

27.04.2023

WPA 24763 of 2018

**Smt. Aparna Manna & Ors.
Vs.
The State of West Bengal & Ors.**

Mr. Nilanjan Bhattacharjee
Mr. Sanjoy Karar
Mr. Arpan Guha
Mr. Saikat Day

... ... for the petitioners

Mr. Pinaki Dhole
Mr. Avishek Prasad

... ... for the State

Mr. Md. Hafiz Ali

... ... for the respondent nos.4 to 7

1. The writ petitioners, respondent nos. 1 to 3/State and respondent nos.4 to 7 are represented by their learned advocates.
2. Heard Mr. Nilanjan Bhattacharjee, learned advocate for the petitioners in support of the instant writ petition. Heard Mr. Pinaki Dhole, learned advocate for the State and Mr. Md. Hafiz Ali, learned advocate for the respondent nos.4 to 7, i.e. Budge Budge Municipality and its officials against the writ petition.
3. Perused the entire materials as placed before this Court and considered the submissions of the learned advocates for the contending parties.
4. In this writ petition as filed under Article 226 of the Constitution of India the writ petitioners are aggrieved with the order of the Director of Local

Bodies, Government of West Bengal, as communicated vide letter no.1423(10)/DLB/P-211/13/WB-20247/2018 dated November 14, 2018. By the impugned order the Director of Local Bodies after considering the representation of the present writ petitioners held thus :

“Since permanent vacancies against sanctioned posts in the self same scheme i.e. CUDP-III where service of the petitioners were utilized, were never declared, question of eligibility for absorption as per the terms and conditions of such declaration of vacancies against the posts, does not arise.”

5. For effective adjudication of the instant *lis* the facts leading to filing of the instant writ petition is required to be dealt in a nutshell.
6. By filing the instant writ petition it has been contended by the petitioners that on 21.05.1988 the present petitioners joined as health workers under the Kolkata Urban Development Project – III (hereinafter referred to as the ‘said project’). It is contended on behalf of the writ petitioners that by an order dated January 22, 1997 as issued by the Director of Local Bodies, Government of West Bengal casual workers engaged prior to 31.12.1991 in different Urban Local Bodies were directed for absorption against sanction but in spite of rendering long service under the said project the respondent nos.4 to 7 did not make the present

writ petitioners permanent pursuant to the said circular dated January 22, 1997.

7. Finding no other alternative, the writ petitioners made several representations before the respondent nos.4 and 7 but of no effect.
8. It is contended further that finding no other alternative the writ petitioners filed WP 3610(W) of 2011 against the present respondents and in the said writ petition a co-ordinate Bench of this Court by its order dated 15.11.2011 directed the respondent no.2 of the said writ petition to dispose of the matter regarding regularization of the petitioners by passing a reasoned order within a specified time.
9. It is contended further that under cover of its letter dated February 23, 2012 Director of Local Bodies while rejecting the contention of the present petitioners held that since the present petitioners were serving under the said project they cannot be treated as casual workers and in the absence of any Government order to absorb the project workers in sanctioned vacant post of the municipality, their prayer for regularization of service cannot be held to be maintainable.
10. Challenging the said order dated February 23, 2012 a second writ petition was filed before this Court

and in the said writ petition being WP 9512 (W) of 2012 another co-ordinate Bench of this Court by its order dated 11.01.2018 though set aside the order of the Director of Local Bodies as communicated under cover of its letter dated February 22, 2012 but directed the Director of Local Bodies, Government of West Bengal to consider the case of present petitioners within three parameters namely; (i) on the date of declaration of permanent vacancy against sanctioned post in the self-same scheme where service of the petitioners were utilized, and (ii) if the petitioners or either of the aspirant petitioners are/is still in service, and, (iii) if they are eligible on that date to be absorbed as per the terms and conditions of such declaration of vacancy against the post so to be declared.

11. As stated above, by the impugned order as indicated vide letter dated November 14, 2018 Director of Local Bodies again rejected the prayer of the writ petitioners on the ground mentioned above.
12. In support of the instant writ petition Mr. Bhattacharjee, learned advocate for the writ petitioners strongly contended that considering the long tenure of service and considering the guidelines as fixed by this Hon'ble Court in WP 9512 (W) of 2012 the respondent no.2/ Director of

Local Bodies was not supposed to pass the impugned order.

