

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 18 of 2021

Swapan Kumar Hota & Ors.

Vs.

The State of West bengal & Ors.

For the Petitioners	: Mr. L.K. Gupta, Sr. Adv. Mr. Soumen Kumar Dutta Mr. Subham Dutta Sk. Sayan Uddin	 advocates
For the State	: Mr. Indranil Roy Mr. Tapas Kumar Mondal	 advocates
For the Contai Municipality	: Mr. Nilanjan Adhikari	 advocate
For the Private Respondent	: Mr. Soumya Majumder Mr. Suryaneel Das Mr. Chiranjit Pal	 advocates
Reserved on	: 02.09.2024	
Judgment on	: 12.09.2024	

Hiranmay Bhattacharyya, J.:-

1. Thirty three casual workers of a Municipality have jointly filed this writ petition praying for issuance of a writ of mandamus to command the Director of Local Bodies to grant approval to the appointment of the petitioners from their respective dates of appointment; to cancel the approval letter issued in favour of the private respondents and also to set aside all consequential effect.
2. The petitioners claim that they were appointed on casual basis on diverse dates during the period 1992 to 2000 in Contai Municipality (for short "the

Municipality"). They further claim that the private respondent nos. 7 to 31 were also appointed in the said municipality during the period 1991 to 2000. The petitioners claim that their names along with the names of the respondent nos. 7 to 31 were included in the list of 268 casual/ daily rated workers who were engaged for not less than 10 years as on 01.04.2010 and have rendered service for not less than 240 days each year. The petitioners further claim that they are entitled to get approval from the date of their respective dates of appointment in view of the decision of the Hon'ble Supreme Court in **Secretary, State of Karnataka vs. Uma Devi (3)** reported at **(2006) 4 SCC 1**. Petitioners alleged that the Director of Local Bodies (for short "DLB") accorded approval of appointment of the private respondents vide letter dated 10.02.2020. Petitioners allege that though the petitioners and private respondents were all appointed as casual workers and doing same nature of work, the action of the DLB is discriminatory as the petitioners' appointments were not approved when the appointments of similarity situated casual workers were approved.

3. Being aggrieved, by the aforesaid action of the respondents, the petitioners have approached this Court.
4. Mr. Gupta, learned Senior Counsel appearing in support of the writ petition contended that the writ petitioners along with the private respondents and several others were appointed as casual workers in the Municipality. He further contended that the appointments of the private respondents were approved in terms of the Order dated 28.06.2004 issued by the Department of Municipal Affairs, Government of West Bengal. He submitted that since the petitioners are similarly placed as that of the private respondents and were appointed more or less at the same period of time, the appointment of the petitioners ought to have been approved from their respective dates of appointment. He further contended that the petitioners were also appointed in a pay scale attached to the posts in which they were appointed. Mr. Gupta contended that the appointments of the petitioners were not

approved only on the ground that there is no vacancy in the sanctioned posts. Mr. Gupta referred to the information furnished by the competent authority under the provisions of the Right to Information Act, 2005 (for short "the 2005 Act") vide letter dated 17.10.2023 in support of his contention that there were no sanctioned vacant post in the year 1994. By placing reliance upon the said information, Mr. Gupta contended that appointments of private respondents and several others were approved though there was no sanctioned vacant post at the relevant point of time.

5. Mr. Gupta contended that the act of regularising one group of employees and not regularising the other group is discriminatory and violative of Article 14 of the Constitution of India. He further contended that lack of vacancy in sanctioned post cannot be a ground to deny regularisation. In support of the aforesaid contentions, Mr. Gupta placed reliance upon the following decisions of the Hon'ble Supreme Court of India:

(i) Order passed in **SLP (C) No. 7898/ 2020** on July 3, 2023 in the case of **Raman Kumar & Ors. vs. Union of India and others**.

(ii) Order passed in **Civil Appeal No(s) 2795-2798 of 2018** on March 13, 2018 in the case of **Ravi Verma and ors. vs. Union of India and others**.

6. Mr. Roy, learned advocate appearing for State seriously disputed the contentions of Mr. Gupta. He contended that the petitioners were engaged on different dates and have been receiving consolidated pay of Rs. 6,600/- per month. He further contended that the petitioners never received salary in any scale of pay. He submitted that the petitioners were paid by the Municipality from its own fund. He submitted that the Board of Councillors of a Municipality cannot create posts without prior sanction of the State Government. He concluded by submitting that 46 number of posts created by the Board of Councillors vide resolution dated 21.03.2000 are not valid posts and, therefore, the appointments of the petitioners in such posts cannot be said to be valid.

