

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT No. 552 of 2022

With

CAN 1 of 2022

Sri Kartick Chandra Barik

Vs.

State of West Bengal & Others.

For the Appellant : Mr. Debajyoti Basu, Adv.
Mr. Supratim Dhar, Adv.
Mr. D. Das, Adv.
Mr. Tirupati Mukherjee, Adv.

For the State : Mr. Pinaki Dhole, Adv.
Ms. Ananya Neogi, Adv.

For the Respondent : Mr. Partha Sarathi Debbarman, Adv.
Municipality Mr. Kumaresh Dalal, Adv.

Heard on : November 27, 2024

Judgment on : December 09, 2024

Md. Shabbar Rashidi, J.:-

1. The appeal is in assailment of judgment and order dated March 4, 2022 passed in W.P.A. 29339 of 2014. By the impugned judgment and order, the writ petition filed on behalf of the appellant claiming regularization of his service was dismissed.
2. The factual background of the present litigation in a nutshell is that the writ petitioner was appointed temporarily as driver with effect from November 1, 1988 in Baidyabati Municipality. His pay was fixed in regular scales and he has been drawing salaries in terms of such fixation. Suddenly on and from March 2010, the increment and usual allowances payable to the writ petitioner were stopped.
3. Being aggrieved by such action, the writ petitioner approached Baidyabati Municipality seeking redressal of his grievances. However, no steps were taken by the municipality/employer, for which, the writ petitioner approached the High Court by the writ petition being W.P. No. 13380 (W) of 2014. The said writ petition was disposed of by an order dated May 15, 2014 whereby the Director of Local Bodies, Government of West Bengal, was

directed to look into the representation of the writ petitioner and dispose of the same by a reasoned order.

4. In pursuance of such order, Director of Local Bodies, Government of West Bengal, considered the prayer of the writ petitioner and by a reasoned order dated September 8, 2014, negated the claim of the writ petitioner for regularization of his services as driver. Such reasoned order dated September 8, 2014 has been challenged in the subsequent writ petition being W.P. No. 29339 (W) of 2014 which resulted in the impugned order.
5. At the time of hearing in the writ petition, it was contended on behalf of the writ petitioner that since the pay of the petitioner was fixed in a regular scale by the order of the chairman of the municipality with effect from November 1, 1988, and the petitioner has been drawing salary under such scale, his service was liable to be regularized. It was also argued that in terms of Memoranda dated March 8, 2005, appointments of some of the casual employees working under Baidyabati Municipality were approved by the Hon'ble Governor, West Bengal. Such casual employees were also appointed prior to 1992. Hence, it was

submitted that since, the writ petitioner was also appointed prior to 1992, his service ought to have been regularized.

6. In support of his contentions, Learned advocate for the appellant relied upon unreported decisions passed in ***MAT No. 1651 of 2023 (The Baidyabati Municipality & Ors. vs. Sri Tapan Adhikary & Anr.)***, ***MAT No. 65 of 2021 (The Baidyabati Municipality & Ors. vs. Swapan Chatterjee & Anr.)***, ***WPA No. 13149 of 2022 (Sri Susanta Samui vs. The Baidyabati Municipality & Ors.)***, ***WPA No. 23748 of 2022 (Aloke Dey vs. The Baidyabati Municipality & Ors.)***.
7. Learned advocate for the appellant also relied upon ***2019 SCC OnLine Cal 9170 (State of West Bengal vs. Tapas Chakraborty)***, ***2023 SCC OnLine Cal 3633 (State of West Bengal and Anr. vs. Dr. Saktilal Choudhury and Ors.)*** and ***2002 SCC OnLine Cal 112 (Ranaghat Municipal Employees' Association & Ors. vs. State of West Bengal & Ors.)***.
8. On the other hand, it was submitted on behalf of respondents that the appellant was initially appointed on no work no pay basis which was subsequently converted into casual appointment. He was never appointed against a sanctioned post

and that too, without following the extant norms prevalent for the recruitment. As such, the appellant is not entitled for regularization of his services. The respondents submitted that there is no reason to interfere with the impugned order as well as the reasoned order passed by the Director of Local Bodies, Government of West Bengal, dated September 8, 2014. In support of their contention, the respondent placed reliance upon ***(2008) 10 Supreme Court Cases 1 (Official Liquidator vs. Dayanand and Ors.)***.

9. As noted above, by an office order dated October 20, 1987, issued in the pen of Chairman of Baidyabati Municipality, the appellant/writ petitioner was appointed as driver under Baidyabati Municipality on casual basis i.e. on no work no pay basis for a period from October 9, 1987 till December 31, 1987 upon a fixed remuneration of ₹ 18/- per day. Such appointment was extended from time to time upon existing terms and conditions.
10. By another office order dated November 3, 1988, issued by the chairman of the Municipality, the appellant was absorbed in regular scale of pay as temporary driver in a particular scale of

pay plus usual allowances as admissible from time to time with effect from November 1, 1988. The appellant was drawing admissible salary and other allowances in pursuance of such order. He was also getting annual increments and other allowances. However, according to the appellant on and from March 2010, the increments and usual allowances admissible to the appellant were stopped by the municipality.

