

D/L
Item No. 04
15.12.2023
KOLE

**MAT 2312 of 2023
With
IA CAN 1 of 2023**

**Bina Kader
-Vs.-
The State of West Bengal & Ors.**

Mr. Samarandra Nath Biswas,

...for the appellant.

*Mr. Priyankar Saha,
Mr. Rudrajit Sarkar,*

...for the State.

Affidavit of service filed in Court today be kept with the records. In spite of receiving notice, the Jiaganj Azimganj Municipality (in short 'the Municipality') is not represented.

By consent of the appearing parties, the appeal and the connected application are taken up for hearing together.

A judgment and order dated September 29, 2023, passed by a learned Single Judge of this Court on the appellant's writ petition being WPA 6757 of 2023, is the subject matter of challenge in this appeal.

The appellant's husband was serving in the post of Drain Cleaner in the Municipality. He passed away while in harness in June 2015 after completing almost 23 years of service. After his death, his wife, the appellant herein, was permitted by the Municipality to serve in the aforesaid post which her husband held, as a full time Drain Cleaner of the Municipality. The appellant is being paid a monthly remuneration of Rs. 5,000/- since 2015.

The appellant had earlier approached a learned Judge of this Court by filing WPA 18332 of 2021 which was disposed of by an order dated January 15, 2022 by observing that if the Municipality decides to fill up the post in accordance with law, then the writ petitioner (appellant herein) shall be allowed an opportunity of participating in the selection process upon condoning the age bar, if she is otherwise eligible and is working continuously since 2015 till the date of recruitment.

Thereafter the Municipality did not take any steps for filling up vacant posts including the post in which the appellant is serving.

In the present round of litigation, the appellant approached the learned Single Judge complaining that the Municipality is not taking steps for filling up the vacant sanctioned posts. It was submitted that it is practically impossible to survive on a paltry remuneration of Rs. 5,000/- per month. The writ petitioner relied on the observation of the Hon'ble Apex Court in the case of **State of Karnataka Ors.-vs.-Uma Devi**, reported in **(2006) 4 SCC 1**, to the effect that if sanctioned posts are vacant the State shall take immediate steps for filling up those posts by initiating regular process of selection.

It was submitted on behalf of the Municipality that the Municipality does not have the funds to make regular engagement. The Director of Local Bodies has not taken any steps for appointment.

The learned Judge disposed of the writ petition with the following observations and directions:-

“The petitioner has submitted that she is serving as a casual employee since 2016 at a paltry remuneration of Rs. 5,000/- only per month. Admittedly, there are various sanctioned posts that are vacant as on date. It is highly improper for the Municipality to get work done by engaging casual employees in full time service.

Since the work performed by the petitioner is of permanent nature, the Municipality ought to take steps for filling up the vacant sanctioned posts.

Though it is not for the court to issue writ of Mandamus compelling the Municipality to initiate recruitment process, but at the same time the Court cannot keep its eyes shut to the submission made by the petitioner that she is being exploited to perform regular full-time work upon payment of Rs. 5,000/- only per month for years together.

In view of the above, the instant writ petition is disposed of by directing the Municipality to take steps for initiating regular selection process for filling up the vacant sanctioned post (s) in accordance with the directions passed by the Hon’ble Supreme Court in the matter of Umadevi & Ors (supra).”

The writ petitioner has come up by way of this appeal only because no time period has been indicated by the learned Single Judge within which the recruitment process is to be completed. Learned Advocate for the appellant says that the appellant is in dire conditions. Rs. 5,000/- per month is just not enough to make both ends meet. Hence, the sanctioned vacant posts including the post in which the appellant is serving should be filled up following due process of law at the earliest.

We have heard Learned Advocate for the State, who says that it is for the Municipality to take appropriate steps in the matter.

It is indeed next to impossible to survive with any degree of dignity on a monthly salary of Rs. 5,000/-. The appellant is discharging whole time duties since 2015. It is not a part time job. The appellant is discharging the duty that her husband used to discharge as a full time regular employee. She is compelled to render this service as it is a question of her survival. However, given the present price indices and the cost of living, we reiterate that one cannot possibly survive on a salary of Rs. 5,000/- per month. This is nothing but exploitation. Right to life guaranteed under Article 21 of the Constitution of India includes the right to live with dignity. It does not contemplate mere existence.

We agree with the learned Single Judge that in a situation like the present one, the Writ Court must, in order to do substantive justice, issue appropriate directions. The learned Judge has issued such direction. We only clarify that the process for filling up the vacant sanctioned post(s) in accordance with law, and the directions passed by the Hon'ble Apex Court in the case of ***Umadevi*** (*supra*) be initiated and completed by the Municipality after obtaining immediate permission from the Director of Local Bodies, within six months from the date of communication of this order by the appellant to the Chairperson of the said Municipality.

We clarify that we are not issuing any mandamus to absorb the appellant. The appellant will only be entitled to participate in the recruitment process condoning any age bar. Only if she is successful in such process, she will be absorbed.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to be admitted by the respondents.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)