

Item No. 294

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

29.09.2023
Ct-24
A.G.M.

WPA 6757 of 2023

Bina Kedar

v.

The State of West Bengal & Ors.

Mr. Samarendra Nath Biswas
... for the petitioner.

Mr. Usof Ali Dewan
Mr. Asif Dewan
... for respondent nos. 4 and 5.

The husband of the petitioner was an employee of Jiaganj-Azimganj Municipality serving in the post of Drain Cleaner.

He expired while in harness in June 2015 after completing 22 years, 10 months and 11 days in service. After the death of her husband, the Municipality permitted the petitioner to serve in the said post as a full time Drain Cleaner of the Municipality and the petitioner is being paid Rs. 5,000/- only per month.

Seeking regularization in the sanctioned post, the petitioner filed writ petition before this Court being WPA 18332 of 2021, which stood dismissed on 14th January, 2022 by holding that the petitioner does not any legal right to be permanently appointed as she was not appointed through a regular selection process.

The Court observed that if the Municipality decides to fill up the post in accordance with law, then

the petitioner shall be allowed an opportunity to participate in the selection process upon condoning the age bar, if the petitioner is otherwise eligible and is working continuously since 2016 till the date of recruitment.

In the present writ petition, the petitioner has highlighted the fact that despite several vacancies being available, the Municipality is not taking steps for filling up the vacant sanctioned post.

It has been submitted that it is practically impossible to survive with a paltry remuneration of Rs. 5,000/- per month.

The Municipality is literally exploiting the petitioner by extracting full time work and only paying Rs. 5,000/- per month.

The petitioner relies upon the decision delivered by the Hon'ble Supreme Court in the matter of State of Karnataka & Others –versus- Umadevi & Ors reported in (2006) 4 SCC 1 paragraph 46 wherein the Court was pleased to observe that if sanctioned posts are vacant, the State will take immediate steps for filling those posts by regular process of selection.

Learned advocate representing the Municipality submits that the Municipality does not have the funds to make regular engagement. The DLB has not taken any steps for appointment.

On a query from the Court, the learned advocate representing the Municipality submits that the DLB is yet to be requested seeking approval for initiating the selection process for regular recruitment.

The petitioner has submitted that she is serving as a casual employee since 2016 at a paltry remuneration of Rs. 5,000/- only per month. Admittedly, there are various sanctioned posts that are vacant as on date. It is

highly improper for the Municipality to get work done by engaging casual employees in full time service.

Since the work performed by the petitioner is of permanent nature, the Municipality ought to take steps for filling up the vacant sanctioned posts.

Though it is not for the Court to issue writ of Mandamus compelling the Municipality to initiate recruitment process, but at the same time the Court cannot keep its eyes shut to the submission made by the petitioner that she is being exploited to perform regular full-time work upon payment of Rs. 5,000/- only per month for years together.

In view of the above, the instant writ petition is disposed of by directing the Municipality to take steps for initiating regular selection process for filling up the vacant sanctioned post(s) in accordance with the directions passed by the Hon'ble Supreme Court in the matter of Umadevi & Ors (supra).

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)