

**DEBSMITA BISWAS**

**ADVOCATE  
HIGH COURT CALCUTTA  
BAR ASSOCIATION ROOM NO.**

**CHAMBER:-**

**5, FANCY LANE  
1<sup>ST</sup> FLOOR  
KOLKATA-700001  
M. No. 9831507324**

**9830529388**

TO,

1. The Government Pleader,  
High Court Calcutta,  
Appellate Side,

DATED- **22/04** /2016

2. The Director of Pension, Provident Fund and Group Insurance, Finance Department, Purta Bhawan (2<sup>nd</sup> Floor) Salt Lake City, Kolkata - 700 091.

3. The Treasury Officer, **Banipur**, **Banipur**, **Canning**, P.O. **Canning**, Dist- South 24- Parganas, Pin code no. **743329**. **700144**

4. The District Inspector of School, South 24-Parganas(P.E) P.O.-Alipore Dist.- South 24- Parganas, Pin code- 700027.

Re: - W.P. No. **7500** (W) Of 2016

**Md. Ziad Ali Mollah**

-Versus-

The State Of West Bengal & Ors

Dear Sir,

I am sending herewith a petition under 226 of the constitution of India, along with all annexures, as mentioned above to you for your ready reference and the same will be moved before His Lordship the Hon'ble Justice Tapabrata Chakraborty as listed Motion on **28/04/2016** or soon thereafter as and when, the business of the Hon'ble court permit when please attend.

Kindly acknowledge receipt copy of the same and oblige.

Enclose. As above.

Your faithfully

**Debsmita Biswas**

Advocate

DISTRICT : North -24 Parganas

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE

W.P. No. 7500 (W) of 2016

Subject Matter Relating to:

West Bengal Board of Secondary  
Education Act, 1963, Under Group -  
II, Head - (h) of the Classification list.

-And-

In the matter of:  
Md. Ziad Ali Mollah

Petitioner

-Versus-

The State of West Bengal and Others

Respondents

*Debsmita Biswas*

Advocate on record

*DEBSMITA BISWAS*

Advocate  
High Court, Calcutta.  
5, FANCY LANE,  
KOLKATA-700001

DISTRICT : North -24 Parganas

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

W.P. No. 2570 (W) of 2016

In the matter of:

An application under Article 226 of  
the Constitution of India;

-And-

In the matter of:

Md. Ziad Ali Mollah

Petitioner

-Versus-

The State of West Bengal and Others

Respondents

INDEX

SL. NO.	PARTICULARS	ANNEXURE	PAGE NO.
1.	Writ Petition		1-15
2.	Xerox copy of the P.P.O. dated 23.07.2007;		
3	Xerox copy of the revised P.P.O. dated 06.03.2013;	"P-1"	16
		"P-2"	17

DISTRICT : North -24 Parganas

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

W.P. No. 7576 (W) Of 2016

In the matter of:

An application under Article 226 of  
the Constitution of India;  
-And-

In the matter of:

Md. Ziad Ali Mollah

Petitioner

-Versus-

The State of West Bengal & Others

Respondents

LIST OF DATES

- |               |  |
|---------------|--|
| 1. 31.07.2007 | The Petitioner was superannuated from service.   |
| 2. 23.07.2007 | The pension payment order was issued.  |
| 3. 06.03.2013 | The revised pension payment order was issued.  |
| 4. 03.11.2007 | The Petitioner received death- cum- retirement Gratuity, without any interest.               |
| 5. 02.05.2013 | The petitioner revised amount received death-cum retirement Gratuity, with out any interest. |

DISTRICT : South- 24 Parganas

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

W.P. No. 2500 (W) of 2014

In the matter of:

An application under Article 226 of  
the Constitution of India;  
-And-

In the matter of:

