

09.11.2022
Item No.12.
Court No.6.
S. De

M.A.T. 1440 of 2022
with
I.A. No. CAN/1/2022
I.A. No. CAN/2/2022

Apurba Fulmali.
Vs
State Of West Bengal & Ors.

Md. Salahuddin,
Md. Ahsanuzzaman,
Md. Raziuddin,
...for the appellant.
Mr. Pantu Deb Roy,
Mr. Anand Farmania,
...for the State.

In re : IA No. CAN 2 of 2022

This is an application for condonation of delay of 134 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

I.A. No. CAN 2 of 2022 is, accordingly, disposed of.

In re : MAT 1440 of 2022 & I.A. No. CAN 1 of 2022.

A judgment and order dated March 22, 2022 whereby the appellant's writ petition being W.P.A. 12212 of 2021 was in effect dismissed, has been assailed in this appeal.

The appellant claims to have been engaged as a Sweeper (Cleaner) in the office of the Jajigram Gram Panchayat at a monthly remuneration of Rs.500/-.

In the year 2017, the appellant approached the writ Court by filing W.P. 28803(W) of 2017, claiming enhancement of his remuneration, security of tenure up to 60 years of age and certain terminal benefits, in terms of the Memorandum No.1107-F(P) Howrah dated February 25, 2016 issued by the Principal Secretary to the Government of West Bengal, Finance Department, Audit Branch, with effect from March 1, 2016. The writ petition was disposed of by an order dated June 25, 2018 granting liberty to the writ petitioner to approach the concerned Block Development Officer (in short B.D.O.) with his grievance.

Accordingly, the appellant approached the concerned B.D.O. who, upon hearing the appellant, passed an order dated March 30, 2021, rejecting the claim of the appellant. That order of the B.D.O. was challenged by the appellant before the learned Single Judge in this round of litigation.

The learned Judge considered the Circular dated September 16, 2011, as also the Circular dated February 25, 2016. The learned Judge also took into consideration the Government Order dated December 22, 2010. The learned Judge recorded that the petitioner was unable to produce any document before the B.D.O. or the Court to show that he had been appointed in a sanctioned vacancy and as per Recruitment Rules. The learned Judge observed that

even contractual/temporary or daily rated workers were mandatorily required to be engaged following due recruitment process. Permission of the Government was not taken by the Panchayat prior to or even after the appointment of the writ petitioner. The learned Judge came to the conclusion that the benefit under the Memorandum dated February 25, 2016 can not be extended to the writ petitioner. The State Government cannot be saddled with the burden of payment of enhanced remuneration to a person who was appointed without following due process of law. Accordingly, the learned Judge disposed of the writ petition without interfering with the order of the B.D.O. Hence, this appeal.

We have heard Mr. Salahuddin, learned advocate for the appellant and Mr. Farmania, learned advocate for the State.

Mr. Salahuddin strenuously argued that the service of the appellant was extremely necessary for the Panchayat at the time he was appointed as sweeper. The appellant rendered essential service to the satisfaction of the Panchayat. If there was any irregularity in his appointment, it was not his fault. The appointment cannot be termed to be illegal. At the most, it may be irregular. Having exploited the appellant, today the authorities cannot deny him the benefit of the 2016 Memorandum.

We have full sympathy for the appellant. However, we find no infirmity in the reasoning or conclusion of the learned Single Judge. It is not in dispute that the appointment of the appellant by the Panchayat was not in a sanctioned post and no approval – whether pre-appointment or post-appointment – of the State Government was obtained. Recruitment Rules were not followed. On a consideration of the contents of Memorandum of 2011 as well as 2016, we are completely in agreement with the learned Single Judge that benefit under the Memorandum of February 2016, cannot be made available to the appellant. Sympathy cannot be the basis for granting relief if the law does not permit the granting of such relief. The Courts will also have to function within the four corners of law and cannot pass an order which the law does not countenance.

For the reasons aforesaid, we are unable to grant any relief to the appellant.

The appeal being MAT 1440 of 2022 is, accordingly, dismissed along with the connected application being I.A. No. CAN 1 of 2022.

There will be no order as to costs.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)