13. It is contended by Mr. Bhattacharjee that the circular of the respondent no.2 dated January 22, 1997 squarely applies in the case of the petitioners.
14. In course of his submission Mr. Bhattacharjee, learned advocate for the petitioners places his reliance upon three reported decisions namely; **Amarkant Rai Vs. State of Bihar and others**, reported in **(2015) 8 SCC 265**, **State of Punjab and others Vs. Jagjit Singh and others**, reported in **(2007) 1 SCC 148** and **Nihal Singh and others Vs. State of Punjab and others**, reported in **(2013) 14 SCC 65**.
15. Placing his reliance upon the aforesaid three reported decisions, Mr. Bhattacharjee submits that in the event a Constitutional Court finds that the executive pillar of the Government has failed to take rational decision based on relevant consideration in that event a Constitutional Court can very well direct the executive to create post absorption of the petitioners.
16. Per contra, Mr. Dhole in course of his argument draws the attention of this Court to the order dated 11.01.2018 as passed in WP 9512 (W) of 2012 vis-

à-vis the reasoned order as passed by the respondent no.2 which has been communicated to the writ petitioners under cover of its letter dated November 14, 2018. It is contended by Mr. Dhole that the respondent no.2 after considering the representation of the present writ petitioners in the light of the order dated 11.01.2018 as passed in WP 9512 (W) of 2012 found that since permanent vacancies against the said sanctioned post in the self same scheme/project was/were never declared the question of eligibility for absorption as per the terms and conditions of such declaration of vacancies against the post so to be declared does not arise.

17. Mr. Dhole thus submits that since the order dated November 14, 2018 as passed by the respondent no.2 is a reasoned and rational order, there is little scope to interfere with such finding.
18. Md. Hafiz Ali, learned advocate for the Budge Budge Municipality echoes the version of Mr. Dhole. It is also submitted by him that the writ petitioners have miserably failed to make out a case for getting a favourable order from this Court.
19. On perusal of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, it reveals to this Court

that there is no dispute that the writ petitioners were appointed under a specific project. Admittedly, by a circular dated January 22, 1997 the respondent no.2/ Director of Local Bodies, Government of West Bengal permitted the local authorities to absorb casual workers who were engaged upto 31.12.1991 against sanction but before this Court no materials have been placed that the present writ petitioners were employed as casual workers under Budge Budge Municipality and on the contrary sufficient materials have been placed to substantiate that the present writ petitioners were appointed under a specified project or scheme. Such factum in considered view of this Court has been taken due care of by a co-ordinate Bench of this Court in WP 9512 (W) of 2012 which is why by its order dated 11.01.2018 the said Hon'ble Court had set up three guidelines as mentioned above for considering the absorption of the present petitioners.

20. On perusal of the impugned order of the respondent no.2 as communicated under cover of its letter dated November 14, 2018 it reveals that the respondent no.2/Director of Local Bodies, Government of West Bengal found that in respect of the said scheme or project, permanent vacancies were never declared and thus question of eligibility

for absorption as per terms and conditions of such declaration does not arise.

21. In considered view of this Court while passing the order dated November 14, 2018 as has been assailed before this Court the respondent no.2/Director of Local Bodies, Government of West Bengal duly considered the pros and cons of the three guidelines as fixed by the Hon'ble Court in WP 9512 (W) of 2012 and therefore this Court finds no cogent reason to interfere with the decision dated November 14, 2018.
22. On perusal of the three reported decisions as cited from the side of the writ petitioners it appears to this Court that those three different reported decisions are quite distinguishable from the facts as involved in the present case and thus those three decisions have no manner of application in the instant *lis*.
23. In view of the discussion made hereinabove this Court finds no reason to interfere with the order of the respondent no.2 as communicated under cover of its letter dated November 14, 2018 and thus the instant writ petition fails and the same is hereby dismissed on contest.

24. Urgent certified copy of this order, if applied for, be given to the parties upon compliance of all legal formalities.

(Partha Sarathi Sen, J.)