

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

F.M.A. 38 of 2022

Dr. Rathin Kumar Chatterjee
Vs.
Calcutta Municipal Corporation & Ors.

For the Appellant : Mr. Lakshmi Kanta Pal. Adv.
Mr. Bandhu Brata Bhula, Adv.

For the Respondent-KMC : Mr. Alok Kr. Ghosh, Adv.
Mr. Swapan Kr. Debnath, Adv.

Heard on : 31.07.2024

Judgment on : 31.07.2024

Joymalya Bagchi, J.:-

1. Appellant has assailed order dated 21.11.2016 whereby Hon'ble Single Bench dismissed his prayer to regularize his appointment as per government circular. In 1981 appellant was appointed purely on temporary basis as homeopathy doctor in Barisha Hospital under South Suburban municipality and continued to work in such capacity.
2. In or about 1984 the municipality was merged with Kolkata Municipal Corporation. Relying on a government circular dated 21st

December 1983 which, inter alia, provides on and from the date of merger, employees of South Suburban municipality shall be taken over by the corporation and shall continue to serve on same terms and conditions, he prayed for absorption as a permanent employee of Kolkata Municipal Corporation. In the meantime a selection process to the post of Medical Officer (Homeopathy) was initiated and date for interview was fixed.

3. At this stage appellant approached the Hon'ble Single Bench in WP (W) 2738 of 1998 seeking absorption to the said post. Initially, an injunction was passed restraining the filling up of the aforesaid post but subsequently the same came to be vacated on the ground that the post was for reserved candidate. Upon hearing the parties the writ petition was finally dismissed on the ground that the appellant was a part time employee and had not been appointed to a sanctioned post through open advertisement.

4. Learned counsel for the appellant contends his appointment was with concurrence of the Board of Commissioners of South Suburban municipality and he was regularly discharging his duties in the said post till merger with Kolkata Municipal Corporation. Hence, he was entitled to be regularised.

5. We are unable to accept the submission of the learned counsel. Letter of appointment clearly shows he was employed in South Suburban municipality on monthly honorarium. His appointment was neither

permanent nor against a sanctioned post. Hon'ble Single Bench rightly relied upon the ratio in *Secretary, State of Karnataka & Ors. Vs. Uma Devi & Ors.*¹ and held in the event a casual/temporary employee is not appointed against sanctioned post through open advertisement, there is no right for regularization as a one time measure. Appellant was working on a temporary basis and by no stretch of imagination he could claim higher status as a regular employee and be absorbed as such under the Corporation with reference to the government circular dated 21st December 1983.

6. Accordingly, we are of the opinion the order impugned does not call for interference.

7. Appeal is accordingly dismissed.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

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¹ (2006) 4 SCC 1