- 11.** Being aggrieved the appellant approached the High Court by filing a writ petition being W.P. No. 13380 (W) of 2014. The said writ petition was disposed of by an order dated May 15, 2014. By the said order, the Director of Local Bodies, Government of West Bengal was directed to consider the claim of the appellant for regularization of his service. In pursuance of such direction, the Director of Local Bodies by a reasoned order dated September 8, 2014 refused the claim of the appellant for regularization.
- 12.** The reasoned order dated September 8, 2014 discloses that the Director of Local Bodies, Government of West Bengal, while considering the claim of the appellant/writ petitioner, took note of the order and date of appointment of the appellant. The Director of Local Bodies, Government of West Bengal also

considered the written objection filed on behalf of the municipal authorities and came to a conclusion that the petitioner was a casual worker engaged by the municipality since November 1, 1988. However, such appointment was not sanctioned by the government. The appellant was also never appointed against sanctioned vacant post after observing all necessary formalities as per rules and with prior approval of the State government. The Director of Local Bodies, Government of West Bengal also came to a conclusion that over the years, the status of the petitioner/appellant remained as a casual worker. As a result, the Director of Local Bodies, Government of West Bengal concluded that absorption of casual workers were not being considered by the directorate, hence, approval for regularization of appointment of the writ petitioner, who was a casual worker could not be accorded.

- 13.** Being dissatisfied with the findings in the reasoned order dated September 8, 2014, the appellant challenged the same in another writ petition being W.P.A. No 29339 of 2014. By an order dated March 4, 2022 such writ petition was dismissed upholding the

findings in the reasoned order. Such order of the learned Single Judge is under challenge in the present appeal.

- 14.** It has been submitted on behalf of the appellant that since the appellant was appointed in the year 1987/1988 and he was drawing salary under a particular scale of pay together with usual increment and allowances admissible to the employees of municipality, his services were liable to be regularized and he was entitled to be absorbed in the regular cadre. It was also contended on behalf of the appellant that several other employees who were appointed prior to 1992 were absorbed in the regular cadre and their services were regularized. He was entitled to similar treatment.
- 15.** The materials placed before us leaves no iota of doubt that the writ petitioner/appellant was appointed as casual driver on the basis of no work no pay at a fixed remuneration. It is also evident that later on he was granted a particular scale of pay together with increment and other incidental benefits as applicable to the employees of municipal bodies. He continued to fetch such benefits as well as scale of pay until March, 2010. On the basis of certain objections raised by audit authorities, the increment and

other benefits of the appellant were stopped and the matter came up for consideration whether the appellant was appointed against a sanctioned post after observing all formalities.

16. The reasoned order dated September 8, 2014 as well as the impugned order and upon consideration of all relevant facts, it was decided that since the appellant was never appointed against a sanctioned post and that too without observing the formalities, he was not entitled for regularization or absorption.
17. In ***Sri Tapan Adhikary*** (supra), a Co-ordinate Bench observed that since coming into force of a Memorandum of 2009, a post facto approval to an appointment was to be granted by the Director of Local Bodies, Government of West Bengal. On such ground, the coordinate bench was pleased to set aside the order passed by learned Single Judge directing the release of pensionary benefits. The petitioner therein was granted liberty to apply before the Director of Local Bodies, Government of West Bengal for grant of post facto approval. In the instant case however, the appellant had already approached the Director of Local Bodies, Government of West Bengal and his claim for

regularization of his service has been considered and rejected by such authority on consideration of the relevant materials.

18. In **Swapan Chatterjee** (supra), upon consideration of the materials placed before it, the Coordinate Bench found the appointment to be in a regular post and such appointment was covered under the scope of deemed approval by the Director of Local Bodies, Government of West Bengal. As a result, the municipality was directed to process the pension papers of the petitioner therein. In the instant case however, the appointment of the appellant has not been proved to be against the regular post. The deemed approval of the appointment has specifically been negated by none other than the Director of Local Bodies, Government of West Bengal himself.
19. **Susanta Samui** (supra) and **Aloke Dey** (supra) were rendered and disposed in line with the order passed in the matter of **Swapan Chatterjee** (supra). The aforesaid cases related to release of pensionary benefits and dealt with a situation where appointments were made against sanctioned vacancies, which is not the case in the present proceeding.

20. *Ranaghat Municipal Employees' Association* (supra) was rendered in the context of power of the Municipality to create posts and give appointments in terms of Bengal Municipal Act, 1932. The facts obtaining in the said case is altogether different in the present litigation and so cannot be applied.

21. In *Saktilal Chowdhury* (supra) it was alleged that the petitioner therein was appointed in post not legally sanctioned and prior approval of the State Government was not obtained for such appointment. Hence, pensionary benefits were denied. The High Court observed that,

“30. In view of the aforesaid we must hold that the respondent no. 1/writ petitioner was validly appointed by the Municipality in exercise of power under section 53(4) of the 1993 Act as that section stood prior to the 2002 amendment. Hence, neither prior sanction of the State Government for appointment of the writ petitioner was necessary nor can he be denied pensionary benefits. The question of the writ petitioner being appointed in a sanctioned vacant post also does not arise as the post in which he was appointed was one validly created by the Municipality in exercise of power conferred on it by the 1993 Act.”

