is allowed.

W.P.S.T. 128/2010

In this case the Tribunal has found that the petitioner has approached it for relief, belatedly and, therefore, has rejected the application on merits as well as on the question of limitation.

We have perused the application and we find that it was been filed a few months after the prescribed period of limitation. By applying the same standards for condoning the delay laid down in Badiuzzaman's case (supra), the petition is allowed. The petitioner was unsuccessful in the selection because he had failed in the interview. Although it appears that there is a delay in filing the present petition against the impugned order, the Tribunal which were passed on 11th July 2006 we deem it proper to condone the delay and laches.

The petition is thus allowed.

W.P.S.T. 201/2012

The delay in approaching the Tribunal after the petitioner failed the interview conducted on 10th March 2003 is condoned. In our opinion the Tribunal ought to have condoned the delay as it was only of 8 days and allowed the application filed by the petitioner. We have noticed that the impugned order is of 2006 whereas the present petition has been filed in 2012. An explanation has been given in the petition for the delay and laches. It appears that the petitioner has approached this Court only after the decision of the Supreme Court in the Special Leave Petitions filed against the judgement of this Court in the case of Badiuzzaman (supra). In these circumstances we deem it proper to grant relief to the petitioner who is approximately 32 years old today. The writ petition is accordingly allowed.

W.P.S.T. 202/2012

The petitioners had appeared for the selections conducted in May 1999. They failed in the interview. They filed a common application before the Tribunal being Original Application No. 632 of 2004. The application was filed after a delay of two years and 11 months. Applying the criteria laid down in Badiuzzaman's case (supra), the delay cannot be condoned. The petitioners have approached this Court six years after the impugned order was passed by the Tribunal. The explanation given in the petition is that they had engaged an advocate who subsequently stopped practising and, therefore, they had no information about the Tribunal's decision. All the petitioners visited Kolkata when they realised that the Tribunal had passed the impugned order and, therefore, they moved this Court in 2012. This explanation for the delay in filing the petition is unsatisfactory and in our opinion cannot be accepted. Apart from this, the petitioners have all crossed the age of 35 years, and, therefore the writ petition is dismissed.

W.P.S.T. 203/12

The delay in approaching the Tribunal is of eight months. However, applying the criteria laid down in Badiuzzaman's case (supra), the delay is condoned. The petitioners failed in the interview held during the selections conducted in September 2002. They were aware that the Tribunal had passed the impugned order in the year 2006. The explanation that the petitioners have given in the

petition for the delay in approaching this Court is that they reside in a remote area and that the advocate, who they had engaged, stopped practising while leaving them with an impression that the applications were still pending before the Tribunal. We are not satisfied with this explanation given in the petition as it appears that it is reproduced verbatim from WPST 202/2012.

The Petition is, therefore, dismissed.

W.P.S.T. 204/2012

This petition has been preferred by a person who was not successful at the interview held on 19th May 1995 for recruitment as a Police Constable. He preferred O.A. 853 of 2004 before the Tribunal seven years and eight months after the prescribed period of limitation. The Tribunal has dismissed his application both on the ground of delay and on merits. We have already dealt with the decision of the Tribunal in respect of the merits as to whether the Commissioner of Police had the power to introduce new test for recruitment to the post of Constable in the Calcutta Police. However, we see no reason to interfere with the order of the Tribunal as the petitioner had filed this application seven years and eight months belatedly. Moreover, this writ petition has also been filed six years after the decision of the Tribunal.

This petition is, therefore, dismissed.

W.P.S.T. 205/2012

The petitioners filed their applications before the Tribunal three years and eleven months after failing in the physical efficiency test held in the year 1999 for the reasons stated in the case of Badiuzzaman (*supra*) the delay cannot be condoned. Moreover, the petitioners have approached this Court six years after the award passed by the Tribunal. It appears that the same explanation that has been pleaded in WPST 202 of 2012 is given as a reason for the delay in filing this writ petition. The explanation is unacceptable.

This petition is dismissed.

