



**ORDER SHEET****RAJEN GHOSH.**

Form No. ....

**Vs.****THE STATE OF W.B. & ORS.**Case No. MA 213 of 2018 (OA 397 of 2016).  
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| Serial No. and Date of order.<br>1 | Order of the Tribunal with signature<br>2   | Office action with date and dated signature of parties when necessary<br>3 |
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|                                    | <p>candidates and setting aside their appointments with a direction to the recruitment authority to hold selection afresh, the Division Bench of the High Court on a writ petition filed by the State by its order dated 8<sup>th</sup> September, 2017 remanded the matter to the Tribunal for rehearing the case after providing opportunity to all the successful candidates who have been affected by the impugned order. Thereafter the matter was set at rest by the Supreme Court as Special Leave Petition (Civil) No. 12203 of 2007 was dismissed on 14<sup>th</sup> May, 2018. As the matter has not been decided and sufficient cause has been shown for condoning the delay under 21(3) of the Administrative Tribunals Act, 1985, appropriate order be passed condoning the delay in filing original application and for hearing the matter. In support of his submission, learned advocate for the applicant has relied on the judgement of the Supreme Court in M/s. Rup Diamonds - Vs- Union of India: AIR 1989 SC 674, particularly the law laid down in paragraph 8 thereof and also the order of the Supreme Court in S. Ganeshraju-vs- Narasamma: in (2013)11 SCC 341 particularly paragraph 12 thereof.</p> <p>Mr. M.N. Roy, learned advocate appearing on</p> |  |

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|                                    | <p>behalf of the State respondents relying on the reply, particularly paragraph 5 thereof, submits that application has been moved after the statutory period of limitation as mentioned in clause (a) of Sub Section(2) of Section 20 of the Administrative Tribunals Act, 1985, that is, an application has to be moved within one year from the date on which the final order has been made and as the fact, as stated, that the applicant came to know of the case filed by Bijoy Kumar Shaw on 15<sup>th</sup> March, 2016 does not lead credence to the submission of the applicant and as it is crystal clear that the applicant is a fence sitter who was following the proceedings in the Calcutta High Court and in the Supreme Court of India, no order may be passed. Submission is also made that if this petition is allowed it may open flood gates as the recruitment process is of the year 2012.</p> <p>Heard learned advocates for the parties.</p> <p>There is no dispute that after the Tribunal had passed the order on 30<sup>th</sup> July, 2013 quashing the panel of 298 selected candidates, the High Court on a writ petition by judgement dated 8<sup>th</sup> September, 2017 had remanded the matter to the Tribunal. Against the said decision Special</p> |  |

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|                                    | <p>Leave Petition was filed which was dismissed by the Supreme Court on 14<sup>th</sup> May, 2018. Therefore, it appears that there is yet to be a decision on the issue of appointment. In this regard it is appropriate to refer to the judgement in M/s. Rup Diamonds (supra) wherein it has been held as under :-</p> <p style="padding-left: 40px;">“...Apart altogether from the merits of the grounds for rejection-on which it cannot be said that the mere rejection of the Special Leave Petitions in the cases of M/s. Ripal Kumar &amp; Co., and M/s. H. Patel &amp; Co. , could, by itself, be construed as the imprimatur of this Court on the correctness of the decisions sought to be appealed against- there is no more ground which basically sets the present case apart. Petitioners are re-agitating claims which they had not pursued for several years. <u>Petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else’s case came to be decided.</u> Their case cannot be considered on the analogy of one where a law had been declared unconstitutional and void by a Court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also</p> |  |

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|                                    | <p>an unexplained, inordinate delay in preferring this writ petition which is brought after almost an year after the first rejection. From the orders in M/s. Ripal &amp; Co.'s case and M/s. H. Patel &amp; Co.'s case it is seen that in the former case the application for revalidation and endorsement was made on 12-3-1984 within four months of the date of the redemption certificate dated 16-11-1983 and in the latter case the application for revalidation was filed on 20.6.1984 in about three months from the Redemption Certificate dated 9-3-1984...."(Emphasis supplied).</p> <p>In the instant case, since the matters have been remanded and the issue is open, it cannot be held that the issue has been "decided".</p> <p>Moreover in S. Ganesharaju (supra) the Supreme Court in paragraph 12 of the said order has held that "The expression "sufficient cause" as appearing in Section 5 of the Limitation Act, 1963, has to be given a liberal construction so as to advance substantial justice. Unless the respondents are able to show mala fides in not approaching the court within the period of limitation, generally as a normal rule, delay should be condoned.</p> |  |

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| Skg.                                  | <p>The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given a go-by...".</p> <p>Keeping in mind that the issue has not been "decided", this liberal interpretation of the Supreme Court of the expression "sufficient cause" has to be followed.</p> <p>Since we find that the issue is open and is yet to be "decided", the application for condoning the delay in moving the original application requires to be allowed. Therefore, the application, being MA 213 of 2018, for condoning the delay in connection with OA 397 of 2016 is allowed. Let the Original Application being No. 397 of 2016 be heard along with OA 1535 of 2012, OA 1567 of 2012, OA 814 of 2013 and OA 976 of 2013 wherein the similar issues are involved.</p> <p>(P. Ramesh Kumar)<br/>Member (A).</p> <p>(Soumitra Pal)<br/>Chairman.</p> |  |