

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA No. 10326 of 2023

Sri Manotosh Karmakar

Vs.

The State of West Bengal & Ors.

For the writ petitioner	:-	Mr. Subir Sanyal, Adv. Mr. Partha Sarkar, Adv. Mr. Abhijit Basu, Adv.
For respondent no. 1	:-	Mr. Jayanta Samanta, Adv. Mr. Ovik Sengupta, Adv.
For DMC	:-	Mr. Sandipan Banerjee, Adv. Mr. Sobhan Majumder, Adv.
Hearing concluded on	:-	10.08.2023
Judgment on	:-	31.08.2023

Amrita Sinha, J.:-

The petitioner claims to be aggrieved by the alleged act on the part of the Durgapur Municipal Corporation ('DMC' for short) for taking steps for filling up of one sanctioned vacant post of Sanitary Inspector through promotion in DMC.

The petitioner is an employee of DMC. He was initially engaged in DMC through a regular selection process in the post of Sanitary Inspector on contractual basis in May 2008. The engagement was for a period of one year on a consolidated remuneration. The order of engagement mentions that the engagement may be terminated at any time without assigning any reason by issue of one months' notice or payment of one months' remuneration in lieu thereof before the expiry of the period of contract. The engagement not being permanent, the petitioner was not entitled to pensionary benefit, retirement benefit, pay scale or any other allowances. An agreement was submitted by the petitioner at the time of joining.

The engagement of the petitioner stood renewed on yearly basis till an order was published by the DMC on 14th June, 2017 mentioning that as per Government

Order no. 1107-F (P) dated 25th February, 2016 passed by the Principal Secretary, Government of West Bengal, Finance Department, Audit Branch and as per the resolution no. 9 of the meeting of the Mayor in Council, DMC held on 24 March, 2017, the contractual staff of DMC mentioned in the said order need not require yearly renewal as they are likely to remain in service up to sixty years of age. The petitioner was one of the contractual staff whose name was mentioned in the said order and the petitioner was described as the Sanitary Inspector.

Salary of the petitioner was disbursed in accordance with the salary statement of the petitioner wherein it was clearly mentioned that his salary was on consolidated pay and there was no particular pay band according to which his salary was paid.

The petitioner refers to various documents in support of his submission that he all along performed the job of the Sanitary Inspector.

The petitioner thereafter refers to the order dated 28th June, 2019 issued by the Commissioner of DMC mentioning that in pursuance of posts created vide Department of Urban Development and Municipal Affairs no. 87-MA/O/C-5/D/2E-1/2016 dated 16th April, 2018 and as per decision taken vide resolution of the Mayor in Council, DMC on 27th June, 2019, the persons whose names appear in the order have been appointed to the post as mentioned against their names.

The name of the petitioner figured in the said order in the designation of Pipeline Inspector in pay band 2. The order mentions that the employees will get pay and allowances as admissible to other permanent employees according to the scale of pay as mentioned against each and the condition of service will be governed by the extant Rules and Act as applicable to the employees of Municipal Corporation.

By a communication dated 29th June, 2020, the petitioner applied before the Commissioner, DMC to transfer his service in the post of Sanitary Inspector after the retirement of the employee who is serving as Sanitary Inspector.

The petitioner refers to the minutes of the meeting of the Administrative Committee of DMC held on 14th March, 2023 wherein discussion was made for filling up the vacant post of Sanitary Inspector. Relying on the said discussion the petitioner forwarded repeated representations before the DMC with a request to promote him in the post of Sanitary Inspector.

The petitioner apprehends that even though he performed the job of Sanitary Inspector since his initial appointment as contractual employee in DMC in the year 2008 till date, DMC is taking steps to fill up the vacant post of Sanitary Inspector ignoring the claim of the petitioner.

The petitioner submits that he does not possess the eligibility criteria for being appointed as Pipeline Inspector but he possesses the requisite qualification for appointment as Sanitary Inspector. The petitioner prays for a direction upon DMC to approve his appointment in the post of Sanitary Inspector and to regularise his service in the said post.

Learned advocate representing DMC vehemently opposes the submission of the petitioner. It has been submitted that the writ petition suffers from gross suppression of material facts, in view of which, the writ petition is liable to be dismissed with exemplary costs.

The report filed on behalf of DMC discloses several documents. It appears therefrom that a notice for walk-in-interview was published by DMC on 7th March, 2019 inviting eligible candidates for engagement in various posts of the Corporation. Pipeline Inspector was one of the posts where walk-in-interview was invited. In response to the said advertisement published in the local newspaper, the petitioner applied for the walk-in-interview by filling application on 7th March, 2019. The petitioner disclosed his educational qualification in the said application and described himself as a member of the general category. In the application the petitioner declared that the statements made therein were true, complete and correct to the best of his knowledge and belief.

In response to the application filed by the petitioner, DMC considered his candidature and on being found fit for appointment, the petitioner was appointed in the post of Pipeline Inspector in the pay band no. 2 by order dated 28th June, 2019. The petitioner signed the joining report in the post of Pipeline Inspector on 1st July, 2019. By order dated 16th July, 2019 the Commissioner of DMC published the place of posting of the petitioner. It was mentioned that his original posting is at Water Supply Department. The petitioner was to look after the job of Sanitary Inspector in Borough no. 4 until further order.

As per the direction of the employer the petitioner, though designated as Pipeline Inspector, performed the job of Sanitary Inspector. The order dated 4th May, 2023 mentions that the petitioner, Pipeline Inspector, presently stationed at Borough no. 1 will be stationed at Water Supply Department.

