

Sl. No.01.
03.12.2024
Suman
Ct. 15

WPA 98 of 2023

Moududi Sk.
Vs.
The State of West Bengal & Ors.

Mr. Partha Sarathi Bhattacharyya, Sr. Adv.
Mr. Md. Kutubuddin
Mr. Raju Bhattacharyya
..for the petitioner

Mr. Usuf Ali Dewan
Mr. Asif Dewan
..for respondent no.4

Mr. Benazir Ahmed
..for the State

This is the third round of litigation in which the petitioner seeks a direction upon the respondent authorities to appoint him as a "Licence Inspector" under Jangipur Municipality.

Initially, the facts that are undisputed by the parties should be noted.

The Director of Local Bodies, West Bengal, by a memo dated June 13, 2011, sanctioned 35 vacant posts in Jangipur Municipality. This sanction was granted in response to letters dated December 31, 2010, and December 14, 2020, from Jangipur Municipality. In the letter dated December 31, 2010, the post of "Licence

Inspector" was listed as a sanctioned vacant post by the Municipality.

Based on this memo, Jangipur Municipality initiated a recruitment process to fill 26 posts. The petitioner was selected for the post of "Licence Inspector," and his name, along with those of 25 other successful candidates, was submitted to the Director of Local Bodies for approval by a letter dated November 8, 2016. However, the Director of Local Bodies declined to approve the names of eight candidates, including the petitioner.

In response, the petitioner filed WP No. 10652(W) of 2019, seeking his appointment to the post. The writ petition was disposed of by a Coordinate Bench of this Court, which directed the Director of Local Bodies to consider the petitioner's grievance.

The Director of Local Bodies, however, rejected the petitioner's claim by an order dated November 29, 2019, stating, *inter alia*:

"But it has been found in the staff pattern of Jangipur Municipality that the post of Licence Inspector is not an entitled one."

Challenging this order, the petitioner filed WPA 1792 of 2020. This writ petition was disposed of by a

Coordinate Bench of this Court on February 24, 2022.

The relevant part of the order is quoted below:

“This Court disposed of the writ petition with a direction upon the petitioner to file a detailed representation before the Director of Local Bodies, West Bengal. On the basis of the representation the impugned order has been passed. The only reason assigned in the order impugned is that the post of ‘Licence Inspector’ in Jangipur Municipality is not an entitled one. First, this Court is unable to understand the meaning and purport of the expression ‘entitled one’. Secondly, had it not been a sanctioned post in that case, the authority ought to have given sufficient reasons based on the records while arriving at such finding.

On the contrary, Mr. Dewan, learned advocate appearing on behalf of the Municipality has handed up a communication from the Director of Local Bodies, West Bengal dated June 13, 2011, from which it appears that the post of ‘Licence Inspector’ had been sanctioned by the Government. Permission was also accorded for filling up seven sanctioned vacant posts as mentioned in Annexure-A thereof. The second post in Annexure-A was the post of ‘Licence Inspector’ and the number of post was mentioned as ‘1’. For convenience Annexure-A is quoted below:

“Annexure
A

Sl. No.	Name of the posts which are permitted to fill up	No. of post
1.	Night Guard	2
2.	Licence Inspector	1
3.	Clerk	1
4.	Peon	1
5.	Majdoor	2
	Total--	7(Seven)”

It is also submitted by Mr. Dewan that the post still remains vacant. He further submits that no further communication was received from the Director of Local Bodies, West Bengal subsequent to the communication dated June 13, 2011 either withdrawing or cancelling the sanction granted for filling up the post of ‘Licence Inspector’. He submits that only after the recruitment was over, the proposals for appointments to the post of ‘Licence Inspector’ and ‘Night Guard’ were not approved.

There is serious discrepancy between the order impugned and the earlier communication

received by the municipality, the Director of Local Bodies West Bengal, dated June 13, 2011. Thus, the order impugned and the submissions of Mr. Panda are contrary to what the records. Unless this a case in which the approval granted for filling up seven sanctioned vacant posts had been subsequently withdrawn or the selection process was found to be irregular, the finding of the state respondent does not appear to be reasonable.