Md. Ziad Ali Mollah

Petitioner

-Versus-

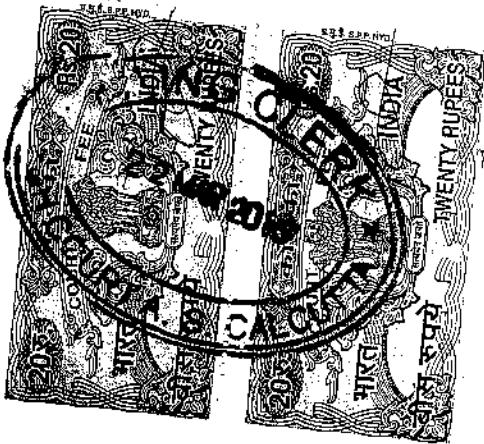
The State of West Bengal & Ors.

Respondents

**POINTS OF LAW FOR DETERMINATION**

1. WHETHER the Payment of Gratuity amount can be withheld a long time?
2. WHETHER the petitioner is entitled to get interest?
3. WHETHER the concerned authority have not taken only steps for realizing the interest for delayed payment of gratuity amount, for which the petitioner is very much entitled to and as such the entire act, actions and /or inactions of concerned authority are attracted by the Article 14, 21 and the Constitution of India?.

DISTRICT : North 24 Parganas



Through  
Debmila Biswas  
Advocate

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

W.P. No. 7570 (W) Of 2016

In the matter of:

An application under Article 226 of  
the Constitution of India;

-And-

In the matter of:

A Writ in the nature of Mandamus  
and/or Prohibition and/or Certiorari  
and/or any other order or orders,  
direction or directions;

-And-

In the matter of:

Death Cum Retirement benefits  
Scheme 1981.

-And-

In the matter of:

Illegal denial by the respondents  
authority to disburse and /or release  
the interest to the tune of 18% per  
annum, for delayed payment of

1431

AM

gratuity amount of the petitioner, even on a similar circumstances our Hon'ble High Court, Passed several orders on the case of similarly situated persons;

-And-

In the matter of :

The West Bengal Recognised Non-Government Aided Educational Institutions Employees (Revision of pay and Allowances) Rules, 2009.

-And-

In the matter of:

Pension payment order dated 23.07.2007 and revised Pension Payment order dated 06.03.2013 issued by the office of the Director of Pension, Provident Fund And Group Insurance, Finance Department, Government of West Bengal, Purta Bhavan, Salt Lake City, Kolkata, in favour of the petitioner even petitioner superannuated from service on 31.07.2007 as an Clerk of Satulia Islamia Sr. Madrasah at P.O.



Pithapukur, District- 24-Parganas  
(South).

-And-

In the matter of:

Article 14, 21 and 41 of the  
Constitution of India;

-And-

In the matter of :

West Bengal Board of Secondary  
Education Act, 1963.

-And-

In the matter of:

Md. Ziad Ali Mollah, son of Late K.  
Mollah, residing at Vill.- West Voida,  
P.O.- Chouhatta, District- North 24  
Parganas, Pin code no- 743425.

Petitioner

-Versus-

1. The State of West Bengal,  
service through the Secretary,  
Education Department (S.E.) Bikash  
Bhawan, Salt Lake City, Kolkata -  
700 091.

2. The Director of Pension,  
Provident Fund and Group  
Insurance, Finance Department,

4

Purta Bhawan (2<sup>nd</sup> Floor) Salt Lake  
City, Kolkata - 700 091.

3. The Treasury Officer, Baruipur,  
P.O. - Baruipur, District- South 24  
Parganas, Pin code no. 700144.

4. The District Inspector of School,  
South 24 Parganas, (S.E) New  
Administrative Building, Alipore,  
Kolkata -700027.

.....Respondents

To

The Hon'ble Mrs. Manjula Chellur, Chief Justice and Her Companion  
Justices of the said Hon'ble Court.

