

04.03.2021

Ct. No.13

Sl. No.16

akd

**W.P.A. 4133 of 2018 [via video conference]
CAN 1 of 2018 (Old CAN 5430 of 2018)**

[Binay Chandra Das -Vs- The State of West Bengal & Ors.]

Mr. Kamalesh Bhattacharyya

Mr. Sanjoy Karar

... .. for the petitioner

Mr. Rezaul Hossain

... for the Municipality

In Re : CAN 1 of 2018 (Old CAN 5430 of 2018)

Sufficient grounds have been made out explaining the absence of the petitioner's counsel on July 03, 2018.

Hence, order dated 3rd July, 2018 is recalled.

The writ petition is restored to its original file and number.

Accordingly, CAN 1 of 2018 (*Old CAN 5430 of 2018*) is allowed.

In Re : W.P.A. 4133 of 2018

The writ petitioner is functioning as Head Clerk of Dalkhola Municipality since 2007. It appears from the records that under normal circumstances in terms of the West Bengal Municipal Employees' (Recruitment) Rules, 2005, the post of Head Clerk is a promotional post. However, since the Dalkhola Municipality had started functioning for the first time in the year 2003, there were no available clerks in the feeder post to fill up the post of Head Clerk by promotion. The entire recruitment process for the one post each of Head Clerk, Accountant, Cashier, Clerk, Typist, Store-keeper, Peon, Sub-Assistant Engineer and Sanitary Inspector were undertaken pursuant to a

sanction issued by the Government dated 28th February, 2003. The name of the petitioner was sponsored by the concerned Employment Exchange and accordingly, the process of recruitment was undertaken. Prior thereto, however, the petitioner was taken in as an employee of the Dalkhola Municipality in lieu of an exigency by communication dated 23rd September, 2003.

After following the process of screening, interview and viva-voce, the petitioner was appointed by letter dated 24th May, 2008 and has been functioning as such at the Dalkhola Municipality. The petitioner was being paid some salary and allowances but not his whole entitlement as a Head Clerk in view of absence of formal sanction from the Director of Local Bodies, Government of West Bengal. The petitioner was also made permanent in the post of Head Clerk by order dated 3rd June, 2011. The Director of Local Bodies, West Bengal upon being repeatedly requested by the Dalkhola Municipality has objected by contending that the post of Head Clerk within the West Bengal Municipal Employees' (Recruitment) Rules, 2005 is a promotional post. The petitioner admittedly, has been recruited as Head Clerk directly.

It appears that the entire recruitment process in the Dalkhola Municipality had commenced in the year 2007. The petitioner may have been temporarily appointed in the year 2003. However, since the entire recruitment process as stipulated under the West Bengal Municipal Employees' (Recruitment) Rules, 2005 appears to have been followed, the petitioner has indeed made out a prima facie case for consideration and approval.

In these circumstances, the Director of Local Bodies, Government of West Bengal shall within a period of two months from the date of communication of a copy of this order pass a reasoned order as to why the petitioner's engagement in the year 2007 should not be approved.

The Director while passing orders shall consult relevant records after calling for the same from the Dalkhola Municipality. The Director shall bear in mind that the Municipality itself was formed in the year 2003 and there might not have been sufficient persons in the permanent feeder post of Clerk available to fill up the post of Head Clerk.

The petitioner and/or Municipality shall be heard by the Director before passing orders.

If the Director is satisfied that the petitioner's appointment is liable to be regularised, he shall do so and communicate any order he may pass within seven days thereof to the petitioner.

With the aforesaid directions, the writ petition is disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Rajasekhar Mantha, J.)