W.P.S.T. 206/2012

The petitioner No. 3 did not possess the requisite physical measurements and, therefore, he was failed in the examination conducted on 23rd September 2002. We do not find any reason to interfere with the judgement of the Tribunal as the required physical measurements were prescribed in the recruitment rules prior to the notification of 4th July 1994. Hence the petition as regards petitioner No. 3 is dismissed. All the other petitioners have failed in the endurance test. The delay in approaching the Tribunal against the Selection conducted in September 2002 is of seven months. By applying the criteria laid down in Badiuzzaman's case (*supra*) this delay can be condoned.

However, we have noticed that the petitioners have approached this Court after six years from the date of the decision of the Tribunal. The only explanation

which has been given by the petitioners for the delay is the same as the explanation given by the petitioners in the writ petition No. 203/12. In fact it is a verbatim reproduction of para 14(a) of that petition. We do not find this explanation satisfactory. Moreover all the petitioners except petitioner No. 4 & 6 are over age of 35 years.

In these circumstances the petition is dismissed.

W.P.S.T. 282/2012

This Writ Petition had been filed by three persons. Two of the petitioners had filed Original Application No. 499 of 2004. Petitioner No. 3, Gautam Mondal claims that he had filed Original Application No. 336 of 2004. The petitioner Nos. 1 and 2 have approached the Tribunal three years and seven months after selection was held in July 1999. No details could be found in respect of Gautam Mondal i.e. petitioner No. 3 as the call letter received by him has not been annexed to the Writ Petition. Moreover, the Original Application filed by him has also not been annexed to the petition.

The petitioners had approached the Tribunal belatedly, Petitioner No. 1 is 40 years old while petitioner No. 2 is 39 years old. The petitioners have approached this Court six years after the impugned order was passed by the Tribunal. No explanation for the delay has been stated in the petition. In these circumstances the petition is dismissed.

W.P.S.T. 206/2012

The petitioner No. 3 did not possess the requisite physical measurements and, therefore, he was failed in the examination conducted on 23rd September 2002. We do not find any reason to interfere with the judgement of the Tribunal as the required physical measurements were prescribed in the recruitment rules prior to the notification of 4th July 1994. Hence the petition as regards petitioner No. 3 is dismissed. All the other petitioners have failed in the physical efficiency test. The delay in approaching the Tribunal against the Selection conducted in September 2002 is of seven months. By applying the criteria laid down in Badiuzzaman's case (supra) this delay can be condoned.

However, we have noticed that the petitioners have approached this Court after six years after the date of the decision of the Tribunal. The only explanation which has been given by the petitioners for the delay is the same as the explanation given by the petitioners in the writ petition No. 203/12. In fact it is a verbatim reproduction of para 14(a) of that petition. We do not find this explanation satisfactory. Moreover all the petitioners except petitioner No. 4 & 6 are over the age of 35 years.

In these circumstances the petition is dismissed.

W.P.S.T. 231/2012

The petitioner had failed in the interview held in the year 1999 for recruitment to

the post of constable. He approached the Tribunal six years after the prescribed period of limitation. In our opinion, therefore, the Tribunal had rightly dismissed his application on the ground of delay. His approach to this Court by preferring the writ petition is also after six years from the impugned order dated 11th July 2006. No satisfactory explanation has been put forth by the petitioner for this delay. In these circumstances the writ petition is dismissed as no relief can be granted to the petitioner who is guilty of delay and laches.

W.P.S.T. 236/2012

All the petitioners except Petitioner No. 1 that is Md. Riajuddin, son of Md. Ayub have failed the recruitment because they did not have the required physical measurements. Therefore, in our opinion the Tribunal has rightly dismissed their application and no relief can be given to these petitioners.

