

06 12.09.2023
rkd Ct.15

W.P.A. 16923 of 2014

Sitesh Chandra Mandal

-vs-

The State of West Bengal & Ors.

Mr. Zafirul Islam,

....for the petitioner.

Mr. Suman Ghosh,
Mr. Sankha Prasad Roy

....for the State.

Petitioner claiming to be appointed as Panchayat Sahayak in Jaluabadhal Gram Panchayat, District- Malda under Kaliachak-I Block vide appointment letter dated 1st June, 1999 by instituting this writ petition, *inter alia*, has prayed for regularisation of his engagement upon cancellation of decisions as contained in memo dated 7th February, 2014 passed by the Director, Panchayat and Rural Development, West Bengal and subsequent decision of the Joint Secretary to the Government of West Bengal as contained in memo dated 5th May, 2014.

It has been submitted by the learned advocate representing the petitioner that writ petition being WPA 11063 of 2002 was preferred by him and the same was disposed of vide order dated 12th December, 2003 observing that the claim of

the petitioner shall be guided by the circular dated 16th April, 2003 and the notification dated 8th October, 2003. Subsequently, another writ petition was filed being WPA 21168 of 2007 which was disposed of by another coordinate Bench vide order dated 3rd September, 2013 whereby the Director of Panchayat and Rural Development, Government of West Bengal was directed to comply with the order dated 12th December, 2003 passed on the writ petition being WPA 11063 of 2002.

It was observed in the said order dated 3rd September, 2013 that if in implementing it is found that the implementation of the order requires the help of other officials as well, the Director was directed to take appropriate steps for implementation of the same through other respondents and the order passed by the Court shall be deemed to be binding upon them as well.

Pursuant to such direction orders have been passed by the Director dated 7th February, 2014 and the Joint Secretary dated 5th May, 2014 whereby the claim of the petitioner for regularisation has been negated. Petitioner questions the reasons assigned particularly in the order dated 7th February, 2014 in refusing the claim of the petitioner for regularisation. It has also

been submitted that if the Department of Panchayat and Rural Development was found to be appropriate authority in deciding the issue of regularisation of the petitioner in that event the Joint Secretary was required to pass an independent order disclosing reasons.

State respondents are represented by learned advocates who have made submissions in order to defend the decision of the Director dated 7th February, 2014 and Joint Secretary dated 5th May, 2014. It has been submitted that notification dated 8th October, 2003 is not applicable in the case of the petitioner since petitioner was appointed as Panchayat Sahayak on 1st June, 1999 whereas notification indicates that the candidate needs to be appointed before 13th March, 1996. Therefore according to the learned advocates representing the State respondents there is no infirmity in the order passed by the Director dated 7th February, 2014 based on which subsequent decision was taken by the Joint Secretary on 5th May, 2014.

Having considered the submissions made on behalf of the respective parties and on perusal of the notification dated 8th October, 2003 it appears that since petitioner was appointed as Panchayat

Sahayak vide letter dated 1st June, 1999 in the aforesaid Gram Panchayat that was considered by the Director while appraising the prayer of the petitioner for regularisation on the anvil of the notification dated 8th October, 2003.

The order dated 3rd September, 2013 passed by the coordinate Bench on the writ petition being WPA 21168 of 2007 requires due compliance of the order dated 12th December, 2003 passed on the previous writ petition being WPA 11063 of 2002 and in the said order dated 12th December, 2003 there was specific observation made by another coordinate Bench that all the cases would be guided by the circular as well as notification dated 8th October, 2003.

On perusal of order dated 7th February, 2014 passed by the Director it appears that there are certain reasons assigned in order to refuse the contention of the petitioner but finally it was found by the Director that he was not the appropriate authority to take decision since he was not the controlling authority of Block Development Officers therefore found it fit to forward the issue to the Department of Panchayat and Rural Development for final decision. Therefore, Joint Secretary, Panchayat and Rural Development Department

took the impugned decision dated 5th May, 2014 simply adopting the view expressed by the Director as contained in the order dated 7th February, 2014 without taking any independent decision.

In the present case considering the aforesaid scenario the concerned officer Panchayat and Rural Development Department needs to take an independent view by assigning certain reasons in order to consider the claim of the petitioner for regularisation in view of the stand taken by the Director. The view expressed by the Director, Panchayat and Rural Development dated 7th February, 2014 may be considered his recommendation but the final decision is required to be taken by the Secretary, Panchayat and Rural Development Department since it has been specifically observed in the order dated 3rd September, 2013 by Sambuddha Chakrabarti, J. that if in implementing the order dated 12th December, 2003 it is found that implementation of the order requires the help of other officials as well, the said respondent is directed to take appropriate steps for implementation of the same through other respondents and this order shall be deemed to be binding upon them as well.

In above conspectus, the order dated 5th

May, 2014 passed by the Joint Secretary, Panchayat and Rural Development Department stands set aside since the same is devoid of reasons.

However, this Court does not interfere with the decision taken by the Director, Panchayat and Rural Development, West Bengal dated 7th February, 2014.

Based on such decision of the Director dated 7th February, 2014 the Secretary, Panchayat and Rural Development Department being the respondent no.1 is directed to take a reasoned decision on the claim of the petitioner for regularisation within a period of twelve weeks from the date of communication of this order.

The decision to be taken by the respondent no.1 shall be communicated to the petitioner within one week thereafter.

With the aforesaid direction, the writ petition stands disposed of.

However, there shall be no order as to costs.

Since no affidavits have been filed allegations contained in the writ petition are deemed not to have been admitted.

Urgent photostat certified copy of this

order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)