

S/L 21
04.01.2022
Court. No. 19
GB

WPA 17002 of 2021

Partha Chakraborty
Vs.
The State of West Bengal & Ors.
(Through Video Conference)

Md. Sarwar Jahan

...for the Petitioner.

*Mr. Jahar Lal De,
Mr. Ashim Kumar Bera.*

...for the State.

The petitioner was appointed as a Tax Collecting Sarkar under the Kult Municipality. It is submitted that six posts of Tax Collecting Sarkar were sanctioned for being filled up through a recruitment process. The petitioner was a sponsored candidate of the District Employment Exchange, Sitarampur. Subsequent to the recruitment process, the petitioner being successful was engaged. The petitioner was engaged in 1996 and continued to work up to October 31, 2021.

It is submitted that although the remuneration was paid to the petitioner month by month every month, the retirement benefits have not been paid in view of the fact that the petitioner's service was not approved by the authority.

Reliance is placed on a government order, issued by the Department of Municipal Affairs dated May 7, 2009. According to the said order, post facto approval, were to be

granted in respect of appointments made by the Municipalities against sanctioned vacancies.

It also appears that some communication has taken place between the Kulti Municipality and the Director of Local Bodies, West Bengal in this regard. The Kulti Municipality had thereafter been brought under the Asansol Municipal Corporation.

Records also reveal that on February 4, 2013 the Chairman, Kulti Municipality had recommended the case of the petitioner to the Director of Local Bodies with a request to accord post-facto approval. When the Kulti Municipality merged with Asansol Municipal Corporation, the Administrator of the Asansol Municipal Corporation by a letter dated July 3, 2015 requested the Director of Local Bodies to accord approval to the service of the petitioner along with two other persons.

Thus, records reveal that the petitioner was entitled to the grant of post-facto approval according to the employers. Such right had been recognized by the Kulti Municipality and the Asansol Municipal Corporation under which the petitioner was working.

Mr. De, learned Advocate appearing on behalf of the State respondents submits that there is nothing on record to show that the post was sanctioned. He further submits that the petitioner had filed a writ petition which was withdrawn by the petitioner.

However, as the Government itself had issued an order indicating that post-facto approval should be given to

those persons appointed by Municipalities against sanctioned posts, this Court does not see any reason as to why the case of the petitioner should not be considered in the light of the Government order dated May 7, 2009.

Records also reveal that the petitioner had applied for grant of post-facto approval before the Joint Secretary, Urban Development and Department of Municipal Affairs being Annexure-P/20 at page 82 of the writ petition on February 24, 2021, that is, much before his retirement. It is also not disputed that the Asansol Municipal Corporation had also requested the authorities for grant of post-facto approval to the appointment of the petitioner, who has been working since 1996 as a Tax Collecting Sarkar, till his retirement.

On the basis of the records which are before this Court, this Court is of the opinion that if the petitioner falls within the eligibility criteria as prescribed under the Memo dated May 7, 2009, the case of the petitioner should be considered in accordance with the said provision and necessary post-facto approval must be granted.

Accordingly, the Joint Secretary, Urban Development and Department of Municipal Affairs is directed to dispose of the representation of the petitioner dated February 24, 2021 in accordance with law upon granting a hearing to the petitioner as also the authorities of the Asansol Municipal Corporation. If the petitioner is eligible as per the Circular of the Government, then necessary orders shall be passed granting post-facto approval. If, for any reason, the

authorities are of the opinion that the petitioner is not eligible for grant of post-facto approval, then reasons shall be assigned. A reasoned order shall be passed and communicated to the petitioner as also the Asansol Municipal Corporation. The issue shall be decided by the authority on the basis of the records and submissions of the petitioner and the records to be produced by the Asansol Municipal Corporation.

In case post-facto approval is granted to the appointment of the petitioner, his retirement benefits shall be released expeditiously.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

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

(Shampa Sarkar, J.)