

D/L
Item No. 8
15.06.2022
KOLE

**FMA 1094 of 2021
With
IA No. CAN 1 of 2021**

**Azmaul Sk.
-Vs.-
The State of West Bengal & Ors.**

*Md. Salahuddin,
Md. Ashanuzzaman,
Md. Raziuddin,*

...for the appellant.

Upon the undertaking of learned Advocate on record for the appellant to file affidavit-of-service in course of the day, this matter is taken up for hearing. From the postal documents produced in Court, it appears that the respondents have been served, but are not represented.

The petitioner claims to be a casual Panchayat Karmee appointed against a sanctioned post in Arjunpur Gram Panchayat, Murshidabad. According to him, he continued to discharge his functions as Panchayat Karmee for a long period of time. Claiming regularization of his service, he made a representation before the District Panchayat and Rural Development Officer, Murshidabad. Alleging that his representation was not considered, he approached the learned Single Judge by filing WP No. 30452(W) of 2017. By an order dated March 18, 2019, the learned Single Judge disposed of the writ petition with a direction upon the Commissioner of Panchayat, Government of West Bengal to consider and dispose of the representation made by the writ petitioner through his learned Advocate, in

accordance with law, after giving an opportunity of hearing to the writ petitioner as also the Panchayat Authorities. The Commissioner was directed to pass a reasoned order within a stipulated time period.

It appears that in purported compliance of that order of the learned Single Judge, the Additional Secretary to the Government of West Bengal, Panchayats and Rural Development Department, passed a reasoned order dated February 2, 2021, rejecting the claim of the writ petitioner, who is the present appellant. The said order was challenged by the writ petitioner by filing the present writ petition. By the impugned order dated April 8, 2021, the learned Single Judge dismissed the writ petition. The learned Judge observed that the Authority found that the Gram Panchayat Pradhan was not the competent authority to fill up any post in a P.R.I body and the normal process of competitive recruitment had not been followed. The learned Judge found no procedural irregularity in the order impugned in the writ petition and accordingly rejected the writ petition.

We have heard learned counsel for the appellant. We find that in the order challenged before the learned Single Judge, the person passing the order records that he was directed by the Additional Chief Secretary of Panchayats and Rural Development Department “to dispose of the instant writ petition”. Firstly, the officer who passed the order was not considering any writ petition nor did he have any power or authority to consider or dispose of any writ petition. The direction was for consideration of the writ petitioner’s

representation claiming regularization of service. It is only the Court which can consider and dispose of a writ petition and not any officer in the administration. Secondly, the direction of the learned Single Judge in the earlier writ petition was on the Commissioner of Panchayats, Government of West Bengal, to consider and dispose of the appellant's representation by a reasoned order in accordance with law. The Additional Chief Secretary of Panchayats and Rural Development Department had no authority to change such order by directing the Additional Secretary to the Government of West Bengal, Panchayats and Rural Development Department to consider and dispose of the writ petitioner's representation instead of the Commissioner of Panchayats doing so. This amounts to interfering with Court's order and is viewed seriously by us. If for some reason the Additional Chief Secretary was of the opinion that some officer other than the Commissioner of Panchayat would be the appropriate Authority to take a decision on the appellant's representation, he should have obtained appropriate modification of the order of the Learned Single Judge passed on the earlier writ petition. However, we refrain from taking any action against the concerned officers in the administration as we give them the benefit of doubt that out of ignorance they have acted in the manner they did. The Additional Chief Secretary of Panchayats and Rural Development Department should be more careful in future in ensuring that court's orders are complied with in strict

terms of such order and not modified by officers in the administration.

Since the person who had been directed by the learned Single Judge in the earlier writ petition to consider the writ petitioner's representation did not do so and instead some other officer has done it, the order impugned in the writ petition, dated February 2, 2021, is set aside. The matter is remanded to the Commissioner of Panchayat, Government of West Bengal to consider and dispose of the writ petitioner's representation for regularization of his service, by a reasoned order, in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order along with a copy of the representation, after giving an opportunity of hearing to the appellant/writ petitioner or his authorized representative. The Commissioner of Panchayats, shall not be influenced by any observation made in the order dated February 2, 2021 passed by the Additional Secretary to the Government of West Bengal, Panchayats and Rural Development Department, which we have hereby set aside. The decision so taken by the Commissioner of Panchayats shall be communicated to the appellant within a period of one week from the date of the decision.

We have not gone into the merits of the appellant's claim. The Commissioner of Panchayat, Government of West Bengal shall take an informed decision on the appellant's representation in accordance with law and the applicable rules.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to be admitted. The order impugned is set aside.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Rai Chattopadhyay, J.)