

12. 10.11.2022
Ct. No.6
Tanmoy

M.A.T. 1419 of 2022

**Dhananjoy Bagdi
-Versus-
The State of West Bengal & Ors.**

**With
IA No: C.A.N. 1 of 2022**

Mr. Anjan Dutta, Adv.,
Mr. Hare Krishna Halder, Adv.,
Mr. Debasis Sur, Adv.

...for the appellant.

Mr. Sudipto Panda, Adv.,
Ms. Munmun Tewari, Adv.

...for the State.

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

This appeal is directed against a judgment and order dated August 2, 2022, whereby the appellant's writ petition being WPA 1321 of 2022 was dismissed.

The appellant claims to have worked in the Sahaspur Gram Panchayat and claims that he is eligible for regularization as '*Sahayak*'. The appellant had first approached this Court by filing W.P. No. 10973(W) of 2000, ventilating a grievance regarding non-regularization of his service. The said writ petition was disposed of by directing the concerned Block Development Officer (BDO) to consider the appellant's case for regularization as '*Sahayak*'.

The concerned BDO considered the appellant's case and passed an order dated December 29, 2005 rejecting

the appellant's claim on the ground that there was no document on record which would show that the appellant attended the Office of the Gram Panchayat or received any remuneration from that Office. It was also not shown that he had rendered continuous service for more than three years. It was also not established that he was ever engaged in a sanctioned vacant post.

The appellant challenged the said order of the BDO by filing W.P. No. 1950(W) of 2006. Such writ petition was dismissed by the learned Single Judge by a judgment and order dated July 28, 2011. The appellant carried the matter in appeal by filing F.M.A. 3541 of 2013. The Division Bench allowed the appeal by a judgment and order dated May 7, 2014 with the following observations:-

"After hearing the learned counsel for the parties, we are of the opinion that the certificate granted by the concerned Gram Panchayat had not been taken into consideration by the Block Development Officer while passing the order dated 29th December, 2005. What is the evidential value of it was required to be considered. Accordingly, we direct to the Block Development Officer to consider the same.

Accordingly, the Block Development Officer is directed to reconsider the representation made by the petitioner in accordance with law after considering the certificate and other aspect as has been raised before him.

Consequently, the impugned orders passed by the Block Development Officer and the Single Bench are set aside and the matter remitted to the Block Development Officer to consider the whole matter afresh."

Alleging inaction on the part of the concerned BDO in not acting in terms of the Division Bench's order, the appellant filed yet another writ petition being WPA 18447

of 2019. Such writ petition was disposed of by a judgment and order dated August 10, 2021 by directing the concerned BDO to consider the matter of the appellant's regularization within a stipulated time period.

Pursuant to such order, the concerned BDO passed an order dated December 16, 2021 rejecting the appellant's claim for regularization. Such order was challenged by the appellant before the learned Single Judge in the present round of litigation.

The learned Judge observed that the concerned BDO has passed a detailed order with reasons. No documents could be produced which would show that the appellant ever worked at the concerned Panchayat's Office or ever received any remuneration from such Office.

It appears that past Secretaries and *Pradhans* of the concerned Panchayat could not identify the appellant. The learned Judge finally opined that disputed questions of fact being involved, the writ Court could not conveniently adjudicate such disputes. Accordingly, the writ petition was dismissed. Hence this appeal.

We have heard learned Counsel for the parties. We see no apparent infirmity in the order assailed before us. Indeed, disputed questions of fact are involved. Without the appellant producing documents to even *prima facie* show that he is eligible for regularization, we are unable to grant any relief to him. We may have full sympathy for the appellant. However, sympathy cannot be the basis for

granting relief. Unless the appellant can establish his right to regularization by producing cogent evidence, we cannot impose on the State the burden of regularizing him in service as the same would have financial implication for the Public Exchequer.

In view of the aforesaid, the appeal being M.A.T. 1419 of 2022 and the connected application being IA No: C.A.N. 1 of 2022 are dismissed. However, there will be no order as to costs.

Needless to say, this order will not preclude the appellant from approaching any other forum, in accordance with law, for redressal of his grievance.

Let urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with all necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)