

Item No.192

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

21.04.2023
Ct-24

WPA 13884 of 2021
Debanjan Saran Sadhu
v.
Bongaon Municipality & Ors.

Mr. Vivekananda Bose
Mr. Ratikanta Pal
... for the petitioner.

Mr. Sayan Sinha
... for the Municipality.

The petitioner was appointed in the Bongaon Municipality on contractual basis in the post of Computer Assistant at a monthly pay of Rs. 7,813/- only for a period of one year initially by appointment letter dated September 9, 2020. The engagement was purely temporary on contractual basis and likely to be renewed for another one year on satisfactory performance.

The said appointment letter was issued allegedly in furtherance to the advertisement published by the Bongaon Municipality bearing Memo No. BM-2283 dated August 31, 2020 when applications were invited for appointment to the post of Computer Assistant on contractual basis. The petitioner joined service on September 10, 2020 and as per the terms and conditions of the letter of appointment he was to remain in service for a period of one year initially.

The Municipality allegedly terminated the service of the petitioner in June 2020 without any formal disciplinary proceedings initiated against him or without intimating the reasons for termination.

The petitioner filed representations before the Municipality and the same not being considered approached this Court for relief.

The petitioner submits that due to financial constraints the petitioner was constrained to accept the casual job offered by the Municipality from the month of July 2021 at a reduced remuneration of Rs. 5,000/- only per month. The petitioner contends that he ought to be permitted to continue with the job.

The Municipality on the other hand submits that the appointment of the petitioner was not in accordance with the relevant rules. The petitioner was paid from the account of one Arup Kumar Nag who was serving in the post of Computer Assistant in the Municipality. There is neither any document to show the removal of the said Arup Kumar Nag from the Municipality nor there is any resolution of the Board of Administrators of the Municipality to that effect. The State Urban Development Agency still now issues salary for the post of Computer Assistant in the name of Arup Kumar Nag.

The Municipality has averred in the affidavit that the application for appointment submitted by the petitioner was incomplete. The petitioner appears to be the only person who applied for appointment to the said post and there is neither any resolution of the Board of Administrators of the Municipality nor there is any sanction or approval of the State Urban Development Agency in respect of the said appointment.

According to the Municipality the entire selection process of the petitioner to the post of Computer Assistant of the Municipality is non est.

On humanitarian grounds the Municipality did not sack the petitioner from his job but offered the petitioner casual employment at a monthly remuneration of Rs. 5,000/- only. The petitioner accepted the offer and is still serving the Municipality as a casual worker.

The Municipality has raised an issue with regard to the maintainability of the writ petition. It has been submitted that as the petitioner joined the casual employment, the earlier appointment of the petitioner on contractual basis ceases and the petitioner cannot pray for revival of the same.

The Municipality has annexed documents to show that the petitioner is being paid the monthly allowances of Rs. 5,000/- directly in his bank account which the petitioner admits.

What is to be decided is whether the act of the Municipality discontinuing the contractual service of the petitioner prior to completion of the contractual period without initiation of proceeding or without service of notice is valid or not.

It appears that after the petitioner was offered casual employment three months prior to completion of his contractual period, he accepted the same. Though, in the writ petition it has been affirmed that the same has been accepted on account of financial reasons but as the petitioner accepted the said job on casual basis for any reason whatsoever, the earlier contract loses force.

The petitioner not being a regular permanent employee of the Municipality cannot seek for a regular proceeding to be initiated prior to termination/ removal

/discontinuation of service. The Municipality contends that the service of the petitioner was neither terminated nor was the petitioner removed from the job. On humanitarian grounds the petitioner has been allowed to continue service and is earning Rs. 5,000/- per month.

Apart from the letter of appointment, the petitioner has not been able to show that his appointment was in accordance with the rules of the Municipality. It has been submitted that the rules of appointment are not readily available. The same does not imply that the rules are required to be complied with by the Municipality at the time of issuing the letter of appointment.

The Municipality has averred that apart from the petitioner, none else applied for the said post. The same also appears to be very strange as in any public employment where notice of advertisement is published, more often than not, huge number of applications are submitted. It can hardly be that no one else applied for the post but for the petitioner.

It has been submitted by the Municipality that the application form filed by the petitioner was an incomplete one. The Court fails to understand as to how the Municipality processed the application form and proceeded to give appointment to the petitioner till the application form was filed with complete details, in accordance with the recruitment rules.

The learned advocate representing the petitioner submits that the averments made in the affidavit-in-opposition filed by the Municipality is not corroborated by substantive documents.

Be that as it may, the Court not being satisfied that the appointment of the petitioner was in accordance with the relevant rules, refrains from passing any order in exercise of the discretionary extra ordinary writ jurisdiction of the Court.

The writ petition fails and is hereby dismissed.

Affidavit-in-opposition and reply thereto filed in Court today be taken on record.

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

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(Amrita Sinha, J.)