

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 11668 of 2021

Sri Swapan Roy @ Swapan Kumar Roy
Vs.
The State of West Bengal & Ors.

With
WPA 5985 of 2022

Tushar Kanti Das
Vs.
The State of West Bengal & Ors.

For the Writ Petitioners	:-	Mr. Rudranil De, Adv.
For the Municipality	:-	Mr. Gopal Chandra Das, Adv.
For the State	:-	Mr. T.M. Siddiqui, Adv. Mr. Nilotpal Chatterjee, Adv. ...In WPA 11668 of 2021 Mr. Bibek Jyoti Basu, Adv. Mr. Somnath Mukhopadhyay, Adv. ...In WPA 5985 of 2022
Heard on	:-	31.01.2023
Judgment on	:-	16.02.2023

Amrita Sinha, J.:-

Facts of the aforesaid two writ petitions being similar, both are disposed of by this common judgment.

Both the petitioners are employees of Tamluk Municipality.

Swapam was engaged by the Municipality in the year 1993 in the post of ambulance driver. His service was confirmed by the resolution adopted by the Board of Councillors of the Municipality in June 1995 in a particular scale of pay.

Tushar was engaged as casual employee of the Municipality with effect from 4th January, 1990 for performing the duty of pump operator.

The Joint Secretary, Municipal Affairs Department sanctioned thirty five posts in the said Municipality in the year 1996. The Board of Councillors in August, 1996 appointed Swapan in the sanctioned post of driver and appointed Tushar in the sanctioned post of pump operator.

By a communication dated 30th September, 2011 the Joint Director of Local Bodies, Burdwan Division intimated the Director of Local Bodies and ex officio Joint Secretary to the Government of West Bengal, Municipal Affairs Department that the names of the employees mentioned therein were enlisted in the Verified Staff Statistic as on 1st April, 2000 which was previously checked and verified and subsequently accepted and computerized by the DLB office and the employees are getting salary, fixed grant and DA from the Government. It may be taken that the said employees of the Tamluk Municipality were initially appointed and promoted against sanctioned posts. The name of Swapan appears at serial no. 19 and the name of Tushar appears at serial no. 22 in the list of employees mentioned in the aforesaid communication.

The Joint Director of Local Bodies (A & A), Burdwan Division by a further communication dated 10th April, 2017 requested the Director of Local Bodies to approve the appointment of Tushar in the post of pump operator on and from 1st August, 1996. Similar communications were made in respect of the other employees whose names figured in the communication of the Joint Director of Local Bodies, Burdwan Division dated 30th September, 2011.

As no steps were taken by the Director of Local Bodies, thirty three employees filed a writ petition before this Court being WP No. 4512 (W) of 2015 (Tapas Chakraborty & Ors. Vs. State of West Bengal & Ors.). The Court, by order dated 29th April, 2016, was pleased to direct that, the appointments of the petitioners have to be regularized with notional effect from the dates of their joining mentioned in the recommendation of the Joint Director of Local Bodies, Burdwan Division on 30th September, 2011. The Court clarified that the petitioners will have no claim with regard to arrear salary.

Being aggrieved by the aforesaid order, the State respondents preferred appeal being MAT 1619 of 2016 (State of West Bengal & Ors. Vs. Tapas Chakraborty & Ors.). The said appeal was disposed of on 11th January, 2019 directing the appellants to comply with the direction passed by the learned Single Judge in regularizing the appointments of the writ petitioners.

In compliance of the direction passed by the Hon'ble Division Bench, approval was granted in respect of the thirty three petitioners. The present two petitioners were not parties in the aforesaid proceeding. The petitioners, however, stand in the same footing as that of the other thirty three petitioners as the names of the present petitioners also featured in the same recommendation list dated 30th September, 2011.

As similar benefits were not extended to the present petitioners, they filed separate writ petitions before this Court seeking similar relief as granted in the matter of Tapas Chakraborty (supra). The said writ petition being WP No. 21776 (W) of 2019 (Tushar Kanti Das vs. The State of West Bengal & Ors.) was disposed of by the Court on 27th November, 2019 and WP No. 23586 (W) of 2019 (Sri Swapan Roy @ Swapan Kumar Roy vs. The State of West Bengal & Ors.) was disposed of on 20th December, 2019 directing the Director, Directorate of Local Bodies to take a decision with regard to the prayer of the petitioners in the light of the judgment passed in the matter of Tapas Chakraborty (supra).

The prayer of the petitioners were considered and rejected. The said rejection is impugned in the present writ petitions.

