

27.07.2021
Sl No.10
srm

W.P.A. No.7317 of 2021

Binod Mahato
VS
The State of West Bengal & Ors.

*Ms. Susmita Saha Dutta,
Mr. Niladri Saha.*

... for the Petitioner.

*Mr. Arjun Roy Mukherjee,
Mr. Arunava Maiti*

... for the State.

Mr. Sirsanya Bandyopadhyay

...for the Raiganj Municipality

Affidavit of service is taken on record.

The petitioner seeks regularization. The petitioner claims to be an employee of the Raiganj Municipality, who was engaged by the Chairman of the Municipality as per the resolution of the Board of Councillors on and from March 1, 2006, at a fixed pay of Rs.1,700/- per month.

The petitioner alleges that he has been working in the municipality continuously but has not yet been absorbed. It is further submitted that the petitioner was engaged prior to the coming into force of the West Bengal Municipal Employees' (Recruitment) Rules, 2005.

Reliance has been placed on a decision of the Hon'ble Division Bench of this Court, which had directed the Principal Secretary of Local Bodies to

absorb 13 employees of Raiganj Municipality. The petitioner submits that in respect of the said persons posts were created by the municipality.

The learned advocate for the State-respondents submits that regularization cannot be claimed as a matter of right. Reliance has been placed on the decision of *The Secretary, State of Karnataka & Ors. versus Uma Devi (3)* reported in (2006) 4 SCC 1. It is also submitted that the decision of the Hon'ble Division Bench in AST No.242 of 2014 was given under separate facts and the petitioner is not similarly situated with those who were absorbed pursuant to the said order. Further reliance has been placed on the decision of this Court in the matter of *Rabindra Nath Ghosh & Ors. vs. The State of West Bengal & Ors.* reported in 2009 SCC OnLine Cal 2017. The Division Bench dismissed similar claims for regularisation.

Mr. Sirsanya Bandyopadhyay, learned Junior Standing Counsel appearing on behalf of the municipality, submits that the order of the Division Bench, as cited by the petitioner, does not have any application in this case. The facts of the case before the Hon'ble Division Bench are distinguishable.

Having heard the rival contentions of the parties, this Court is of the opinion that it is for the

employer to decide whether the case of its employee is similar to those persons who were given the benefit in AST No.242 of 2014 or not and whether the said decision of the Hon'ble Division Bench and the decision of the Hon'ble Apex Court in the matter of *Narendra Kumar Tiwari & Ors. versus State of Jharkhand & Ors.* reported in (2018) 8 Supreme Court Cases 238, would be applicable in case of the petitioner. The facts and circumstances under which the petitioner has sought for regularization has to be decided by the authority itself. Moreover, the decisions against regularisation also needs to be considered in the given set of facts.

Under such circumstances, the writ petition is disposed of with a direction upon the petitioner to make a composite representation before the Principal Secretary, Department of Municipal Affairs, West Bengal. If such application is made, the Principal Secretary shall consider the grievance of the petitioner in accordance with law by taking into consideration the decision of the Hon'ble Division Bench of this Court in AST No.242 of 2014 and other decisions relied upon by the respective parties. The authority will also take into consideration whether as a onetime measure a scheme could be floated for regularization of casual workers of Raiganj Municipality whose

services have been used over a long period of time, even after coming into force of the recruitment rules.

This Court has not gone into the merits of the case and all points are kept open for the Principal Secretary to decide. Whether the petitioner is still working as a casual worker in the municipality or not, is also left open for the appropriate authority to decide on the basis of the records. This order shall not be construed as a decision of the right of the petitioner for regularisation.

The entire exercise should be completed within a period of 10 weeks from date of receipt of the petitioner's representation.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)