

18.03.2021.
Item no. 24.
Court No. 13
ap

W.P.A. No. 4134 of 2018
With
I.A. No. CAN 1 of 2018 (Old CAN 5431 of 2018)

Nishit Raha
Versus
The State of West Bengal & Ors.

Mr. Kamalesh Bhattacharjee,
Mr. Sanjoy Karar.
..For the petitioner.

Mr. Rezaul Hossain.
...For the Municipality.

Mr. Supriyo Chattopadhyay,
Ms. Iti Dutta.
...For the State.

In Re: CAN 5431 of 2018 (Restoration)

Sufficient grounds are available to explain the absence of the petitioner and/or his Counsel on 3rd July, 2018 before the Coordinate Bench (Debangsu Basak, J.).

The said order is recalled and the writ petition is restored to its file and number.

Accordingly, CAN 5431 of 2018 is disposed of.

There will be, however, no order as to costs.

In Re: W.P.A No. 4134 of 2018

The writ petition has been filed by a person, who was a General Category Candidate, recruited temporarily in the post of Clerk at Dalkhola Municipality.

It appears from the records that Dalkhola Municipality was newly constituted in the year 2006. They were looking for employees to fill in the post, inter alia, of Clerk. There were six posts of Clerk sanctioned by the Director of Local Bodies. In terms of the Rules for Reservation, five posts were to be filled up from General Category and one from Reserved Category of Scheduled Tribes.

It is submitted that the Employment Exchange had not recommended any Scheduled Tribes candidate. Five persons from other categories were recruited in the year 2008 after compliance with the formalities and were made permanent after approval of the Director of Local Bodies.

In so far as the petitioner is concerned, he was recruited on temporary basis in the year 2006 and continued as such even after he was sponsored by the employment exchange in 2008 and participated in the selection process for clerks. This is so as the post was reserved for Scheduled Tribes Category and the petitioner was General Category Candidate.

Since after recruitment, the petitioner was allowed to remain in the temporary post until the year 2018.

The writ petition was filed seeking permanent absorption and approval of the Director of Local Bodies.

This Court finds that the petitioner claims that he was engaged in a permanent post, which is utterly baseless. The post was reserved for the Scheduled Tribes Category. The petitioner is a General Category Candidate and was functioning temporarily since 2003.

Counsel for the Municipality submits that a resolution was adopted in the year 2008 by the Municipality that the petitioner's appointment should be approved in the post forthwith and that the recruitment to the Reserved Category in the post of Clerk would be made on the next occasion.

Unfortunately, the "next occasion" never came. The petitioner's appointment in the post of Clerk could not have been approved by the Director of Local Bodies.

The petitioner claims that since he has been working in an otherwise permanent post for sixteen years, now he should be made permanent and the Director of Local Bodies must be asked to approve his appointment.

This Court sees that the petitioner was not appointed to any sanctioned or approved post since the vacancy in the post of Clerk was reserved for Scheduled Tribes candidate. The petitioner cannot benefit from an illegality since there is no estoppel against the law.

The Dalkhola Municipality shall take immediate steps to fill in one post of Clerk reserved for Scheduled Tribes candidate immediately.

Hence, no relief can be granted to the writ petitioner in this writ application.

In view of the above, the instant writ petition must fail and is hereby dismissed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rajasekhar Mantha, J.)