7. Mr. Adhikari learned advocate appearing for the Municipality submitted that the petitioners are all working in the Municipality for more than 10 years and have rendered service for at least 240 days each year. He further submitted that under a Memo dated 10.02.2021 the Chairperson of the Board of Administrators, Contai Municipality forwarded a proposal to the Director of Local Bodies and Ex-Officio Special Secretary to the Government of West Bengal for creation of additional posts and sought permission to fill up those posts so that the petitioners can be absorbed from the date of their respective engagement.
8. Mr. Majumder learned advocate appearing for the private respondents submitted that the private respondents were appointed by the Municipality and their appointments have been duly approved by the DLB vide Memo dated 10.02.2020 in view of the order dated 28.06.2004. He submitted that the petitioners do not stand on the same footing as that of the private respondents.
9. Heard the learned advocates for the parties and perused the materials placed.
10. Record reveals that it was brought to the notice of the Government of West Bengal, Department of Municipal Affairs that a considerable number of appointments/ promotion were made in a number of Urban Local Bodies against sanctioned vacancies holding erstwhile scale of Rs. 380-910/- and below during the period from 01.01.1986 to 13.07.1994 without obtaining prior approval of the Government and in absence of approval of the Government, the Urban Local Bodies are facing difficulties relating to the finalisation of pension cases of the retired employees. The Government after due consideration issued a Memo dated 28.06.2004 wherefrom it appears that the Government was pleased to decide that the approval of the Government for such appointments/ promotions for the aforesaid period, made against the vacancies in sanctioned posts of the concerned Urban Local Bodies, shall be deemed to have been accorded.

11. After going through the Memo dated 28.06.2004, this Court finds that only the appointments/ promotions made during the period 01.01.1986 to 13.07.1994 against the vacancies in sanctioned posts shall be deemed to have been accorded.
12. In reply to the request for approval of appointments of the private respondents, DLB applied the Memo dated 28.06.2004 and issued a Memo dated 10.02.2020 informing the Chairman of the Municipality that their appointments are deemed to have been approved.
13. Petitioners claim that their appointments ought to have been approved by applying the aforesaid Memo dated 28.06.2004.
14. In order to decide the issue as to the applicability of the Memo dated 28.06.2004, this Court has to consider whether the petitioners were appointed against vacancies in sanctioned posts at the scale of pay and during the period as specified in the said Memo.
15. In the Supplementary Affidavit affirmed on 11.09.2023, the petitioners have disclosed the appointment letters issued in their favour by the Chairman of the Municipality. The said appointment letters appear to have been issued sometimes in the month of March, 2000. Such letters record that the appointments were made pursuant to the resolution no. 10(iii) of the meeting of the Board of Councillors held on 21.03.2000 as Group "D" employee with effect from 01.04.2000. The letters further record that such service is purely temporary and may be terminated without assigning any reason thereof. It was also specifically stated therein that no scale of pay will be give until the sanctioned order of the Government is received from the concerned authority.
16. From Resolution no. 10(iii) of the meeting of the Board of Councillors held on 21.03.2000 it is evident that the Chairman of the Municipality was empowered to take appropriate steps for getting necessary approval of 46 number of Group "D" posts.

17. Creations of posts by the Municipality without the approval of the competent authority of the Government cannot fall with the expression "sanctioned posts". To the mind of the Court, the appointments of the petitioners with effect from 01.04.2000 cannot be said to be against vacancies in sanctioned posts.
18. The Government of West Bengal, Department of Municipal Affairs issued an Order dated 23.04.2010 directing that casual/daily rated workers engaged by various Local Bodies will be paid a remuneration of Rs. 6,600/- per month and they will not be entitled to any other allowances.
19. The writ petitioners have admitted that they were receiving an amount of Rs. 6,600/- per month in terms of the Government Order dated 23.04.2010 at the relevant point of time.
20. In view of the aforesaid discussion, this Court holds that the writ petitioners were not appointed against vacancies in sanctioned posts at the scale of pay and during the period stipulated in the Memo dated 28.06.2004. Therefore, the said Memo dated 28.06.2004 cannot come to the aid of the petitioners.
21. In course of hearing, Mr. Roy placed a Memo dated 07.05.2009 issued by the Department of Municipal Affairs whereby the Governor was pleased to authorise the DLB to issue order according post facto approval of appointments / promotions made by the Municipalities against sanctioned vacancies holding erstwhile scale of pay of Rs. 380-910/- since revised to 4000-8850/- and below.
22. The said Memo dated 07.05.2009 also cannot come to the aid of the petitioners as it has already been held that the petitioners were not appointed against sanctioned vacancies.
23. Mr. Gupta would contend that the petitioners are similarly situated with that of the private respondents as the appointments of the private respondents at the relevant point of time were not against sanctioned

vacancies. To buttress such contention, Mr. Gupta placed strong reliance on the informations furnished under the 2005 Act.

