

18.02.2021
Item No. 14
(P.Jana)

(Via Video Conference)

WPA 4270 of 2021

Md. Alauddin

-Vs-

The State of West Bengal & Ors.

Mr. Golam Mastafa,
Mr. Samirul Sardar,
... for the petitioner.

Mr. Joytosh Majumdar, learned Govt Pleader.
Mr. Pinaki Dhole,
Ms. Sucharita Paul,
... for the State respondents.

Affidavit of service filed in Court today be kept with the record.

The Secretary of the Managing Committee of the Kamurdiar Nazbul Haque High Madrasah (H.S.) District. Murshidabad on July 26, 2010 temporarily appointed the petitioner as the Peon of the said Madrasah.

The petitioner by the instant writ petition is praying regularization of his said appointment.

The earlier writ petition filed by the petitioner being WP No. 27438 (W) of 2015 was disposed of by the order dated November 05, 2015 with the following observations:

“Considering the ratio in the case of Uma Devi reported in (2006)4 SCC, page 1, I do not think this kind of appointment is illegal but can be “irregular” on the principles of that judgment. The appointment did not say that the writ petitioner was temporary or ad hoc Peon but stated that he was an irregular staff of the school on “substantive basis” subject to approval

of the District Inspector of Schools (SE). That is why I say that the appointment was irregular.

Now the grievance of the writ petitioner is that he has been working from 2010 and should be regularized accordingly. The writ petitioner is working as permanent staff of the School and there is vacancy.

Considering the fact that the appointment of the writ petitioner was irregular in terms of Uma Devi's case, I am of the view that according to the principles enshrined in that judgment an irregularly appointed employee can be regularized subject to vacancy and in appropriate circumstances."

The said order was appealed against by the State of West Bengal in MAT 117 of 2016 which was allowed by the judgment and order dated July 09, 2018 holding as follows:

"We are of the considered view that the learned Judge committed gross error in viewing the appointment of the writ petitioner as irregular, and not illegal. Considered in the light of the appointment letter issued to the writ petitioner, the findings in the aforesaid excerpt appear to be inappropriate. The writ petitioner came to be appointed not on the basis of any selection process but through the side door. Having regard to the decision in Uma Devi (Supra) as well as subsequent decisions of the Supreme Court on the point including the decision in Official Liquidator vs. Dayanand & ors. : (2008) 10 SCC 1, we are of the considered opinion that the judgment and order under challenge is indefensible."

Mr. Golam Mastafa, learned counsel appearing on behalf of the petitioner, submits that the judgment and

order of the appeal Court was carried forward to the Hon'ble Supreme Court but the same was not pressed and was accordingly dismissed as withdrawn.

He submits that the Hon'ble Supreme Court in the case of **SHEO NARAIN NAGAR AND OTHERS -VS- STATE OF UTTAR PRADESH AND OTHERS** reported in **AIR 2018 (SC) 233** has held that the decision in the case of **STATE OF KARNATAKA & ORS. VS. UMA DEVI & ORS** reported in **AIR 2006 (SC) 1806** has not been properly understood and rather wrongly applied by various State Governments, therefore, according to him, refusal of the prayer of the petitioner on the basis of the decision of **Uma Devi (supra)** is not justified and the petitioner is entitled to regularization of his temporary appointment.

Mr. Joytosh Majumdar, learned Government Pleader, responding to the said submission of Mr. Mastafa submits that the petitioner cannot re-agitate the issue as the Division Bench in the aforementioned appeal has declared the appointment of the petitioner as illegal, as such the prayer of the petitioner for regularization is speculative and mala fide.

Having heard the learned counsel for the parties and on perusal of the materials on record, I am at one with Mr. Majumdar, the appointment of the petitioner has been declared illegal by the Division Bench in the aforesaid appeal and the said order since has attained finality there is no scope for the petitioner to re-agitate the said issue.

The decision reported in **AIR 2018 (SC) 233 (Supra)** relied on by Mr. Mastafa is distinguishable in the facts and circumstances of the present case inasmuch as in the said case the question arose for consideration was

regularization of the service of the employees appointed irregularly but in the present case the finding of the Division Bench in the aforementioned appeal that the appointment of the petitioner was illegal is fait accompli, as such, the petitioner is also not entitled to the relief as prayed for on the basis of the proposition of law laid down in the aforementioned judgment of the Hon'ble Supreme Court relied on by Mr. Mastafa.

WPA 4270 of 2021 is, therefore, devoid of any merit and is accordingly dismissed. No order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(Biswajit Basu, J.)