

Item No.48

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

01.04.2024
Ct-24

WPA 15163 of 2023
Sri Subhra Kumar Das

v.

The State of West Bengal & Ors.

Mr. Amitabha Ghosh
... for the petitioner.

Mr. Biswajit Hazra
Mr. Archisman Sain
Mr. Sk. Nadeem Ahmed
... for the respondent no. 7.

Mr. Kallol Kumar Basu
Md. Nannat Ul Firdous
... for the respondent nos. 3 to 5.

Mr. Arindam Mandal
Ms. Dipa Bhattacharya
... for the State.

The petitioner is serving the Taki Municipality in the promotional post of Accountant by virtue of the order passed by the Director of Local Bodies on December 17, 2020.

He is aggrieved by the direction issued by the Chairman of the Municipality on June 14, 2023 directing him to hand over charge to the private respondent who is temporarily serving as the Head Clerk of the Municipality.

The petitioner submits that no reason has been mentioned in the said notice as to why the petitioner has been directed to hand over charge to the private respondent.

Learned advocate representing the private respondent submits that it is a mere temporary arrangement made by the Chairman of the Municipality. As the post of Head Clerk is yet to be sanctioned by the Director of Local Bodies, accordingly, the temporary arrangement has been made.

Learned advocate representing the Municipality submits, upon instruction that, the petitioner is not competent to hold the post of Accountant.

On a perusal of the impugned order there is nothing to suggest that the petitioner is incompetent to hold the subject post. It appears that the petitioner was serving in the post of Clerk and he was promoted to the post of Accountant by the order of the Director of Local Bodies in December 2020. If any change is required to be made in the designation of the petitioner, the same ought to come from the Director of Local Bodies and not from the Chairman of the Municipality.

The temporary arrangement which the private respondent submits is an absolute illegal one to favour a particular candidate and the same cannot be made as the petitioner is holding the post upon approval of his appointment on promotion. An approved employee, without any justifiable reason, cannot be directed to hand over charge in favour of another employee whose post is yet to be sanctioned by the Director of Local Bodies.

In the event, the Municipality feels that the petitioner is not competent to hold the said post, then necessary proceeding ought to be initiated against him but he cannot be directed to hand over charge to

somebody else without disclosing any reason, which is totally contrary to the provision of law.

In view of the above the order impugned is liable to be set aside and is, accordingly, set aside.

It will be open for the Municipality to take necessary steps in accordance with law, if so advised.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Amrita Sinha, J.)