

13.10.2023
Item No.19
Court No.6.
S. De

MAT 1804 of 2023
With
I.A. No. CAN/1/2023
I.A. No. CAN/2/2023

**The Director of Local Bodies, West Bengal & Ex-
Officio Additional Secretary.**
Vs.
Anindita Das & Ors.

Mr. Subhrangsu Panda,
Ms. Ina Bhattacharyya,
Ms. Mithu Singha Mahapatra,
...for the appellant.

Mr. Mainak Gangully,
...for the respondent
nos. 2, 3.

Mr. Arunava Ghosh,
Mr. Anant Kr. Shaw,
...for the respondent/writ
petitioner no.1

Mr. Rajarshi Basu,
Mr. S.T. Mina,
...for the State/respondent no.5.

By consent of the parties the appeal and the
connected applications are taken up together for
hearing.

In re : I.A. No. CAN/2/2023 (Section 5)

This is an application for condonation of delay of
562 days in filing the appeal. Causes shown being
sufficient, the delay is condoned.

I.A. No. CAN 2 of 2023 is, accordingly, disposed
of.

In re : MAT 1804 of 2023 & I.A. No. CAN/1/2023

This appeal is directed against a judgment and order dated November 23, 2021, whereby the writ petition of the respondent no.1 herein being WPA No.15882 of 2017 and two connected applications being CAN 1 of 2018 and CAN 2 of 2020 were disposed of by a learned Single Judge of this Court.

The writ petitioner is a casual employee in Garulia Municipality. She is a teacher. She wanted to participate as an in-house candidate in a recruitment process initiated by Garulia Municipality. However, because she had crossed the age limit, her application was not accepted. She approached this Court by filing the present writ petition being W.P. 15882(W) of 2017.

By an interim order dated June 20, 2017, a learned Single Judge of this Court permitted her to participate in the recruitment process subject to certain conditions. The relevant portion of that order reads as follows :-

“By way of an interim measure, this Court directs the concerned authority to accept the application of the petitioner without insisting for the age limit indicated in the employment notice and if the said application is found otherwise in order shall permit the petitioner to sit in the recruitment examination but shall not declare the result until further order that may be passed in the instant writ petition.

The participation in the recruitment process shall not create any special equity in favour of the petitioner and always be subject to the result of the writ petition.”

The petitioner participated in the recruitment process which was initiated in 2017. Although the recruitment process was finalized, the result was not published because of the interim order which we have extracted above. The Municipality filed an application for modification of the interim order being CAN 1 of 2018 (Old No. CAN 8538 of 2018) praying for permission to publish the result of the recruitment process.

By the judgment and order dated November 23, 2021 which is impugned in the present appeal, the learned Single Judge disposed of that application as also the writ petition. The relevant portion of the impugned order reads as follows :-

“Having heard the learned Advocates for the respective parties, this Court grants such leave to the municipality to publish the result. The candidature of the petitioner shall be considered on the basis of the merit list. It is submitted by the municipality as also the other respondents that they do not have any objection to the finalisation of the recruitment process and they shall also not insist on the age bar prescribed in the recruitment notice in case the

petitioner fulfils the other eligibility criteria and has been successful in the selection process. The petitioner has been discharging her duty for almost 20 years in the municipality on casual basis. If the petitioner has the requisite qualification, the age bar can be condoned and the municipality is willing to do the same in view of the several decisions of this court. Resolution to that effect has also been adopted by the municipality.

As the recruitment process was pending in view of the order passed in the writ petition, it is expected that the entire recruitment process shall be completed within a period of two weeks from date.”

The Director of Local Bodies, Municipal Affairs Department, who is the present appellant, filed an application for review of the learned Single Judge’s judgment and order dated November 23, 2021. The learned Judge disposed of such review application by a judgment and order dated November 24, 2022 with the following observations :

“Today, a review has been sought on the ground that before the order of this court was passed, the West Bengal Municipal Service Commission Act, 2018 had already come into force and all recruitments were to be done in terms of the said Act. Although this court is of the

view that the recruitment process which was initiated in 2017 and which continued at the time when the new Act had not come into force should be guided by the previous rules and regulations, the court deems it fit not to venture into an adjudication of this issue which is beyond the scope of the writ petition.