The humble petition on behalf of the  
petitioner abovenamed most  
respectfully -

S H E W E T H :

1. That the petitioner is a Law abiding Citizen of India and  
resides at the address given in the Cause Title.

My

2. That the petitioner was an approved Clerk of Satulia Islamia Sr. Madrasah at P.O. Pithapukur, District- 24-Parganas (South) (hereinafter referred to as the said School) and he was superannuated from service on 31.07.2007.
3. That the petitioner properly submitted all the necessary papers before the pension sanctioning authority much prior to his retirement for early releasing of his pensionary benefits and as such the respondent no.2 herein issued pension payment order being Memo no. 3699/S dated 23.07.2007, in favour of the petitioner.

Photo copy of the pension payment order dated 23.07.2007 is annexed herewith and marked as annexure- P-1.

4. That the petitioner submitted the said P.P.O. to the Treasury Office at Baruipur for early action on behalf of the concerned respondent regarding payment of gratuity of pension as well as other retiral benefits, with interest.
5. That the matter was unnecessarily delayed by the respondents and they did not discharge their duties and obligations in time as provided under the different Government Circulars and acted as per their sweet will and computation and disbursement of the same was illegally kept in abeyance in derogation to the Government guidelines.



6. That the pensionary benefit including gratuity is the property of the petitioner and the respondent's authority by depriving the petitioner of the same have violated the provision of the Constitution of India.
7. Your petitioner states that the respondent authorities disbursed the gross DCRG amounting Rs. 1, 93,347.00 only in respect of 1<sup>st</sup> P.P.O. and also disbursed the revised DCRG amounting Rs. 2, 46,345.00 only in respect of revised P.P.O. and the petitioner received the amount on 03.11.2007 and 02.05.2013 without interest.
8. That the petitioner is already superannuated from service and the respondents have disbursed the Gratuity amount commuted value of the Pension after the retirement and they have enjoyed the interest, petitioner received the gratuity and commuted value of pension amount on 03.11.2007 and 02.05.2013 and such action is blatantly ultravires and malafide and interest amount to comparison of a punishment upon the petitioner who is compelled to survive under extreme financial Hardship and several orders passed by the Apex Court warranting comparison of penal interest @ 18% upon the respondents.
9. That the petitioner superannuated from service on 31.07.2007 but unfortunately he received the gratuity and commuted value of pension on 03.11.2007 and 02.05.2013 without interest. And as such

the concern respondent's authority could not compliance of penal interest as provided by the statute for such delay payment of gratuity amount to the petitioner in this regard.

10. Your petitioner states that after retirement from service the respondents authority, have no rights to withhold the petitioners retirement benefits, like as gratuity amount as well as other retirement benefits, is this regard, and as such in the similar facts and circumstances of this instant case, our Hon'ble High Court Delivered an unreported judgment, dated 27.03.2006 in W.P. No. 6305 (W) of 2006 by relying a Division Bench Decision of our Hon'ble Court being F.M.A No. 720-725 of 2004 with F.M.A. No. 731 of 2004 and an unreported judgment dated 26.09.2008 passed in W.P. No. No. 14343 (W) of 2008, by relying the W.P. No. 10750 (W) of 2007 (Abha Acharya VS- State of West Bengal and Ors) which was disposed of on 09.07.2008, directing the Secretary, Department of Finance, Government of west Bengal to do the needful and pay interest @ 10% within 90 days from the date of receipt of a copy of the order failing which an additional interest @ 2% P.A. was made pay able, in this regard.

11. That the petitioner states that after receiving the amount of gratuity as well as other retrial benefits, your petitioner personally several times met with the concern respondent authority and also requested to release the interest against the delayed payment of



gratuity but the respondent authorities always assured to the extent that the prayer of your petitioner will be considered immediately, but all are in vain as yet. The petitioner finding no other alternative your petitioner had made contact with the learned Advocate of High Court, Calcutta through one of his relative and instructed to file writ petition for ventilating his grievances and the petitioner also went to the Treasury Office, but the concerned Treasury officer told him that without the order of Hon'ble High Court nothing can be paid by the treasury officer and as such the petitioner prays for condonation of delay in filing the instant application otherwise your petitioner will suffer irreparable loss and injury.