As regards petitioner No. 1 he has been denied recruitment on the basis of the physical efficiency test held on 16th December 1993. A writ petition was filed by the petitioner seeking relief in respect of recruitment to the post of constable, on 17th January 1994. The matter was subsequently transferred to the Administrative Tribunal and numbered as T.A. No. 705 of 1996. Thus, there is no delay in approaching the Tribunal. As regards the filing of the present writ petition we find that there is a delay of six years. However, an explanation has been submitted by the petitioner to the effect that he has approached the Court after the decision of the Supreme Court in respect of the case of Badiuzzaman (supra). The Petitioner No. 1 is 42 years of age. We do not think it proper to direct the State to appoint him as a Constable at this late age. However he was excluded from the recruitment process due to no fault of his and with the passage of time he is unsuitable for being appointed as a Constable. In our considered view, therefore, the ends of justice would be met by directing the State to pay compensation quantified at Rs. 1,00,00/- (Rupees One Lakh) to him. The Petition is allowed accordingly in respect of Petitioner No. 1 alone while it is dismissed in the case of the other petitioners.

W.P.S.T. 237/12

Petitioner No. 1 was a candidate for the selections held on 19th October 1995. He failed in the physical efficiency test. He approached the Tribunal 7 years and nine months after failing in the selection. This is an inordinate delay, which is unexplained by the petitioner No. 1. We see no reason to condone this delay.

Petitioner No. 2 failed in the physical efficiency test conducted on 4th September 2002. He approached the Tribunal after a delay of one year. Considering the decision in the case of Badiuzzaman's case this delay can be condoned. However, the only explanation given by him for approaching this Court after six years from the impugned order is same as the explanation given the WPST No. 203/2012.

The Petition is, therefore, dismissed.

W.P.S.T. 268/2012

The petitioners failed in the interview conducted in July 2002 for recruiting them as Police Constables with the Calcutta Police. They filed their applications before the Tribunal eight months after the prescribed period of limitation. Applying the test mentioned in Badiuzzaman's case the delay in filing the application before the Tribunal is condoned. However, no plausible explanation has been given by the petitioners for filing the petition six years after their decision of the Tribunal. The explanation is the same as is given in WPST No. 203/12 and therefore, the petition is dismissed.

W.P.S.T. 269/2008

The petitioner failed in the interview held on 26 September 2002 for recruitment in the Calcutta Police. He preferred O.A. No. 1423 of 2004 which has been disposed of by the common order passed on 11th July 2006 by the Tribunal. The petitioner approached the Tribunal ten months after the prescribed period of limitation. Applying the test in Badiuzzaman's case the delay is condoned. The petitioner has approached this Court about a year and a half after the order of the Tribunal. Considering the pleadings on record we find that this delay must be condoned. The petitioner is, therefore, entitled to the relief claimed in the writ petition.

The Writ petition is allowed.

W.P.S.T. 270/12

The petitioners failed in the physical efficiency test conducted in September 2002. They filed the application before the Tribunal about eight months after the prescribed period of limitation. Applying the test in Badiuzzaman's case the delay in preferring the application is condoned. The petition has however been filed six years after the decision of the Tribunal. The only explanation for the delay is the same as is given in the WPST 203/2012. This explanation is unacceptable as there are no details. Moreover the petitioners are now 38 and 37 years of age.

The Petition is, therefore, dismissed.

W.P.S.T. 271/12

The petition has been filed in respect of the order passed in O. A. No. 852 of 2004 by the West Bengal Administrative Tribunal on 11th July 2006. It appears that the petitioner has contended that he received a call letter in the month of September 2002 from the concerned Employment Exchange directing him to appear for the selections to be held between 3rd May 1999 and 13th May 1999, at the Belguma Police line Purulia for recruitment to post of Constable. However, the petitioner has not annexed the call letter issued by the Employment Exchange to the writ petition. The learned advocate for the State has submitted that it is difficult for them to ascertain whether the petitioner is in fact sponsored

by the in Employment Exchange and whether he appeared for the selections. In these circumstances no relief can be granted to the petitioner. In any event, he has challenged the order impugned in the writ petition after six years, without any justifiable reason. Accordingly, the Writ petitioner is dismissed.