I do not find any ground for review.

It is not a case of error apparent on the face of the record. It is also not a case where a settled principle of law has not been followed. Finally, it is not a case in which the applicant was not aware of the existence of the Act of 2018 when the writ petition was disposed of.

The municipality had completed the process on the basis of the 2017 advertisement. Final result was not published due to pendency of the writ petition. The employer had decided to condone the age limit for an in house candidate.

The learned advocate for the State respondents did not raise any objection at the relevant point of time. It is presumed that the learned advocate was conscious that a recruitment process which was initiated in 2017, could not be cancelled by retrospective application of a subsequent statute.

If the promulgation of the 2018 Act and the prohibition therein is a ground for review, in that case not only the selection of the petitioner but the entire selection

process becomes invalid and the other candidates who were selected would suffer consequences. They are also not before the court.”

Being unsuccessful in the review application, the Director of Local Bodies has come up by way of this appeal against the learned Judge’s original judgment and order dated November 23, 2021.

The sole point urged by learned advocate for the appellant before us is that upon the West Bengal Municipal (Second amendment) Act, 2018 coming into force in January 2019, the Director of Local Bodies ceased to have anything to do with recruitment of the municipal employees and lost the power even to approve appointment of municipal employees. This is because Section 54(3A) of the West Bengal Municipal Act, 1993 and Section 55 of that Act were amended to read as follows :

“54(3A) : The recruitment to the posts not required to be made through the West Bengal Municipal Service Commission constituted under sub-section (1) of Section 3 of the West Bengal Municipal Service Commission Act, 2018, shall be made through the open advertisement or through such other method as the State Government may determine from time to time”

The amended Section 55 reads as follows :-

“55. The West Bengal Municipal Service Commission constituted under sub-section (1) of Section 3 of the West Bengal Municipal Service Commission Act, 2018, shall select such personnel for the municipalities as may be prescribed by the State Government, and it shall be binding on the Municipality to appoint the personnel selected by the said Commission”

We are of the considered opinion that the appellant is suffering from a gross misconception. Firstly, a recruitment process which was initiated in 2017 and which was completed prior to the West Bengal Municipal (Second Amendment) Act, 2018, coming into force, cannot be in any manner affected by the provisions of that Amendment Act. The result of the recruitment process was withheld in view of the interim order of a learned Judge of this Court. However, it is not in dispute that the process was completed prior to the 2018 Amendment Act coming into force. It is established law that any amendment will have to be taken to be prospective in nature unless it is made retrospective expressly or by necessary implication. We find no intention of the legislature in the present case to make the 2018

Amendment Act retrospective. The language of the amendment is also very clear and indicates that the amended provisions will have effect in futuro. Hence, in our considered view, the provisions of the 2018 Amendment Act in no manner affect the recruitment process that was initiated in 2017.

Secondly, it appears that by the 2018 Amendment, the Municipal Service Commission was only entrusted with the duty of preparing a panel of candidates for the purpose of recruitment. The appointment still has to be made by the Municipality concerned which would necessarily mean that the Municipality would have to obtain the approval of the Director of Local Bodies. Hence, we are not in agreement with learned advocate for the appellant that the appellant has no power to grant approval. We are at a loss to understand as to why the appellant is desperate to abdicate the power which he has according to us.

We find no merit in this appeal at all. The result of the recruitment process has now been published. Learned advocate for the Municipality tells us that the writ petitioner has been successful in the recruitment process and her name has found place in the panel. It will be up to the Municipality to grant appointment to the writ petitioner in accordance with law and if, for that purpose, the Municipality approaches the

Director of Local Bodies for approval, such approval will be forthwith granted by the Director of Local Bodies.

MAT 1804 of 2023 is disposed of along with the application being I.A. No. CAN 1 of 2023.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)