

28.07.2021
Sl. No.09
S.B.

W.P.A. No. 2788 of 2021

**Sri Uday Dutta & Ors.
Vs.
The Durgapur Municipal Corporation & Ors.**

Mr. Partha Sarkar,
Mr. Abhijit Basu,

...for the Petitioners.

Mr. Sandipan Banerjee

...for the Respondents.

Affidavit-of-service is taken on record.

The petitioners have moved this Court under Article 226 of the Constitution of India seeking a direction from the Court to allow them to participate in the recruitment process to be initiated by the Durgapur Municipal Corporation upon consideration of the age bar.

It is the contention of the petitioners that the petitioners were working for the municipal corporation since long. The petitioners were primarily working as drivers or health workers. The petitioners rely on some decisions of this Court, passed in WP 23795(W) of 2018, Sri Durgam Prasad Jaiswal vs. The Mal Municipality & Ors., W.P No.22116(W) of 2018, Rakesh Kumar Khan & Ors. Vs. The State of West Bengal &

Ors. and WP No. 24220(W) of 2015, Sujit Kumar Maiti Vs. The State of West Bengal & Ors. Reliance is also placed on a decision of the Hon'ble Apex Court in the case of Dr. Surinder Singh Jaiswal and Another Vs. State of Jammu & Kashmir and Ors. reported in AIR 1996 Supreme Court 2775.

Mr. Banerjee, learned Advocate appearing on behalf of the Durgapur Municipal Corporation submits that the names of the petitioners have been forwarded to the Directorate of Local Bodies for clarification as to whether the age bar could be condoned in respect of the petitioners but no further instructions have yet been received from the Director of local Bodies.

The petitioners claim that as the Durgapur Municipal Corporation has utilised the services of the petitioners for a long period, the age bar should be condoned and the petitioners should be allowed to participate in the selection process to be undertaken by the Durgapur Municipal Corporation. It is submitted that this is the first recruitment drive initiated by the Corporation.

Heard the parties. Unlike the decisions cited by the petitioners, the petitioners were not appointed directly by the Corporation either on ad hoc basis or casual basis. The petitioners are staffs of various agencies who render services to the Municipality on the basis of contracts. Although, the

corporation may have issued identity cards to the petitioners during the covid period, fact remains, that the petitioners are the employees of the various outsource agencies of the Corporation and the salary of the petitioners are also paid by these organisations. Thus, the decisions relied upon by the petitioners are distinguishable on facts. However, it is for the Corporation to take a decision as to whether the petitioners may be allowed to participate, upon relaxation of the age bar. In the decision of Dr. Surinder Singh Jaiswal (supra), the recruitment rules permitted relaxation of the age bar. In Rakesh Kumar Khan (supra) the municipality directly recruited casual workers and used their services, but did not initiate any regular appointment process even after coming into effect the relevant recruitment rules. Similarly in Durgam Prasad Jaiswal (supra) and Sujit Kumar Maiti (supra) the petitioners were all appointed directly by the authority and not through any agency.

Under such circumstances, the writ petition is disposed of with a direction upon the Commissioner of Durgapur Municipality to dispose of the representations made by the petitioners which have been annexed to the petition. The petitioners and/or their representative shall be given a hearing. A reasoned order shall be passed and communicated to the petitioners.

The Commissioner shall take into consideration the contentions of the petitioners and also the fact that the petitioners have rendered uninterrupted sincere service to the Municipal Corporation. The entire exercise shall be completed within a period of 6 weeks from the date of communication of this order.

The writ petition is thus disposed of.

There will be no order as to costs.

All parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)