21. In the case of *Tapas Chakraborty* (supra), the writ petitioners therein, were initially appointed on casual basis but later on,

their services were confirmed against sanctioned posts. They had to be appointed on an emergency basis since the project of water supply to the people of locality was to be done on priority. It was specifically placed in the said case, on behalf of the Municipality that each of the appointee had the requisite qualification for the respective posts on the date of their appointment. Such appointment was made against regular sanctioned posts and following the extant Recruitment Rules applicable for the municipal employee, framed by the State Government in 2005.

- 22.** However, in the case at hand, petitioner was never appointed against a vacant sanctioned post. No prior approval was obtained for such appointment. To the contrary, a post facto approval was denied by the competent authority. The appellant, in his earlier writ petition, was relegated to the appropriate authority i.e. Director of Local Bodies, Government of West Bengal, who upon hearing the parties and consideration of all the materials placed before him concluded that the petitioner was not appointed a sanctioned post. His appointment was also not in accordance with the relevant recruitment rules.

23. In the case of **Official Liquidator** (supra), the learned Single Judge of the Calcutta High Court allowed the writ petition claiming regularization of services. The appeal preferred by the Government appellants was dismissed by the Division Bench, which noted that even though the writ petitioners had been working for last 20 to 25 years, neither were their services regularised nor were they paid on a par with similar employees of other Departments/offices and they were retired at the age of 58 years without any financial benefit. The Division Bench held that the appellants have failed to substantiate their plea that the employees appointed by the Court Liquidator were not engaged for doing work of perennial nature and that there was no reasonable basis for discriminating between the Court Liquidator's staff vis-à-vis the regular employees of the Office of Official Liquidator. the Hon'ble Supreme Court allowed the appeal by the Central Government and laid down that,

“75. By virtue of Article 141 of the Constitution, the judgment of the Constitution Bench in State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753] is binding on all the courts including this Court till the same is overruled by a larger Bench. The ratio of the Constitution Bench judgment has been followed by different two-Judge Benches for

declining to entertain the claim of regularisation of service made by ad hoc/temporary/daily-wage/casual employees or for reversing the orders of the High Court granting relief to such employees — Indian Drugs and Pharmaceuticals Ltd. v. Workmen [(2007) 1 SCC 408 : (2007) 1 SCC (L&S) 270] , Gangadhar Pillai v. Siemens Ltd. [(2007) 1 SCC 533 : (2007) 1 SCC (L&S) 346] , Kendriya Vidyalaya Sangathan v. L.V. Subramanyeswara [(2007) 5 SCC 326 : (2007) 2 SCC (L&S) 143] , Hindustan Aeronautics Ltd. v. Dan Bahadur Singh [(2007) 6 SCC 207 : (2007) 2 SCC (L&S) 441] . However, in U.P. SEB v. Pooran Chandra Pandey [(2007) 11 SCC 92 : (2008) 1 SCC (L&S) 736] on which reliance has been placed by Shri Gupta, a two-Judge Bench has attempted to dilute the Constitution Bench judgment by suggesting that the said decision cannot be applied to a case where regularisation has been sought for in pursuance of Article 14 of the Constitution and that the same is in conflict with the judgment of the seven-Judge Bench in Maneka Gandhi v. Union of India [(1978) 1 SCC 248].

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92. In the light of what has been stated above, we deem it proper to clarify that the comments and observations made by the two-Judge Bench in U.P. SEB v. Pooran Chandra Pandey [(2007) 11 SCC 92 : (2008) 1 SCC (L&S) 736] should be read as obiter and the same should neither be treated as binding by the High Courts, tribunals and other judicial foras nor they should be relied upon or made basis for bypassing the principles laid down by the Constitution Bench.

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122. In the result, the appeals are allowed. The impugned judgments and orders are set aside subject to the direction for framing of scheme for absorption of eligible and suitable

employees against Group D posts and implementation thereof and increase in the salaries and emoluments payable to the company-paid staff.”

24. Therefore, in the facts and circumstances of the case as well as in view of the ratio laid down in the aforementioned judgments, it is evident that the appellant/writ petitioner was not appointed in a sanctioned post following the extant rules governing recruitment. Not only that, the representation of the appellant was disposed of by the Director of Local Bodies in view of the ratio laid down in the case of ***State of Karnataka vs Umadevi (3)*** reported in ***(2006) 4 SCC 1***, rejected the claim of the appellant for regularization of his service on such grounds.
25. In the light of the discussions made herein before we find no reasons to interfere with the impugned judgement and order. The present appeal is devoid of any merit.
26. Consequently, the instant appeal being **MAT No. 552 of 2022** is hereby dismissed, however, without any order as to costs and thus, disposed of.
27. In view of the disposal of the appeal, connected applications, if any, shall also stand disposed of.

- 28.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

- 29.** I agree.

[DEBANGSU BASAK, J.]