

07 11.04.2022
rkd Ct.15

W.P.A. 4182 of 2016

Smt. Namita Das & Anr.

-vs-

The State of West Bengal & Ors.

Mr. Kamalesh Bhattacharya,
Mr. Rezaul Hossain,
Mr. Parvez Hossain

....for the petitioners.

Mr. Srijan Nayak,
Ms. Riturparna Maitra,

....for the Balurghat Municipality.

Mr. A. K. Guha,
Mr. Naren Ghosh Dastidar

....for the State.

The writ petition pertains to grant of post facto approval in favour of the two writ petitioners who are working in the posts of Attendant in Balurghat Municipality (hereinafter referred to as the “said Municipality”) vide appointment letters dated 26th February, 2001.

Mr. Bhattacharya, learned counsel appearing for the petitioners has submitted that initially both the petitioners were engaged as Community Organiser by the letter dated 6th April, 1995 and 11th February, 1997 issued by the concerned authority of the said municipality under UBSP Schemes and subsequently on creation of posts in terms of Memo No.329/DLB/J-401/15-96

dated 14th May, 1997 issued by the Joint Secretary, Department of Municipal Affairs both the petitioners were appointed on the posts of Attendant in the said municipality vide appointment letters dated 26th February, 2001. It has also been pointed out on behalf of the petitioners that on such appointment both the petitioners were placed on regular scale of pay and pursuant to such appointment till date petitioners are discharging their duties on the said posts and both of them are going to retire soon.

Petitioners for obtaining necessary direction in order to get their service approved on grant of post facto approval if necessary, approached this Court by filing writ petition being W.P. 25043(W) of 2014 which was disposed of vide order dated 11th September, 2014 by a coordinate Bench whereby the Director of Local Bodies was directed to furnish a report to the Assistant Secretary, Government of West Bengal, Department of Municipal Affairs and based on such report the said Assistant Secretary was directed to take decision on the prayer of the petitioners.

Pursuant thereto the Director of Local Bodies, respondent no.2, forwarded a report under

Memo dated 25th March, 2015 which has been heavily relied upon on behalf of the petitioners in order to satisfy the query of this Court.

On perusal of such report of the respondent no.2, it appears that the case of the petitioners was favourably recommended by the respondent no.2 considering the past service rendered by the petitioners for a considerable period of time. But ultimately the Assistant Secretary to the Government of the West Bengal, respondent no.3, refused to pass necessary direction for according approval/post facto approval to the petitioners upon placing reliance on the Government Circular dated 7th May, 2009. According to the respondent no.3, such Government Circular dated 7th May, 2009 does not apply in the case of the petitioners. In the present writ petition the decision of the respondent no.3 dated 3rd December, 2015 is questioned.

Mr. Bhattacharya has submitted that it is an admitted position that the petitioners were appointed against the sanctioned posts with effect from 1st March, 2001 as Attendant and were placed in regular scale of pay and the posts against which both the petitioners were appointed were created

pursuant to the Memo dated 14th May, 1997. It has further been submitted that considering the past service of the petitioners with effect from 1995 onwards they were appointed against the sanctioned vacancies and had there been expeditious initiation of the process of appointment for accommodating the petitioners against the sanctioned posts which were created in terms of the Government Order dated 14th May, 1997, definitely their appointment would have been made within the period of 14th July, 1994 to 15th October, 2000 as mentioned in the Circular dated 7th May, 2009.

In addition thereto, the respondent no.2 while recommending the case of the petitioners to the respondent no.3 vide Memo dated 24th March, 2015 has admitted that both the petitioners were appointed against the regular sanctioned vacant posts of Attendant (Group-D) with effect from 1st March, 2001 on the strength of Board of Councillors Resolution dated 23rd February, 2001 and drew the salary under ROPA 2009. Therefore according to the petitioners on placing reliance on the recommendation of the respondent no.2 and considering the date of creation of posts against which petitioners were appointed which is within

the period from 14th July, 1994 to 15th October, 2000 the claim of the petitioners for grant of post facto approval ought to have been favourably considered by the respondent no.3.

Mr. Dastidar, learned counsel appears on behalf of the State respondents and has defended the decision of the respondent no.3 dated 3rd December, 2015 and has also submitted that in view of the Circular letter dated 7th May, 2009 since the petitioners were not appointed within the period which is mentioned therein the respondent no.3 had no other alternative but to reject the prayer of the petitioners.

Mr. Nayak, learned advocate appears on behalf of the said municipality and has submitted that in spite of approach being made on behalf of the said municipality to the concerned State respondents seeking approval of appointment/post facto approval in favour of the petitioners no steps were taken at the relevant point of time but the fact remains that the petitioners were appointed against the sanctioned vacancies with effect from 1st March, 2001 and they are being permitted to draw monthly salaries regularly which is applicable to the approved Group-D staff working in the

municipality. According to the municipality by this time both the petitioners could have been approved by the respondent authorities.

Having considered the rival contentions made on behalf of the parties as well as on consideration of the relevant materials available on record, it appears that petitioners were engaged under a Scheme as Community Organiser vide engagement letters dated 6th April, 1995 and 11th February, 1997 but subsequently with effect from 1st March, 2001 both of them were appointed against the posts of Attendant and they were placed in regular scale of pay.

In addition thereto, the posts which were manned by the petitioners were created in terms of the Government Memo dated 14th May, 1997 issued by the Joint Secretary to the Government of West Bengal, Department of Municipal Affairs, permitting the concerned authorities to fill up those posts. Pursuant to such Memo dated 14th May, 1997 petitioners were appointed. This aspect has not been gone into by the respondent no.3 while taking decision on the claim of the petitioners for approval of appointment/post facto approval.

In addition thereto on perusal of the

impugned decision of the respondent no.3 dated 3rd December, 2015 it does not appear that any credence has been given to the recommendation made by the respondent no.2 vide issuing Memo dated 24th March, 2015.

In view of the aforesaid facts and since the posts were created in the year 1997 pursuant to the Government Order dated 14th May, 1997, this Court directs the Assistant Secretary to the Government of West Bengal, Department of Municipal Affairs being the respondent no.3 to revisit the issue relating to grant of approval/post facto approval in favour of the petitioners and to pass a reasoned order within the period of six weeks from the date of communication of this order after granting opportunity of hearing to the petitioners and the representative of Balurghat Municipality.

It is made clear that while taking decision the respondent no.3 shall consider the recommendation of the respondent no.2 dated 24th March, 2015 as well as date of creation of posts in 1997 pursuant to the Memo dated 14th May, 1997 and to explore the possibility of extending the benefit of the circular letter dated 7th May, 2009 in

favour of the petitioners by granting approval of appointment/post facto approval to the petitioners.

The impugned decision of the respondent no.3 dated 3rd December, 2015 stands set aside.

With the above observation and direction the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)