12. Your petitioner states that, after superannuation from his service, the Director of Pension, Provident Fund and Group Insurance, Finance Department, Government of West Bengal, issued First pension payment order, in favour of the petitioner on 23.07.2007 and thereafter the aforesaid authority also issued revised pension payment order in favour of the petitioner on 06.03.2013 under the revision of pay and allowances Rules, 2009.

Be it noted herein that, the petitioner, praying before this Hon'ble Court, to payment of interest on gratuity for delayed payment of the principal amount as also for payment of interest on the ground of delayed payment of benefit of The West Bengal Recognised Non-Government Aided Educational Institutions Employees (Revision of



pay and Allowances) Rules, 2009, form the date on which it was payable till the date of its actual payment, by foregoing the interest of principal amount, which was reflected from his first pension payment order, alongwith claiming interest to the tune of 18% per annum.

Photo copy of the revised pension payment order being Memo no. S/00969/2013 dated 06.03.2013 by the respondents no. 2 herein is annexed herewith and marked as annexure -P-2.

13. your petitioner submitted that entitlement to interest has been accepted by a decision of Hon'ble Supreme Court (2008) 3 SCC, para-44 and held that a claim for interest for delayed payment of retrial dues can be made under part-III of the constitution of India be relying on Article 14,19, and 21 of the constitution of India.

14. Being aggrieved by and dissatisfied with the purported denial of the respondents as to disbursed the interest amount towards gratuity and others your petitioner begs to move this petition before Your Lordship on the following amongst others :-

#### G R O U N D S

I. FOR THAT the matter was unnecessarily delayed by the respondents and they did not discharge their duties and allegations in times as provided under different Government Circulars and acted as per their sweet will and computations and availability of the pensionary benefits, the mentioning and disbursement of the same was illegally kept in abeyance in derogation to the Government guidelines.



- II. FOR THAT pension and gratuity are no longer bounty to be distributed by the Government to its employees or their heirs but have become under the various decisions of the Hon'ble Court, rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest till actual payment.
- III. FOR THAT the concerned authority being the Public authority are required to act fairly, justly and reasonably but in the instant case while dealing with the case of the petitioner the concerned authorities are denying to act fairly, justly and without sense of responsibilities and such action/actions are calling for the interference of this Hon'ble Court for be slowing due justice to your petitioner.
- IV. FOR THAT, the respondents authority are duty bound to release interest on gratuity for delayed payment of the principal amount as also for payment of interest on the ground of delayed payment of benefit of the West Bengal Recognized Non- Government Aided Educational Institutions Employees (Revision of pay and Allowances) Rules, 2009 in favour of the petitioner, by virtue of the order passed by this Hon'ble Court, in a similar Circumstances.
- V. FOR THAT the concerned authorities have not taken any steps for realizing the interest for which the petitioner is very



entitled and as such the entire act, action and/or inactions of concerned authority are hit by Article 14, 21 of the Constitution of India.

VI. FOR THAT the entire action of the respondents are other wise bad in law.

15. Your petitioner states that on the same facts of cause of action neither any writ petition is pending.

16. That there is no other alternative legal remedy and the remedy sought for herein would be adequate, full and complete.

17. That the records of the case lying within the Appellate Side Jurisdiction of the Hon'ble Court.

18. That the application is made bonafide and for the ends of justice,

Under the facts and circumstances stated herein above your petitioner most humbly prays that Your Lordship would graciously pleased to pass the following orders:

a) A Writ in the Nature of Mandamus commanding the respondents authority for payment of



interest on gratuity for delayed payment of the principal amount as also for payment of interest on the ground of delayed payment of benefit of the West Bengal Recognised Non-Government Aided Educational Institutions Employees (Revision of pay and Allowances) Rules, 2009 from the date on which it was payable till the date of its actual payment, along with interest of 18% per annum, in favour of the petitioner forthwith.

b) A Writ in the nature of certiorari commanding the respondents and each of the produce all in records, papers and documents pertaining to this case before this Hon'ble Court to annum that consonable justice may be done by perusing the same.



c) Rule in terms of prayer (a) and (b) above.

