

A THE STATE OF WEST BENGAL & ORS.
v.
SOMDEB BANDYOPADHYAY & ORS.
(Civil Appeal No. 397 of 2009)

JANUARY 23, 2009

B [DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]

C *Interim order – Delay in filing appeal – Delay not
condoned and appeal not entertained – Court passing series
of interim orders – Permissibility of – Held: Not permissible
as appeal was non est in eye of law without it being
entertained – Matter remitted.*

D On the basis of enquiry, administrative function was
withdrawn from respondent 1 and another person was
appointed. Respondent 1 filed OA before Administrative
Tribunal. Tribunal passed certain interim orders and
ultimately dismissed OA on the ground that Tribunal had
no jurisdiction.

E Respondent No.1 then filed writ petition before High
Court seeking restoration of status as Member Secretary
of Governing body. Certain interim directions were given.
F The appellant-State took stand that respondent 1 was not
attending the office and was not signing the attendance
register. Single Judge of High Court held that since
factual dispute was involved, the writ petition was not
entertainable. Writ appeal was filed thereagainst. Certain
interim orders were passed therein. Writ appeal was
G allowed holding that since proceedings for absence were
not initiated, appellant was bound to pay lawful arrears
and there was no question of any prejudice involved.

In appeal to this Court, the appellant contended that

without condoning the delay several interim orders were passed which was not permissible in law.

Allowing the appeal and remitting the matter to High Court, the Court

HELD: Even without condoning the delay and entertaining the writ appeal the High Court passed series of interim orders. Such a course is impermissible as the appeal was non-est in the eye of law without it being entertained. Admittedly, the delay in preferring the writ appeal was not condoned at the time when the interim orders were passed. The High Court has committed another error in holding that the writ petition was dismissed principally on the ground that it was the decision of the Governing Body as to who should be its Secretary, although Government approval is necessary for appointment of the Secretary of the Governing Body of the Institute. On the contrary the Single Judge dismissed the writ petition principally on the ground that factual controversy was involved. The Division Bench did not discuss this aspect at all. Therefore, the order was clearly indefensible. [Para 6] [507-G-H; 508-A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 397 of 2009.

From the Judgment and final Order dated 12.10.2004 of the High Court at Calcutta in M.A.T. No. 2124 of 2004.

Tara Chandra Sharma and Neelam Sharma for the Appellant.

R.K. Gupta, S.K. Gupta, Arun Yadav, Shekhar Kumar and Manoj K. Mishra, for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Heard learned counsel for

A both the parties.

2. Leave granted.

B 3. This appeal arises from the order passed by the Division Bench of the Calcutta High Court allowing the writ appeal filed by the respondent No.1.

4. The facts, as presented by the appellants, are as follows:

C Respondent No.1 was appointed to the post of Superintendent of Chhoto Jagulia Junior Technical School, presently named as Industrial Training Centre Chhoto Jagulia, by the Governing Body of the said Institute on 7.7.1993. He was also given the responsibility of the Ex-officio Secretary of the Governing Body.

D Due to some allegations against Respondent No.1, namely, non-functioning of the administrative work as well the non-attending the Institution an Enquiry Committee was set up. On the basis of the decision of the Committee, administrative function as a Member Secretary was withdrawn and another
E person was appointed.

F A writ petition was filed by respondent No.1 taking the stand that he should be allowed to continue as Superintendent. His stand was that he was prevented from discharging duties after 10.3.1997. Originally, the petition was filed before the West Bengal Administrative Tribunal (in short 'the Tribunal') and interim order was passed by the Tribunal directing that there should be no interference with the functioning of the present respondent No.1. Alleging that the interim order was not being carried out contempt petition was filed. Tribunal disposed of the
G petition with certain directions. Subsequently, on 30.3.1998 the Original Application was dismissed on the ground that Tribunal had no jurisdiction.

H On 11.5.1998, a writ petition was filed in the Calcutta High Court seeking restoration of status as Member Secretary of the

Governing Body. Certain interim directions were given. The present appellant took the stand that the respondent was not attending the office and was not signing the attendance register. A special leave petition was filed by respondent No.1 before this Court which was withdrawn. The same was directed against the order dated 22.9.2000 in CPAN 768/2000. The writ petition was dismissed by learned Single Judge on several counts. The basic conclusion was that since factual dispute was involved the writ petition was not to be entertained.

A writ appeal was filed before the High Court and contempt proceedings were also initiated. The Division Bench directed that lawful arrears have to be paid. Certain directions were given making stringent observations against the officials. An amount of Rs.7,33,567/- was paid. The High Court was primarily of the view that since the proceedings for absence were not initiated, the appellant should be bound to pay and there was no question of any prejudice involved. The writ appeal was allowed in the aforesaid terms.

5. Learned counsel for the appellant submitted that the writ petition was dismissed on the ground that factual controversy is involved, i.e. whether the writ petitioner's stand that he was prevented from attending duties or whether the appellant's stand that he was not attending office is correct. It requires factual adjudication and such question cannot be decided in the writ petition. It is also pointed out that without condoning the delay several interim orders were passed which is not permissible in law. Learned counsel for the respondent No.1, on the other hand, submitted that voluminous documents are available to show that the writ petitioner was prevented from attending their duties and carrying on his functions.

6. It is to be noticed that even without condoning the delay and entertaining the writ appeal the High Court has passed series of interim orders. Such a course is impermissible as the appeal was non-est in the eye of law without it being

- A entertained. Admittedly, the delay in preferring the writ appeal was not condoned at the time when the interim orders were passed. The High Court has committed another error in holding that the writ petition was dismissed principally on the ground that it was the decision of the Governing Body as to who should
- B be its Secretary, although Government approval is necessary for appointment of the Secretary of the Governing Body of the Institute. On the contrary the learned Single Judge dismissed the writ petition principally on the ground that factual controversy is involved. The Division Bench has not discussed this aspect
- C at all. Therefore, the order is clearly indefensible.

7. In the aforesaid background, we set aside the impugned judgment of the High Court and remit the matter for its consideration as to whether the writ appeal was to be
- D entertained in view of the conclusions of the learned Single Judge that factual controversies are involved and, therefore, the writ petition was not maintainable.

8. The appeal is allowed without any order as to costs.

D.G.

Appeal allowed.