The Director of Local Bodies opined that the facts of the present petitioners are dissimilar to the case of Tapas Chakraborty & Ors., and accordingly, denied to provide similar relief. The Director of Local Bodies mentioned that in view of certain orders passed by this Court, at present no casual worker can be absorbed in a sanctioned vacant post. The Director in the matter of Tushar Kanti Das observed that Tushar joined in the post of pump operator on 1st August, 1996 without obtaining

prior approval from the Government and subsequently he was promoted with Government approval.

The petitioners contend that out of the thirty five employees whose names were recommended, approval has been granted in respect of thirty three employees who approached this Court in an earlier occasion. There is no reason why the petitioners being the remaining two employees, shall be discriminated.

It has been contended that the service of the petitioners had already been confirmed by the Board of Councillors and their names recommended for approval of appointment. At this stage, the matter is only regarding approval of appointment and not for absorbing the petitioners in sanctioned vacant posts. It has been submitted that the petitioners are receiving regular scale of pay from the Government and they cannot be treated as casual workers as observed in the impugned order.

The petitioners pray for similar relief as granted by this Court in the matter of Tapas Chakraborty (*supra*).

Learned Advocates representing the State respondents opposes the prayer of the petitioners and defends the order passed by the Director of Local Bodies. It has been submitted that at such a delayed point of time, there is no scope to give post facto approval to the appointment of the petitioners. It has been argued that as the initial appointment of the petitioners were made without obtaining prior approval from the Government, accordingly, the Government ought not to be burdened with the financial responsibility of the petitioners.

Learned advocate representing the Municipality admits that the petitioners are in continuous service from their initial date of appointment and the petitioners are receiving their pay in the respective pay scales from the Government. It has been admitted that the petitioners were appointed against sanctioned vacant posts and all documents of the petitioners were forwarded to the Government for according post facto approval of their service. The Government has accepted the prayer of thirty

three employees and the petitioners are the remaining two employees out of the total batch of thirty five employees.

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

It appears from records that the posts in which the petitioners are currently serving were sanctioned by the Government. The names of the petitioners were recommended by the memo dated 30th September, 2011 along with other employees of the Municipality. Thirty three employees from the said list dated 30th September, 2011 approached this Court by filing writ petition and the Court in the matter of Tapas Chakraborty & Ors.(supra) was pleased to pass order that the appointments of the thirty three employees have to be regularized with notional effect from the date of their joining mentioned in the recommendation dated 30th September, 2011.

There is nothing on record to suggest that the petitioners are to be treated differently from the thirty three employees whose service have been regularized in compliance of the direction passed by the Court. There is no reason to treat the petitioners in a manner different from the other employees. The municipality admits that the present petitioners and the petitioners in the case of Tapas Chakraborty & Ors. were empanelled in the same list that was recommended to the Director of Local Bodies.

Though the Director of Local Bodies has opined that the case of the petitioners is dissimilar to the case of Tapas Chakraborty & Ors., but the dissimilarity has not been spelt out in the impugned order. Mere mentioning that the facts are dissimilar does not change the character of the case. Records of the case reveal that it is a clear case of discrimination. Under similar facts the petitioners were treated differently. Equals cannot be treated unequally. The same is not permissible and hit by the principle of Article 14 of the Constitution.

The respondent authority ought to have granted the benefit of the decision of Tapas Chakraborty (supra) to the present petitioners without compelling them to approach Court. On the contrary, the authority rejected their prayer.

The Director of Local Bodies has completely misdirected himself by misappreciating the facts of the case. The authority ought to have appreciated that there is no scope for approval of promotion without approval of the initial appointment. Once promotion is granted, then it has to be taken that the initial appointment is approved, and in the event the same is yet to be approved, then post facto approval has to be given. After serving for more than two decades, after the names of the petitioners were updated in the Verified Staff Statistics way back in 2000 and after disbursing the pay of the petitioners from the State exchequer for such long period, the respondent authority cannot be heard to say that post facto approval of the appointment of the petitioners cannot be given.

The petitioners, under no stretch of imagination, can be treated as casual workers. They were appointed in accordance with the resolution adopted by the Board of Councillors and the posts in which they were appointed were sanctioned by the Government. It is too late in the day to contend that the petitioners cannot be absorbed and post facto approval of their appointment cannot be given. This cannot be treated as a case for absorption in service as, the petitioners are already in regular service for a considerable period of time.

In view of the discussions made herein above, the impugned order passed by the Director of Local Bodies is liable to be set aside and is, accordingly, set aside. The writ petition is disposed of by directing the Director of Local Bodies to accord post facto approval to the appointment of the petitioners with notional effect from the dates of their joining mentioned in the recommendation of the Joint Director of Local Bodies, Burdwan Division dated 30th September, 2011 within eight weeks from the date of communication of this order. It is made clear that the petitioners will have no claim with regard to their arrear salary.

Writ petition stands disposed of.

There shall be no order as to costs.

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

(Amrita Sinha, J.)