

06.10.2023
Item No.42.
Court No.6.
AB

F.M.A. 1146 of 2019

**Kundan Chakraborti & Others
Vs
Atish Chandra Sarkar & Others**

Mr. Debabrata Saha Roy,
Mr. Supriyo Chattopadhyay,
Ms. Debashree Chatterjee ...for the Appellants.

Mr. Saptangshu Basu, Sr. Adv,
Mr. Sayan Sinha,
Mr. Soham Kumar
...for the Bongaon Municipality.

The appellants are 56 employees of Bongaon Municipality. Pursuant to a selection process, they had been empanelled in 2005. Subsequently, they were also appointed in different posts. After their appointment, the concerned panel was annulled by an order of the Director of Local Bodies. Such order was challenged by the Municipality in a writ petition being WPA 12392 of 2005. On the basis of an interim order passed in such writ petition, the appellants, however, continued to serve in the posts in which they had been appointed. Subsequently in 2011, post facto approval was granted to the appointment of the appellants by the State Government. The Municipality withdrew its writ petition once the State Government accorded post facto approval to the appointment of the appellants.

The present writ petition was filed by some of the participants in the 2005 selection process, who

were unsuccessful. The writ petitioners challenged the panel in respect of which post facto approval was granted by the State Government in 2011. The appellants were not made parties to the writ petition. The learned Single Judge quashed the panel and also the post facto approval accorded by the State Government although the same was not the subject matter of challenge in that writ petition.

Being aggrieved, the persons, whose jobs were affected by the learned Judge's order, have come up by way of this appeal after obtaining leave to appeal as they were not parties to the writ petition.

This matter has been called on several times. In spite of having notice, the writ petitioners have not appeared. Hence, we see no reason to keep this matter pending any further.

The impugned order must be set aside. The same was passed by the learned Single Judge in complete violation of the salutary principles of natural justice. Without affording an opportunity of hearing to the empanelled candidates, who were subsequently appointed and were in service, which was subsequently approved by the State Government, the concerned panel ought not to have been interfered with by the learned Judge. The principle of *audi alteram partem* has been observed in breach.

Accordingly, the judgment and order under appeal is set aside solely on the ground of breach of the principles of natural justice.

FMA No.1146 of 2019 is, accordingly, disposed of.

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

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)