In any event, the order impugned lacks justification. The order impugned is, thus, set aside with a direction upon the Director of Local Bodies, West Bengal to reconsider the entire issue upon taking into consideration the communication dated June 13, 2011 in accordance with law. For convenience, the relevant portion is quoted below:

“Sub: Filling up of 35(thirty-five) sanctioned vacant posts.

Ref: Letter No.4121/122/10JM dt.31.12.2010 and no.3921/122/10JM dt. 14.12.2010 of Jangipur Municipality.

With reference to above, the undersigned is directed to state that the Governor has been pleased to accord permission for filling up 7(seven) sanctioned vacant posts as mentioned at A in Annexure – A and also 28(twenty-eight) sanctioned vacant posts by way of re-designation as mentioned at B in the aforesaid annexure under Jangipur Municipality strictly in accordance with the provisions as laid down in the West Bengal Municipal Employees’ (Recruitment) Rules, 2005, since revised and other Govt. orders in respect of appointment.

Final proposal for obtaining prior approval for such appointment from the Govt. will have to be sent to this office under Sec.54(3) of the W.B.M. Act, 1993 since revised.

Director of Local Bodies, West Bengal & Ex-Officio, Joint Secretary to the Govt. of West Bengal.”

A reasoned order shall be passed and communicated to the parties. The petitioner shall be represented by a learned advocate. The petitioner, the representative of Jangipur Municipality and all other interested parties shall be heard.

The entire exercise shall be completed within a period of three months from the date of communication of this order.”

In compliance with this order, the Director of Local Bodies, by letter dated March 24, 2022, again rejected the petitioner’s case. The operative part of the letter is quoted below:

“AND WHEREAS, though it was an inadvertent error to give permission for fill up the post or Licence Inspector, however, in the last para of the same letter Chairman was asked to send a proposal for approval of appointment of the candidates so that this Directorate can examine the proposal before giving approval. So there was a secondary precautionary measure to check whether there was any fault in the whole recruitment process. At the time of examination of the proposal the mistake came to the notice of Director of Local Bodies, West Bengal;

AND WHEREAS, as there is no existence of the post of Licence Inspector in Jangipur Municipality question of giving approval to the appointment in that post cannot arise at all.

AND WHEREAS, the Director of Local Bodies, West Bengal is not the competent authority to create any post in the Municipality.”

Although the order impugned suggests that the permission to fill the post of "Licence Inspector" was granted inadvertently, by the sanction letter dated June 13, 2011, the order impugned did not clarify how such errors crept in.

The learned advocate for the Director of Local Bodies submitted a copy of the consolidated list of sanctioned posts vis-à-vis staff norms of Jangipur Municipality. The Municipality asserts that the staff pattern was computerized in 2009 and that the Director of Local Bodies granted approval for appointments based on this staff pattern. A copy of the staff pattern was provided to Mr. Partha Sarathi Bhattacharyya, learned senior advocate for the petitioner.

From the said list, it appears that, at the time of the approval of the staff pattern, the post of "Licence Inspector" was marked as an "existing sanctioned post," but it was not classified as an "entitled post." The Director of Local Bodies contends that since the post of "Licence Inspector" was a "dying cadre," it was not included in the approved staff pattern as an "entitled post" although it existed previously.

From the aforementioned facts, it is clear that, though in the sanction letter issued by the Director of Local Bodies on June 13, 2011, permission was granted for filling the post of "Licence Inspector"; however, at that time, there was no such approved post in Jangipur Municipality, and the permission to fill the post was granted by mistake.

Mr. Partha Sarathi Bhattacharyya, learned senior advocate for the petitioner, submits that this constitutes

a mistake of fact, not a mistake of law. Since it is a mistake of fact, he argues, it should not impede the petitioner's right to be appointed to the post, particularly given that he was selected through a proper recruitment process and his name was included in the panel.

I am unable to accept this argument. I find justification in the Director of Local Bodies' stance that the mere empanelment by the Municipality does not automatically confer a right to appointment. The right to be appointed arises only upon the approval of the Director of Local Bodies. In this case, the Director of Local Bodies rectified the error before granting approval. Moreover, not only the petitioner, the seven other candidates forwarded by the Municipality were not given appointment for the same reason.

In light of these circumstances, I find no justification to interfere with the Director of Local Bodies' decision not to approve the petitioner's appointment.

Accordingly, **WPA 98 of 2023** is dismissed.

Urgent phostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)