

11.03.2021
Ct. No.13
Sl. No.198
akd

W.P.A. 4702 of 2016 [via video conference]

[Sri Pashupati Mandal -Vs- The State of West Bengal & Ors.]

Mr. Kaustuv Mitra
... .. for the petitioner

Mr. Santanu Kumar Mitra
... .. for the State

The writ petition has been filed challenging the appointment of the private respondent no.9 and asking for a direction upon the respondent nos.7 and 8 to advertise the post of skilled technical person for the purpose of implementation of the NREGA at the Dasagram Gram Panchayat, P.S. Sabang, Dist: Paschim Medinipur. It appears from the records that by a resolution dated 12th July, 2014 the Gram Panchayat had proposed to recruit STP by prescribing qualifications, experience and other requirements.

However, a resolution of the Gram Panchayat has been annexed to the writ application dated 3rd November, 2014 which suggested that only the application of the private respondent no.9 was received by the Gram Panchayat and therefore, he was engaged as a casual worker. Admittedly, the petitioner submitted his application for the post to the Pradhan that has been received and was making regular enquiries.

The BDO, Sabang, Paschim Medinipur has filed affidavit-in-opposition. At paragraph 4(ii), it is stated as follows :-

4. (ii) That the 2 (two) applicants namely Sri Rajesh Ghorai being the respondent no. 9 and Sri Pasupati Mandal, the petitioner no. 1 applied for the post. Among them the respondent no. 9 who secured 73.2 percent in the course in engineering and the petitioner secured 69.6 percent in the Diploma course in engineering respectively.

Therefore the respondent no. 9 had been selected for that post owing to higher marks. The entire process was done by the office of the Pradhan, Dasagram Gram Panchayat, respondent no. 8. In this connection the result of the 2 (two) applicant, statement of Pradhan, Dasagram Gram Panchayat and the resolution of the Dasagram Gram Panchayat are annexed herewith and marked by the Letter "P-1".

There is clear contradiction between the aforesaid statement in the affidavit-in-opposition and the resolutions of the Gram Panchayat filed both with the writ petition and the affidavit-in-opposition. None of the resolutions on record indicate receipt of the petitioner's application by the Gram Panchayat. The basis of the averment made in the affidavit-in-opposition, set out hereinabove, is totally misunderstood.

Learned counsel for the petitioner further relies upon the memorandum of the Finance Department, Government of West Bengal dated 23rd April, 2010 and 22nd December, 2010 respectively as also the one dated 16th September, 2011 which specifically prohibited engagement of any person on casual basis in the State. He, therefore, submits that the concerned Gram Panchayat could not have engaged the private respondent no.9 on casual basis. He also submits that the appointment may have been made by the Gram Panchayat in terms of the circular of the Panchayats and Rural Development Department, Government of West Bengal dated 29th September, 2016.

Learned counsel for the State relies upon the communication dated 23rd June, 2008 issued by the Principal Secretary, Panchayats & Rural Development Department, Government of West Bengal which has permitted Gram Panchayats with no Nirman Sahayaks, to engage even on casual basis, a diploma holder in civil engineering as a skilled

technical person. He, therefore, submits that since the projects under the NREGA are being affected in the said Gram Panchayat, the Pradhan had no other option than to engage the private respondent no.9.

This Court notices that the communication dated 23rd June, 2008 relied upon by the State has been superceded by the circulars of the Finance Department, Government of West Bengal annexed to the writ application referred to hereinabove. Casual engagements could not have been made for the, sound reasons evident from the circulars of April, 2010, December, 2010 and September, 2011.

This Court further notices that the appointment given to the private respondent no.9 is suspicious. The resolutions of the Gram Panchayat do not reveal any receipt of the petitioner's application. The BDO in the affidavit-in-opposition has no answer to terms stated that the petitioner's and the private respondent no.9 applications have been received by the Gram Panchayat. Such statements are not supported by the resolutions on record. As to how the BDO came to know of the same or has affirmed the same as true to his knowledge is understood. The BDO has indeed annexed the CV of the petitioner and the mark sheet of the private respondent no.9.

This Court has no doubt in its mind to come to the conclusion that the Gram Panchayat and/or the BDO have attempted to introduce new documents not available on the records of the Dasagram Gram Panchayat with a view to mislead this court.

However, given the fact that the implementation of the MGNREGS is vital for the well being of the residents of the village under the Gram Panchayat, this Court directs the Pradhan, Dasagram Gram Panchayat to forthwith initiate the process of recruitment to the post of STP in the said Gram Panchayat. The terms of recruitment would be those as already decided by the Panchayat in its resolution dated 12th July, 2014.

The private respondent no.9 shall continue in the casual worker post of STP only for a period of two months within which period the recruitment process to such post will be completed. Due and wide circulation within the Gram Panchayat of recruitment to the said post of STP shall be made by the Pradhan. The petitioner, the private respondent no.9 as well as any other eligible person shall be entitled to participate in the aforesaid process of recruitment.

The District Magistrate, Paschim Medinipur shall cause an enquiry into the circumstances under which the BDO, Sabang, Paschim Medinipur has affirmed the affidavit dated 24th July, 2019. Upon conclusion of the enquiry, the District Magistrate, Paschim Medinipur shall take suitable steps including disciplinary proceeding and criminal proceedings, if found warranted, against the BDO namely, Mr. Abhijit Banerjee.

The Registry of this court shall communicate a copy of this order to the District Magistrate, Paschim Medinipur.

With the aforesaid observations, the writ petition is disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for,
be given to the parties on usual undertaking.

(Rajasekhar Mantha, J.)