

S/L 17
06.07.2021
Court. No. 19
GB

W.P.A. 7331 of 2021

Dharmadas Barman
Vs.
State of West Bengal & Ors.

(Through Video Conference)

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

...for the Petitioner.

*Mr. Himadri Sikhar Chakraborty,
Mr. Chandan Kr. Mondal.*

...for the State.

The petitioner seeks regularization.

The petitioner was employed at Raiganj Municipality on a fixed pay of Rs.1700/- per month with effect from March 1, 2006. He was performing his duty under the supervision of Sanitary Inspector of the Raiganj Municipality.

It is alleged that the petitioner has been continuing to work on a casual basis on a fixed pay. As the service of the petitioner was utilized by the concerned Municipality for a long period, the petitioner made a representation before the Director of Local Bodies, West Bengal for being absorbed in the Municipality.

It is further contended that the appointment of the petitioner was prior to the coming into effect of the West Bengal Municipal Employees' (Recruitment) Rules, 2005 and the provisions of the Rules should not be applicable in

case of the petitioner, whose services had been used uninterrupted by the Raiganj Municipality.

Reliance has also been placed on a decision of the Hon'ble Division Bench of this Court which had directed the Principal Secretary in-Charge of Local Bodies to create sufficient number of posts to absorb 13 employees of Raiganj Municipality. The petitioner has submitted that these 13 persons in respect of whom new posts were created by the Municipality are similarly situated with the petitioner.

The learned advocate for the respondents submits that regularization cannot be given 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.

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 the petitioner is similar to those persons who were given the benefit in AST No.242 of 2014 or not and whether the 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 on which the

petitioner has sought for regularization has to be decided by the authority itself.

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 on the basis of which 13 posts were created by the Raiganj Municipality for absorption/regularization of the petitioners therein. 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 decided on the merits whether the petitioner is still working as a casual worker in the Municipality or not is left open for the appropriate authority to decide on the basis of the records.

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.)