

W.P.A. 29048 of 2014

**Bhola Das & Ors.
Vs.
The State of West Bengal & Ors.**

**Mr. Prosenjit Mukherjee
Mr. Arghya Kamal Das**

....for the petitioners

**Mr. Tapan Kr. Mukherjee
Ms. Tuli Sinha**

...for the State

**Mr. Tapas Kr. Ghosh
Mr. Tanmoy Chowdhury**

..for the respondent nos. 6 & 7

Twenty eight writ petitions are before this Court with the present writ petition, *inter alia*, challenging the order of the Principal Secretary, Municipal Affairs Department being respondent no. 2 whereby claim of the petitioners to be absorbed as staff of Hooghly-Chinsurah Municipality has been negated on certain grounds as delineated therein.

Petitioners moved writ petition being WPA 24843 of 2013 (Bhola Das & Ors. Vs. State of West Bengal & Ors.) which was disposed of by a coordinate Bench vide order dated 7th October, 2013 directing the respondent no. 2 to take decision on the claim of the petitioners seeking regularization upon according post facto approval. Pursuant to the said order dated 7th October, 2013 respondent no. 2 passed order after hearing the parties on 29th January, 2014 whereby prayer of the petitioners has been spurned.

Petitioners in pursuit of obtaining necessary direction for their absorption upon according post facto approval relied upon by the State Government order being Memo No. 162/MA/O/C-9/2A-1/2010 dated 23rd April, 2010 before the coordinate Bench and it was also contended that the claim of the petitioners was recommended by the concerned authority of the municipality, therefore, benefit of such Government Memo dated 23rd April, 2010 needs to be extended in favour of the petitioners. While considering the issue of extending the benefit of Government Order dated 23rd April, 2010 the respondent no. 2 found it fit not to grant relief to the petitioners on the score that the petitioners were engaged on casual basis in 1992 onwards without the nod of the State Government. Therefore, according to the respondent no. 2 in absence of such nod of the State Government petitioners could not have been substantively approved in their respective posts.

The learned advocate representing the petitioners while advancing argument has placed reliance on Section 54(3) of the West Bengal Municipal Act, 1993 which prescribes requirement of prior approval of the State Government in the matter of appointment by the municipality in respect of the posts excluded under sub-Section (1) of Section 54. It has also been contended that requirement of approval of the State Government in the matter of appointment under Section 54 (3) has been

introduced vide amendment with effect from 1st October, 2003; therefore the requirement of approval of the State-Government in the matter of appointment of the petitioners was not necessary since they were appointed prior to aforesaid amendment. In support of such contention reliance has been placed on the judgment of the Hon'ble Division Bench dated 11th January, 2019 passed on **MAT 1619 of 2016 (The State of West Bengal and Ors. Vs. Tapas Chakraborty and Ors.)**.

The learned advocate representing Hooghly-Chinsurah Municipality supports the contention of the petitioners and has also submitted that the case of the petitioners was duly recommended by the concerned authority of the municipality at the material point of time for their absorption. However, such recommendation was not considered by the concerned authority of State Government for granting relief to the petitioners.

Mr. Tapan Kr. Mukherjee, learned Additional Government Pleader appears for the State-respondents who has defended the decision of the respondent no. 2 dated 29th January, 2014. It has been submitted by Mr. Mukherjee that even Court proceeds on the premise that considering the date of appointment of the petitioners prescription of the statute under Section 54 (3) may not come into play but Section 54 (3A) would apply in case of the petitioners. It has been submitted that if recruitment is not made on the recommendation of the West Bengal

Municipal Service Commission the municipality is required to publish open advertisement for the purpose of recruitment or through such other method as the State Government may determine from time to time. Since in the present case requirement under Section 54(3A) has not been complied with the claim of the petitioners cannot be acceded to.

Having heard the learned advocates representing the parties and on perusal of the decision taken by the respondent no. 2 dated 29th January, 2014 it appears that the case of the petitioners to extend the benefit of Government Order dated 23rd April, 2010 has been rejected not on application of the provision of Section 54(3A) rather the purport of the impugned order reveals that the respondent no. 2 proceeded on the premise that the requirement as contemplated under Section 54(3) has not been complied with since it has been recorded in the impugned order that there is no approval of the State Government while engaging the petitioners in the year 1992 onwards. While considering the issue as involved in this writ petition this Court is required to take into consideration the fact that prescription of statute to the extent of requirement of prior approval of the State-Government at the time of recruitment was brought in by way of amendment with effect from 1st October, 2003 whereas petitioners were appointed much prior to the date of amendment.

In this regard reliance is placed on **Tapas Chakraborty** (supra), in paragraph 7 identical issue has been dealt with by the Hon'ble Division Bench that requirement of prior approval of the State Government at the time of appointment was subsequently inserted by way of amendment with effect from 1st October, 2003. I find substance in the contention of the petitioners that on the ground of requirement of prior approval of the State Government, in consideration of the dates of engagement of the petitioners, the respondent no. 2 ought not to have negated the claim of the petitioners since such requirement was brought in by way of an amendment with effect from 1st October, 2003.

Mr. Mukherjee has made feeble attempt to justify the order of the respondent no. 2 on the strength of the provision as contained under Section 54(3A) of 1993 Act since petitioners were not appointed by publishing advertisement in the year 1992 onwards. However, such argument transpires to be made in desperation since respondent no. 2 while negating the claim of the petitioners did not make any observation based on requirement of observance of the provisions under Section 54(3A).

In view of aforesaid scenario the impugned order of the respondent no. 2 dated 29th January, 2014 stands set aside.

The Principal Secretary, Municipal Affairs Department is directed to revisit the issue and pass a

reasoned order on the claim of the petitioners seeking grant of post facto approval in consideration of their respective dates of appointment taking into account the recommendation made by the concerned authority of Hooghly-Chinsurah Municipality within a period of 12 (twelve) weeks from the date of communication of the order. Before taking such decision petitioners or their one representative as well as representative of Hooghly-Chinsurah Municipality shall be granted opportunity of being heard. Respondent no. 2 is also directed that while taking such decision not to consider the absence of prior approval of the State Government at the time of appointment of the petitioners since the same is not the relevant consideration in view of the observations made by this Court in the preceding paragraphs. The decision to be taken by the respondent no. 2 shall be communicated to the parties within 2 (two) weeks thereafter.

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

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)