

12.12.2022
Item No.8.
Court No.6.
AB

M.A.T. 1216 of 2022
With
IA CAN 1 of 2022

Sri Ashim Mondal
Vs
The State of West Bengal & Others

Mr. Kartick Bhattacharya,
Mr. Subhas Chandra Dutta....for the Appellant.

Mr. Tapan Mukherjee, Id. AGP,
Mr. Tarak Karanfor the State.

By consent of the parties, the appeal and the application are taken up for hearing together.

A Judgment and Order dated July 21, 2022, whereby the appellant's writ petition being WPA No.15014 of 2015 was dismissed, is under challenge in this appeal.

The appellant approached the learned Single Judge saying that he has been working in the post of night guard on casual basis from the year 2012. He claimed regularization. He relied on a letter dated May 5, 2015, written by the Block Development Officer, Krishnaganj Development Block, Nadia, addressed to the District Magistrate, Krishnagar, Nadia, recommending regularization of the appellant in view of his good performance.

The State opposed the appellant's prayer before the learned Single Judge. It was stated that the post in

which the appellant is working is not a sanctioned post. Further, the appointment of the appellant was not made following the applicable Recruitment Rules.

The learned Judge held that nothing has been demonstrated to show that the appointment of the appellant was made in compliance of the relevant Recruitment Rules. Nothing turns on the letter dated May 5, 2015, written by the concerned Block Development Officer. There is no enforceable right that the appellant has. Accordingly, no Mandamus can be issued. Reference was made to the case of ***State of Karnataka & Ors Vs Uma Devi (3) reported at (2006)4 SCC 1***. The learned Judge dismissed the writ petition. Hence, this appeal.

We have heard learned Counsel for the parties. We are in agreement with the learned Judge that the appellant has no right that is enforceable in law. The post where the appellant works is not a sanctioned post. The relevant Recruitment Rules were not followed while appointing him. Accordingly, we are unable to direct regularization of his service.

However, the appellant will be at liberty to make a comprehensive representation to the Secretary, Department of Panchayet & Rural Development, Government of West Bengal, within a fortnight from date praying for regularization of his service. If any such representation is made within the time period indicated, the same will be decided by the Secretary,

Department of Panchayet & Rural Development, in accordance with law and the applicable Rules, by way of a reasoned order, within a period of 12 weeks from the date of receipt of the representation along with a copy of this order, after giving an opportunity of hearing to the appellant or his authorized representative. The decision so taken shall be communicated to the appellant within a week from the date of the decision.

While we do not pass any mandate, we are sure that the Secretary, Department of Panchayet & Rural Development, Government of West Bengal, will take a pragmatic view and if the law permits, shall favourably consider the appellant's prayer.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

M.A.T. No.1216 of 2022 is, accordingly, disposed of along with IA CAN 1 of 2022.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)