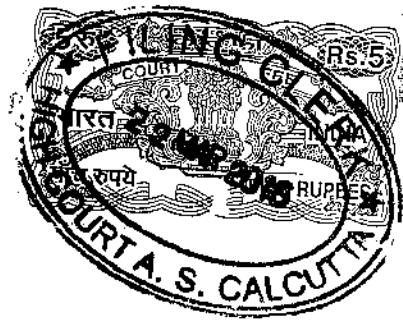
d) Rule is made absolute if no cause for insufficient case is shown.

e) Ad-Interim order directing the concern respondent authority for payment of interest on gratuity for delayed payment of the principal amount as also for payment of benefit of the West Bengal Recognised Non- Government Aided Educational Institutions Employees (Revision of pay and Allowances) Rules, 2009 from the date on which it was payable till the date of its actual payment, alongwith interest to the tune of 18% per annum, in favour of the petitioner till the disposal of this instant writ petition.

f) Any other or further relief or reliefs and/or order or orders, direction or directions as Your Lordship may deem fit and proper.

And your petitioner as in duty bound shall ever pray.





AFFIDAVIT

I, Md. Ziad Ali Mollah, son of Late K. Mollah, aged about 69 years, by faith Muslim, by occupation - retired person, residing at Vill.- West Voida, P.O.- Chouhatta, District- North 24 Parganas, Pin code no- 743425, do hereby solemnly affirm and say as follows :-

1. That I am the petitioner in this case and as such am well acquainted with the facts and circumstances of the above case.
2. That the statements made in paragraphs I to 12 are true to my knowledge and rests are my humble submissions before this Hon'ble Court.

Prepared in my Office  
and I Certify that all  
annexure are legible,

*Debendra Biswas*  
Advocate

Solemnly affirmed before me on  
this 21 day of March, 2016.

*Sd/-*  
The deponent is known to me  
*Gopal Chandra Panja*  
Clerk to Mr. *J. R. Mukherjee* *AS*  
Advocate

Commissioner

*Ar. 21/3/14*  
Commissioner of Affidavit  
High Court, Appellate Side  
Calcutta

*✓*

OFFICE OF THE DIRECTOR OF PENSION, PROVIDENT FUND AND GROUP INSURANCE

PURTA BHAVAN, 2ND FLOOR, SALT LAKE  
KOLKATA - 700 091

FINANCE DEPARTMENT, GOVERNMENT OF WEST BENGAL

TO :  
Treasurer Officer, BARUJPUR  
FILE NO.: SEC/1/ALP/0431/2006  
MEMO NO.: 3699/5 DATE: 23.07.07

PPO NO/LE/S/S/10417

DEB/2071011070001

File No. 10417  
Received  
By \_\_\_\_\_  
D.P.P.G.  
Date \_\_\_\_\_  
Signature \_\_\_\_\_  
Date \_\_\_\_\_  
Signature \_\_\_\_\_

✓ NAME: MO ZIAD ALI MULLAH

✓ DATE OF BIRTH: 02-JUL-1947

✓ 3. QUALIFYING SERVICE  
33(Y)(i)(b)(a)

✓ (ROPA-1951/1990/1998)

✓ 2. DATE OF BIRTH: 02-JUL-1947

✓ AMOUNT  
RECOONABLE: Rs.6300.00

✓ 5. PENSION SANCTIONING AUTHORITY  
D.I.S. SEC. F.O.N. SUDH 2 AMBEGE

✓ 6. PENSION W.E.F.: 01-AUG-2007 UPTD  
(AMOUNT: Rs. 3150.00  
(Three thousand One hundred  
Fifty only.)