DMC contends that initially the petitioner performed the work of Sanitary Inspector when he was engaged on contractual basis. The contractual service of the petitioner came to an end the moment he joined as regular employee in the post of Pipeline Inspector. After acceptance of the job of Pipeline Inspector, the petitioner cannot seek either transfer or regularization or approval to the post of Sanitary Inspector.

DMC further contends that the post of Sanitary Inspector and Pipeline Inspector are completely separate and independent from each other. Pipeline Inspector is not the feeder post of the Sanitary Inspector and Sanitary Inspector is not the promotional post of the Pipeline Inspector. There is no scope to appoint the petitioner in the post of Sanitary Inspector either on promotion or upon regularization or transfer from the post of Pipeline Inspector.

Prayer has been made for dismissal of the writ petition for not disclosing the fact that the petitioner was appointed in the post of Pipeline Inspector in response to his own application made for appointment in the post of Pipeline Inspector pursuant to the public notice published by DMC.

Learned advocate representing the State respondents submits, upon instruction that, the post of Sanitary Inspector can be filled up on promotion on the basis of seniority-cum-merit and based on performance from the employees working in the post of Sanitary Assistant and having qualification for direct recruitment in terms of the West Bengal Municipal Employees (Recruitment) Rules, 2005. The department contends that as the petitioner was appointed in the post of Pipeline Inspector in the year 2019 and he accepted the appointment by signing his joining letter, accordingly at this stage, there is no scope for regularising the petitioner in the post of Sanitary Inspector.

I have heard and considered the submissions made on behalf of all the parties.

From the documents available on record, it is crystal clear that the petitioner was initially appointed on contractual basis as Sanitary Inspector and his contract was renewed yearly. For filling up the vacant sanctioned post of Pipeline Inspector an advertisement was published by DMC. The petitioner responded to the advertisement and applied for appointment as Pipeline Inspector. He was selected as Pipeline Inspector and appointment letter was issued in his favour. He accepted and submitted his joining letter. He joined in the said post without any objection.

In June, 2020 the petitioner sought for transfer of his post from Pipeline Inspector to Sanitary Inspector primarily because the petitioner, even though was appointed in the post of Pipeline Inspector, was permitted to perform the job of Sanitary Inspector. Learned advocate representing DMC has pointed out to the Court that in view of shortage of staff, DMC thought to utilise the experience of the petitioner as Sanitary Inspector and permitted him to perform the job of Sanitary Inspector even though the formal appointment of the petitioner was in the post of Pipeline Inspector.

The moment the petitioner got to learn that the vacant post of Sanitary Inspector may be filled up by DMC, he raised his claim for being regularised in the said post. The petitioner fortifies his claim for regularisation relying upon various

documents of DMC wherein his designation has been mentioned as Sanitary Inspector.

The petitioner tends to contend that he all along performed the job of Sanitary Inspector, but DMC intentionally and deliberately issued appointment letter in his favour in the post of Pipeline Inspector instead of Sanitary Inspector. The petitioner argues that he is not eligible to perform the job of Pipeline Inspector as he does not possess the requisite qualification for the said post. He ought to be appointed as the Sanitary Inspector as he possesses the requisite qualification for being appointed as Sanitary Inspector.

The submission of the petitioner that he was deliberately and intentionally appointed as Pipeline Inspector belies the documents annexed to the affidavit in opposition filed on behalf of DMC. The documents clearly indicate that the petitioner voluntarily applied for the post of Pipeline Inspector in response to the public advertisement published by DMC and was selected as such. It is obvious that as the petitioner was in a contractual post, he thought it beneficial for applying against a permanent post. Had the petitioner not applied in response to the public advertisement, he could have continued to work as Sanitary Inspector on contractual basis till he attained sixty years of age.

It does not appear that the petitioner was forced to accept the job of Pipeline Inspector. On the contrary, it appears that the petitioner found the job of Pipeline Inspector to be more beneficial to his service career as the same was a permanent job, whereas his job as Sanitary Inspector was a contractual one. Now when DMC intends to fill up the vacant post of Sanitary Inspector, the petitioner cannot lay his claim to be regularised to the said post.

It was absolutely improper for the petitioner to not disclose that he was appointed to the post of Pipeline Inspector in response to his own application made pursuant to the advertisement made by DMC. The petitioner has tried to mislead the Court by submitting that he was erroneously given appointment as Pipeline Inspector in place and instead of Sanitary Inspector. The petitioner accepted the

post of Pipeline Inspector by choice. There is no error on the part of DMC in appointing the petitioner in the post of Pipeline Inspector. Though the petitioner was performing the work of Sanitary Inspector, he cannot lay any claim to the said post as he does not have the legal right to do so. Mere functioning in a particular post for a temporary period does not create any vested right in favour of an employee to seek regularisation in the said post. An employee will be entitled to the benefits to the post in which he is appointed.

The service rule of municipal employees lays down the procedure for appointment to the post of Sanitary Inspector. It is open for the Corporation to take necessary steps to fill up the vacant post in accordance with law.

In the event the petitioner is interested to be appointed in the post of Sanitary Inspector, he has to fulfil the eligibility criteria for contesting for the said post. As the post of Pipeline Inspector and Sanitary Inspector are two different, distinct posts, not interconnected with each other, there is no scope for promotion from one post to the other. The avenues of appointment and promotion to the post of Pipeline Inspector and Sanitary Inspector are distinctly separate and as such the prayer of the petitioner for either transferring or regularising or approving his service in the post of Sanitary Inspector is simply not maintainable. The prayers made in the writ petition are absolutely misconceived and not tenable in law.

The relief sought for by the petitioner cannot be allowed.

The writ petition is devoid of merits and is accordingly dismissed.

There will, however, be no order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)