W.P.S.T. 272/2012

The petitioners failed in the interview conducted in September 2002 for recruiting them as constables with Calcutta Police. They filed the Original Application before the Tribunal eight months after the prescribed period of limitation. This delay can be condoned by applying the criteria always in the judgement of Badiuzzaman's case. However, the explanation given by the petitioners for the delay in approaching this Court is unacceptable and is a verbatim reproduction of the pleadings in WPST No. 203/2012. The petitioners are over 35 years of age today and in these circumstances we see no reason to grant any relief to them. The petition is dismissed.

W.P.S.T. 284/12

The petitioner No. 1 has failed in the physical efficiency test for the selection to the post of Police Constable with the Calcutta Police. The selection was held on 14th January 1999. However the petitioner No. 1 filed his application before the Tribunal only in the year 2004, much after the prescribed period of limitation. Applying the test mentioned in the case of Badiuzzaman (supra) the delay in approaching the Tribunal cannot be condoned. Apart from this, the petitioner is guilty of delay and laches in approaching this Court as he has filed the petition six years after the Tribunal's order.

The petitioner Nos. 2 to 6 are not entitled any relief in the writ petition. This is because the particulars mentioned in the writ petition do not tally with the original application of 629 of 2004 allegedly filed by them before the Tribunal. The fathers' name of the petitioners 4 to 7 does not match with the name of the petitioner.

In these circumstances the writ petition is dismissed.

W.P.S.T. 307/2012

The application has been filed by the petitioners against his rejection in the physical efficiency test held on 14th April 2003. The application filed by the petitioner before the Tribunal is within the prescribed period of limitation. It has been disposed of by the order passed by it in the Group - B matters. The petitioner has approached this Court six years after the decision of the Tribunal however, he has explained that the delay was caused because he was tending to his father who was suffering from cancer. It was only after his father was treated for a prolonged period and his condition became stable that the petitioner was able to contact an advocate and approach this Court. This explanation is plausible and sufficient for condoning the delay caused in filing the petition.

The petition is, therefore, allowed.

W.P.S.T. 263/2008

The petitioner failed in the interview held on 27th August 2003 for recruitment in the Calcutta Police. He filed O.A. No. 592 of 2004. As there was no delay in filing the application the Tribunal has disposed of the same on 11th July 2006 alongwith other matters segregated by it in Group - B. The petitioner approached this Court by preferring the present petition in January 2008. In these circumstances the petition is allowed.

W.P.S.T. 696/2008

The petitioner failed in the interview held on 26 September 2002 for recruitment in the Calcutta Police. He preferred O.A. No. 1423 of 2004 which has been disposed of by the common order passed on 11th July 2006 by the Tribunal. The petitioner approached the Tribunal ten months after the prescribed period of limitation. Applying the test in Badiuzzaman's case the delay is condoned. The petitioner has approached this Court about a year and a half after the order of the Tribunal. Considering the pleadings on record we find that this delay must be condoned. The petitioner is, therefore, entitled to the relief claimed in the writ petition.

The Writ petition is allowed.

In the results, W.P.S.T. Nos. 2019/08, 1123/08, 2005/08, 1042/08, 909/08, 954/08, 952/08, 951/08, 214/09, 215/09, 128/10, 201/12, 202/12, 236/12 [in respect of P-1], 307/12, 518/10, 263/08, 696/08 are allowed to the extent aforesaid. The State shall issue appointment letters to all these petitioners within 8 (eight) weeks from today, except to those petitioners to whom we have directed that compensation should be paid. The compensation shall be disbursed within 8 (eight) weeks from today.

W.P.S.T. Nos. 107/12, 25/12, 699/08, 702/08, 642/09, 371/10, 203/12, 204/12, 205/12, 206/12, 217/12, 231/12, 237/12, 238/12, 250/12, 251/12, 268/12, 269/12, 270/12, 271/12, 272/12, 282/12, 283/12, 284/12 are dismissed.