✓ 7. GROSS D/RG: Rs.193347.00

✓ 8. NAME(S) — 1<sup>ST</sup> ROKIYA BIRI  
2<sup>ND</sup> WIFE

✓ 9. (i) E.F.P. : Rs.3150.00 ( Three thousand One hundred Fifty only.)  
(ii) E.F.P. : Rs.0.00 ( - NIL.)  
(iii) N.E.P. : Rs.1890.00 ( One thousand Eight hundred Ninety only.)  
(iv) N.E.P. : Rs.0.00 ( - NIL.)

✓ 10. LIFE TIME ARREAR OF PENSION AND RELIEF AND C.V.P. PAYABLE TO:  
\*N.F.P.: Rs. 143327.00  
FROM: 02-JUL-2012 TO: 01-JUL-2012  
SL. NO. NAME SHARE RELN AM SL.NO. NAME SHARE RELN AM

✓ 11. DEATH/ RETIRING GRATUITY PAYABLE TO:  
1. MO ZIAD ALI MULLAH M.D. Recll. Ali Mullah. SELF A

✓ NAME OF NOMINEE FOR D/R GRANUTY

✓ 12. COMMUTED VALUE OF PENSION - PAYABLE AFTER FIRST PAYMENT OF PENSION  
AMOUNT COMMUTED: Rs.250.00  
PAYABLE LATE: Rs.150.00 (One thousand Three hundred twenty Seven only.)

✓ IN CASE OF DEATH OF PENSIONER, PENSION AND RELIEF PAYABLE FOR LIFE UPTO:  
✓ 7. GROSS D/RG: Rs.193347.00  
✓ 8. NAME(S) — 1<sup>ST</sup> ROKIYA BIRI  
2<sup>ND</sup> WIFE

