

Item No.13

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

28.08.2023
Ct-24

WPA 20872 of 2023
Bijoy Kumar Moni

v.

The State of West Bengal & Ors.

Mr. Partha Sarathi Bhattacharyya, Sr. Adv.
Mr. Arunava Maity
Mr. Kunal Ganguly
Mr. Tirupati Mukherjee
... For the petitioner.

Mr. Rajarshi Basu
Mr. Sanjib Dutta
... For the State.

Ms. Supriya Dubey
...For the respondent nos. 6 to 8.

The order of suspension dated August 11, 2023 passed by the Chairman, Raghunathpur Municipality and the subsequent notice issued by the Municipality calling for walk in interview to fill up one post of Sub-Assistant Engineer on contractual basis on temporary nature for a period of six months is under challenge in the present writ petition.

It appears that the petitioner was serving in the post of Engineer-in-Charge of the Municipality. He approached this Court claiming absorption in the post of Sub-Assistant Engineer. The Hon'ble Division Bench by order dated June 19, 2015 directed the Director of Local Bodies to pass necessary order for according approval to the decision of the Municipality regarding permanent absorption of the petitioner in the newly sanctioned post of Sub-Assistant Engineer.

Being aggrieved by the aforesaid direction the State of West Bengal preferred a Special Leave to Appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court on July 24, 2015 passed order staying operation of the order passed by the Hon'ble Division Bench of this Court with further direction that the petitioner shall neither fill the post in question nor it would remove the first respondent from service.

It has been submitted by the learned advocate representing the writ petitioner that the Special Leave to Appeal before the Hon'ble Supreme Court is still pending consideration.

By the impugned notice dated August 11, 2023 the petitioner has been charged with impersonation. It has been mentioned that knowing fully well that he was serving as Sub-Assistant Engineer, he was describing himself as an Assistant Engineer. A show cause notice was issued on August 4, 2023 and the writ petitioner was given seven days' time to reply to the same. Though, copy of the reply to the show cause is annexed to the writ petition but it appears that order of suspension was passed without taking into consideration the reply submitted by the petitioner.

On August 22, 2023 the Municipality published a notification for walk in interview for engaging one Sub-Assistant Engineer. The notification clearly mentions that the Municipality is entitled to engage two Sub-Assistant Engineers on contractual basis. The Municipality intends to engage one Sub-Assistant Engineer. The engagement is to be made on contractual basis, purely temporary for a period of six months.

The petitioner apprehends that, in the event, the post of Sub-Assistant Engineer is filled up, then the claim of the petitioner for being regularized in the post of Sub-Assistant Engineer will be jeopardized.

Learned advocate representing the State respondents points out that the petitioner, in paragraph 2 of the writ petition, has averred that he was working as Assistant Engineer in the Municipality, whereas the communication of the learned advocate of the petitioner dated August 3, 2023 clearly mentions that the petitioner was working as the Sub-Assistant Engineer.

It has been submitted that the petitioner is taking contradictory stand with regard to his designation.

It has further been submitted that the Municipality ought not to be debarred from engaging Sub-Assistant Engineers on contractual basis for a temporary purpose of only six months. The engagement may be required for the normal functioning of the Municipality.

Learned advocate representing the Municipality is yet to receive any instruction in the matter.

It appears from the submissions made on behalf of the parties and upon perusal of the materials on record that the issue of absorption of the petitioner in the post of Sub-Assistant Engineer is sub-judice before the Hon'ble Supreme Court. Prior to the direction passed by the Hon'ble Division Bench for according approval to the decision of the Municipality regarding permanent absorption of the petitioner in the newly sanctioned post of Sub-Assistant Engineer, the petitioner was serving as the Engineer-in-Charge.

The order passed by the Hon'ble Division Bench of this Court directing the Director of Local Bodies for according approval to the permanent absorption of the petitioner in the post of Sub-Assistant Engineer has been stayed by the Hon'ble Supreme Court on July 24, 2015. The State respondents were restrained from filling up the post in question, that is the post of the Sub-Assistant Engineer. The petitioners were further restrained from removing the writ petitioner herein from service. The same implies that the writ petitioner is still serving in the post of Engineer-in-Charge as the order of the Hon'ble Division Bench to approve him as Sub-Assistant Engineer was stayed by the Hon'ble Supreme Court. The matter before the Hon'ble Supreme Court is pending consideration.

At this stage, the petitioner who is serving as the Engineer-in-Charge ought not to interfere with the notification published by the Municipality calling for walk in interview for engaging one Sub-Assistant Engineer on contractual basis for a temporary period of six months.

The Hon'ble Supreme Court has been pleased to grant protection to the petitioner as there is already a direction not to remove him from service, which means that the service of the petitioner remains protected. At the same time the Hon'ble Supreme Court has been pleased to restrain the employer from filling up the post of Sub-Assistant Engineer.

The Municipality has specified in the notification calling for interview that the Municipality is entitled to engage two Sub-Assistant Engineers, but presently intends to engage only one. It does not appear that the

petitioner will be prejudiced in any manner whatsoever if one post of Sub-Assistant Engineer is filled up on contractual basis for a temporary period.

In view of the facts stated hereinabove it appears that there is no reason for the petitioner to apprehend that he will be removed from service.

As regards the show cause for suspension from service, the Municipality passed the order of suspension without taking into consideration the causes shown by the petitioner in the representation dated August 8, 2023 posted on August 10, 2023.

The Municipality is accordingly directed to take into consideration the causes shown by the petitioner in response to the show cause notice dated August 4, 2023 in accordance with law after giving him a reasonable opportunity of hearing.

The order of suspension dated August 11, 2023 is directed to be kept in abeyance till a fresh order is passed by the Municipality in this regard.

The writ petition stands disposed of.

Affidavit-of-service filed in Court today is 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.)