W.P.S.T. 214 of 2009 With W.P.S.T. 215 of 2009; W.P.S.T. 642 of 2009

TAPAN KUMAR CHANDRA VS. THE STATE OF WEST BENGAL

The petitioners in these Writ Petitions have raised the same question of law as raised in WPST No. 2019/08 regarding the power vested with the Commissioner of Police, Calcutta to issue a notification changing or amending the recruitment rules for recruiting persons to the post of constable. The petitioners preferred Original Applications before the West Bengal Administrative Tribunal in the years 2000 and 2001 challenging the selection process which was conducted in 1990. The applications were dismissed on 18th August 2000 on the ground of delay as the Tribunal refused to condone the delay in preferring the Original Applications. Being aggrieved by the orders of the Tribunal the petitioners in all these petitions

preferred writ petitions before this Court. An order was passed by this Court setting aside the order of the Tribunal and directing it to hear the applications on merits. The Tribunal has disposed of these petitions by an order dated 21.11.08.

Accordingly the applications were remanded to the Tribunal and they have been heard on merit.

Since the delay has been condoned by this Court by an earlier order the applications would have to be treated to be filed within the period of limitation.

Petitioner No. 3 Dilip Kr. Paul in WPST No. 642 of 2009 failed the selection because he does not possess the requisite physical measurements. Therefore, the petition filed by him is dismissed.

As regards the other petitioners in these petitions they have failed in the interview. We have held in W.P.S.T. No. 2019 of 2008 and other connected matters that the interview and physical efficiency test were illegally introduced in the selection process by the notification issued by the Commissioner of Police on 4th July 1994. All these persons have crossed the age of 45 years today. It is not possible for us to direct the State to appoint them as constables at this late age. There is no doubt that the petitioners have been excluded from the recruitment process due to no fault of theirs and now with the passage of time would be unsuitable for appointed as constables. In our considered view therefore the ends of justice would be sub served by directing the State to pay compensation quantified at Rs. 1,00,000/- (Rupees One lakh) to each of the petitioners. The petitions are allowed accordingly. The compensation shall be paid to the petitioners within 8 (eight) weeks from today.

W.P.S.T. 518 of 2010

PRANAB KUMAR KARMAKAR VS. THE STATE OF WEST BENGAL

This petition arises from the order passed by the West Bengal Administrative Tribunal in O.A. No. 2763 of 2007 on 28th July 2010, The petitioner participated in the selection process for appointment to the post of Constable in the Calcutta Police held in the year 1999. The petitioner had preferred O.A. No. 1378 of 1999 as he had not secured an order of appointment. The Tribunal disposed of that application by directing the authorities to consider the case of the petitioner and to pass a reasoned order.

It appears that the Dy. Commissioner of Police, Calcutta passed an order thereafter and the request of the petitioner for being appointed was turned down. The petitioner, therefore, preferred O.A. No. 2763 of 2007. The main challenge in the original application filed by petitioner was to the power of the Commissioner of Police to introduce new tests for the purpose of recruitment to the post of Constable in the Calcutta Police. This test included an interview and a physical efficiency test.

The respondents contended before the Tribunal that since the petitioner has

participated in the Selection process he was not entitled to any relief.

The Tribunal has accepted the contention of the respondents which was based on the decision of the Supreme Court in the case of Civil Appeal No. 1147 of 2004 [State of West Bengal & Ors. vs. Noor Alam].

We have perused the decision of the Tribunal and we find that the Tribunal has not adverted to the contention raised by the petitioner that the Commissioner of Police was not empowered to introduce new tests for the selection process. In our judgement in the case of WPST No. 2019 of 2008 and other connected matters we have already held placing reliance on the judgement in the case of Badiuzzaman vs. State of West Bengal and Ors. 2008(2) WBLR (Cal. 89) that the Commissioner of Police was not vested with such powers. We have held that the notification dated 4th July 1994 issued by the Commissioner of Police introducing the interview and physical efficiency test for recruitment to the post of Constable was illegal.

In these circumstances in our opinion the order impugned in this petition will have to be set aside. Accordingly, the impugned order dated 28th July 2010 passed by the Administrative Tribunal is set aside. The petition is allowed. The appointment order shall be issued to the Petitioner within 8(eight) weeks from today.