✓ 9. ✓ 10. ✓ 11. ✓ 12. ✓ 13. ✓ 14. ✓ 15. ✓ 16. ✓ 17. ✓ 18. ✓ 19. ✓ 20. ✓ 21. ✓ 22. ✓ 23. ✓ 24. ✓ 25. ✓ 26. ✓ 27. ✓ 28. ✓ 29. ✓ 30. ✓ 31. ✓ 32. ✓ 33. ✓ 34. ✓ 35. ✓ 36. ✓ 37. ✓ 38. ✓ 39. ✓ 40. ✓ 41. ✓ 42. ✓ 43. ✓ 44. ✓ 45. ✓ 46. ✓ 47. ✓ 48. ✓ 49. ✓ 50. ✓ 51. ✓ 52. ✓ 53. ✓ 54. ✓ 55. ✓ 56. ✓ 57. ✓ 58. ✓ 59. ✓ 60. ✓ 61. ✓ 62. ✓ 63. ✓ 64. ✓ 65. ✓ 66. ✓ 67. ✓ 68. ✓ 69. ✓ 70. ✓ 71. ✓ 72. ✓ 73. ✓ 74. ✓ 75. ✓ 76. ✓ 77. ✓ 78. ✓ 79. ✓ 80. ✓ 81. ✓ 82. ✓ 83. ✓ 84. ✓ 85. ✓ 86. ✓ 87. ✓ 88. ✓ 89. ✓ 90. ✓ 91. ✓ 92. ✓ 93. ✓ 94. ✓ 95. ✓ 96. ✓ 97. ✓ 98. ✓ 99. ✓ 100. ✓ 101. ✓ 102. ✓ 103. ✓ 104. ✓ 105. ✓ 106. ✓ 107. ✓ 108. ✓ 109. ✓ 110. ✓ 111. ✓ 112. ✓ 113. ✓ 114. ✓ 115. ✓ 116. ✓ 117. ✓ 118. ✓ 119. ✓ 120. ✓ 121. ✓ 122. ✓ 123. ✓ 124. ✓ 125. ✓ 126. ✓ 127. ✓ 128. ✓ 129. ✓ 130. ✓ 131. ✓ 132. ✓ 133. ✓ 134. ✓ 135. ✓ 136. ✓ 137. ✓ 138. ✓ 139. ✓ 140. ✓ 141. ✓ 142. ✓ 143. ✓ 144. ✓ 145. ✓ 146. ✓ 147. ✓ 148. ✓ 149. ✓ 150. ✓ 151. ✓ 152. ✓ 153. ✓ 154. ✓ 155. ✓ 156. ✓ 157. ✓ 158. ✓ 159. ✓ 160. ✓ 161. ✓ 162. ✓ 163. ✓ 164. ✓ 165. ✓ 166. ✓ 167. ✓ 168. ✓ 169. ✓ 170. ✓ 171. ✓ 172. ✓ 173. ✓ 174. ✓ 175. ✓ 176. ✓ 177. ✓ 178. ✓ 179. ✓ 180. ✓ 181. ✓ 182. ✓ 183. ✓ 184. ✓ 185. ✓ 186. ✓ 187. ✓ 188. ✓ 189. ✓ 190. ✓ 191. ✓ 192. ✓ 193. ✓ 194. ✓ 195. ✓ 196. ✓ 197. ✓ 198. ✓ 199. ✓ 200. ✓ 201. ✓ 202. ✓ 203. ✓ 204. ✓ 205. ✓ 206. ✓ 207. ✓ 208. ✓ 209. ✓ 210. ✓ 211. ✓ 212. ✓ 213. ✓ 214. ✓ 215. ✓ 216. ✓ 217. ✓ 218. ✓ 219. ✓ 220. ✓ 221. ✓ 222. ✓ 223. ✓ 224. ✓ 225. ✓ 226. ✓ 227. ✓ 228. ✓ 229. ✓ 230. ✓ 231. ✓ 232. ✓ 233. ✓ 234. ✓ 235. ✓ 236. ✓ 237. ✓ 238. ✓ 239. ✓ 240. ✓ 241. ✓ 242. ✓ 243. ✓ 244. ✓ 245. ✓ 246. ✓ 247. ✓ 248. ✓ 249. ✓ 250. ✓ 251. ✓ 252. ✓ 253. ✓ 254. ✓ 255. ✓ 256. ✓ 257. ✓ 258. ✓ 259. ✓ 260. ✓ 261. ✓ 262. ✓ 263. ✓ 264. ✓ 265. ✓ 266. ✓ 267. ✓ 268. ✓ 269. ✓ 270. ✓ 271. ✓ 272. ✓ 273. ✓ 274. ✓ 275. ✓ 276. ✓ 277. ✓ 278. ✓ 279. ✓ 280. ✓ 281. ✓ 282. ✓ 283. ✓ 284. ✓ 285. ✓ 286. ✓ 287. ✓ 288. ✓ 289. ✓ 290. ✓ 291. ✓ 292. ✓ 293. ✓ 294. ✓ 295. ✓ 296. ✓ 297. ✓ 298. ✓ 299. ✓ 300. ✓ 301. ✓ 302. ✓ 303. ✓ 304. ✓ 305. ✓ 306. ✓ 307. 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1001. ✓ 1002. ✓ 1003. ✓ 1004. ✓ 1005. ✓ 1006. ✓ 1007. ✓ 1008. ✓ 1009. ✓ 1000. ✓ 1001. ✓ 1002. ✓ 1003. ✓ 1004. ✓ 1005. ✓ 1006. ✓ 1007. ✓ 1008. ✓ 1009.



DISTRICT : North 24- Parganas

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE

W.P. No. 7500 (W) of 2016

In the matter of:  
An application under Article 226 of the  
Constitution of India;

-And-

In the matter of:

Md. Ziad Ali Mollah

Petitioner

-Versus-

The State of West Bengal & Ors.

Respondents

## P E T I T I O N

DEBSMITA BISWAS  
Advocate  
High Court, Calcutta.  
5, Fancy Lane,  
Kolkata- 700001.