

Form No. J (2)

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Smita Das De

**FMA 291 of 2025
IA NO: CAN/1/2025**

**Md. Shamim Afzal
vs.
The State of West Bengal & Ors.**

For the Appellant : Md. Shahjahan Hussain, Advocate
Mr. Mohammed Amin, Advocate
Mr. Ghulam Muftaba, Advocate
Ms. Mahjabeen, Advocate
Mr. Prithwiraj Biswas, Advocate

For the State : Mr. Jahar Datta, Advocate
Mr. Bipin Ghosh, Advocate

For the K.M.C. : Mr. Alak Kr. Ghosh, Advocate
Mr. Swapan Kr. Debnath, Advocate

Heard on : 13.03.2025

Judgment on : 13.03.2025

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of the writ petitioner and directed against an order dated January 13, 2025 passed in WPA 2534 of 2022.

2. By the impugned order, the learned Single Judge, noticing that, the appellant was a temporary worker of the Kolkata Municipal Corporation refused to direct regularization of service on the ground that mere continued service in a sanctioned post over an extended period does not confer any automatic right of regularization. Learned Single Judge noted that, the appointment of the appellant before us was not in accordance with the recruitment rules of Kolkata Municipal Corporation (KMC) and that, the appellant failed to demonstrate that the appointment was through a legitimate recruitment process.
3. Learned advocate appearing for the appellant submits that, appellant is entitled to regularization due to the period of service that the appellant put in at the post. He submits that, appellant is working more than 15 years at the post. He also points out that once, the appellant was granted a promotion from Group-D to Group-C. He relies upon **2024 INSC 1034 (Jaggo versus Union of India & Ors.)** and submits that, the ratio of **(2006) 4 Supreme Court Cases 1 (Secretary, State of Karnataka versus Uma Devi (3))** is not a complete bar for the purpose of grant of regularization. He submits that, the appellant is similarly placed and circumstanced as that of **Jaggo (supra)** and any event the ratio of **Jaggo (supra)** applies to the facts of the present case. Similar relief as extended

to the writ petitioner in **Jaggo (supra)** should be granted to the appellant herein.

4. Without prejudice to his earlier part of his contentions, learned advocate for the appellant draws the attention of the Court to a resolution of KMC dated October 23, 2019. He submits that, there was a proposal for enhancement of consolidated remuneration of 12 contractual workers of KMC. He submits that, in the event, regularization is not permissible, the benefit of enhancement of consolidated remuneration as extended to some of the other contractual employees of the K.M.C be extended to the appellant.
5. Learned advocate appearing for the K.M.C. submits on instruction that, the resolution dated October 23, 2019 extending consolidated remuneration to 12 contractual workers was subsequently withdrawn by a resolution dated April 5, 2023. He submits that, no financial benefit was extended to the 12 contractual workers as noted in the resolution dated October 23, 2019.
6. On the aspect of regularization, learned advocate for the K.M.C submits that, the appointment of the appellant is illegal and not irregular. Moreover the post at which, the appellant is working is reserved for Scheduled Caste and Scheduled Tribes candidates which the appellant is not.

7. Learned advocate for the K.M.C submits that, when K.M.C undertook to fill up post at which the appellant is working through a selection process, the appellant filed a writ petition. Such writ petition was disposed of by directing the appellant to make a representation for enhancement of consolidated remuneration. Appellant made such application but the request for enhancement of consolidated remuneration was rejected on the ground that, the appellant failed to produce any relevant documents. The decision of the rejection of enhancement was not challenged.
8. In reply, learned advocate appearing for the appellant submits that, the post was reserved for a Scheduled Caste/Scheduled Tribe candidate subsequent to the appointment of the appellant. He also points out that, the Supervisor wrote several letters to the higher authorities stating that, the post cannot be filled up through Scheduled Caste/Scheduled Tribe candidates.
9. Appellant was appointed as a casual worker of KMC on February 18, 2009 on daily wage rate basis. Appellant made several representations for absorption. KMC initiated process for filling up of the vacancy in 2020. Appellant challenged such advertisement by way of a writ petition being WPA 4681 of 2021.
10. During the pendency of such writ petition, the post stood filled up. Writ petition of the appellant was disposed of by an order dated August 4, 2021

by which, the Authorities were directed to consider the request of the appellant for absorption on contractual basis up to the attainment of the age of 60 years in terms of the policy of the State Government.

11. Pursuant to the order dated August 4, 2021, appellant made a representation to the Authorities. The Authorities conducted the hearing on August 18, 2021 wherein, appellant was called upon to submit all relevant documents in support of his prayer for absorption. Appellant submitted a written submission on August 23, 2021 with the Authorities. The request of the appellant for absorption was rejected by a reasoned order dated August 25, 2021.
12. Appellant did not challenge the decision of the KMC dated August 25, 2021. Appellant however, made further representation for regularization. Thereafter, appellant filed the present writ petition.
13. Admittedly, no selection process was undertaken by the K.M.C. for grant of appointment to the post at which, the appellant was initially appointed. The recruitment rules of KMC governing field was not followed when the appellant was appointed.
14. During the tenure of service, appellant was given the benefit of a higher pay due to revision of pay. That cannot be considered as a grant of promotion. Ratio laid down in **Uma Devi (3)** fell for consideration in **Jaggo (supra)**. The Supreme Court noticing the fact that, the appellants before

the Supreme Court were engaged in service which evolved beyond the nominal levels of part-time or contractual and that they were performing ongoing and core functions integral to operations of Article 12 authority and that, **Uma Devi(3) (supra)** does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities and that, **Uma Devi(3) (supra)** sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirement, proceeded to grant relief to the writ petitioners therein. It also observed that, where the appointments were not illegal but possibly irregular and where employees served continuously against the backdrop of sanctioned post for a considerable period, the need for a fair and humane resolution becomes paramount.

15. **Jaggo (supra)** is of the view that, prolonged continuous and unblemished service performing tasks inherently required on a regular basis over the time transform what was initially ad-hoc or temporary appointment to a demand for fair regularization. It also noticed later pronouncements of the Supreme Court which held that, procedural formalities cannot be used to deny regularization of service to an employee whose appointment was temporary but performed same duties as performed as regular employee over a considerable period in a capacity of the regular employee.

16. In the facts of **Jaggo (supra)**, the Supreme Court found that, the appellants were working as Group-D staff. Duties discharged by the appellants were also noted. In the facts of that case, it was found that the engagement of such appellants was not sporadic or temporary in nature and that, there was indispensable nature of the work performed by such appellants. In the fact of that case, the services of such appellants were sought to be terminated and further, appointments sought to be given through outsourcing.
17. In the facts of the present case, appointment of the appellant is yet to be terminated as noted above. Appointment of the appellant was not through a duly recognized selection process. Moreover, the post at which the appellant is presently performing his duties is reserved for Scheduled Caste and Scheduled Tribes candidates. Although for absorption made by the appellant once earlier failed with the appellant not challenging the decision.
18. In the event, if we are to direct the regularization, then we will be called upon to grant appointment to the appellant who is not falling within the reserved category to a post which reserved.
19. In such circumstances, we find no ground to interfere with the impugned order of the learned Single Judge.

20. **FMA 291 of 2025** along with connected application are **dismissed** without any order as to costs.

(Debangsu Basak, J.)

21. I agree.

(Smita Das De, J.)