24. The information furnished by the SPIO and Executive Officer of the Municipality vide letter dated 17.10.2023 states that there were no sanction vacant post in the year 1994 and there existed 3 number of sanctioned vacant posts since 1995-2000.
25. The writ petitioners have not disclosed the application made under the 2005 Act seeking information. The informations supplied as aforesaid are only relatable to the informations sought for.
26. That apart, the petitioners have specifically admitted in the Supplementary Affidavit affirmed on 13.01.2021 that vacancies are still lying in the Contai Municipality. In the said affidavit, the petitioners have disclosed an Employment Notification dated 02.12.2019 issued by the Municipality inviting applications from eligible candidates to fill up vacant Group "D" posts in the Municipality.
27. For all the above reasons, this Court is not inclined to lend much credence to the information supplied vide letter dated 17.10.2023.
28. DLB applied the Circular/Memo operating in the field while holding that the appointments of the private respondents are deemed to have been approved.
29. Courts shall presume that official acts have been regularly performed. Onus lies upon the writ petitioners to rebut such statutory presumption. It is for the writ petitioners to plead and prove as to why the approval of appointments in favour of the private respondents should be set aside. Apart from the informations supplied under the 2005 Act, petitioners could not produce any acceptable materials for this Court to accept the contention of the petitioners that the private respondents were not appointed against sanctioned vacancies. Petitioners cannot expect the Court to make a roving enquiry in this regard. The prayer for setting aside

the approval of appointment of the private respondents is liable to be rejected and the same thus stands rejected.

30. From the aforesaid discussions, it is crystal clear that the petitioners do not stand on equal footing with the private respondents. Therefore, the petitioners cannot claim equal treatment which was extended to the private respondents. The petitioners have miserably failed to prove their allegation of discrimination.
31. To the mind of this Court, the action of the respondents cannot be said to be violative of Article 14 of the Constitution of India as argued by Mr. Gupta.
32. In ***Uma Devi (3)*** (supra), the Hon'ble Supreme Court noted that there may be cases where irregular appointments (not illegal appointments) of duly qualified persons in duly sanctioned posts might have been made and the employees have continued to work for 10 years or more but without the intervention of Courts or of Tribunals. The Hon'ble Supreme Court held that in such cases, the Union of India, the State Government and their instrumentalities should take steps to regularise as an one time measure, the service of such irregularly appointed, who have worked for 10 years or more but not under cover of the orders of Court or of Tribunals.
33. In the light of the observation made hereinbefore, this Court holds that the appointments of the petitioners cannot be said to be irregular for this Court to apply the aforesaid proposition laid down in ***Uma Devi (3)*** to the case on hand.
34. In ***Ravi Verma*** (supra), the Hon'ble Supreme Court after holding that the appointments in the said reported case were only irregular one, directed the authorities to regularise their service as per the decision of ***Uma Devi (3)***. The facts of the said reported case is distinguishable and therefore, the same cannot come to the aid of the petitioners.

35. In **Raman Kumar** (supra), the authorities after conducting an exercise in pursuance of the judgment of **Uma Devi (3)** (supra) found that 65 employees were entitled for regularisation but regularised the service of 35 employees only. The Hon'ble Supreme Court in the facts of that case held that the act of regularising the services of only 35 employees and not regularising the services of other employees is patently discriminatory and violative of Article 14 of the Constitution of India.
36. This Court has already held that the action of the respondents cannot be said to be violative of Article 14 of the Constitution. Therefore, the decision in Raman Kumar (supra) cannot be applied to the case on hand.
37. For all the reasons as aforesaid, this Court is of the considered view that the writ petitioners could not establish any legal right in their favour to compel the respondents to perform the public duty which they are legally bound to perform.
38. Accordingly the writ petition stands dismissed. There shall be, however, no order as to costs.
39. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)