

01.12.2025
Court No.13.
Item No. 31
sp

MAT 1631 of 2024
With
CAN 1 of 2024
With
CAN 2 of 2024
Madhumita Chakraborty & Ors.
Vs.
Board of Councillors of Dhuliyān Municipality & Ors.

Mr. Biswarup Bhattacharjee,
Mr. Anindya Sundar Das,
Mr. Shaunak Ghosh,
Mr. Syed Ali Afzal,
Ms. Paramita Mondal,
Ms. Suva Gayen.

... for the appellants.

Md. Nure Zaman

... for the respondent Nos. 1 and 2.

Md. Sarwar Jahan,
Ms. Mousumi Mitra,
Ms. Tapati Sarkar,
Ms. Shalini Sen.

..for the respondent no. 30.

Mr. Ujjal Roy,
Mr. Suman Halder.

..for the respondent nos. 32-35 and 38, 55, 63.

Mr. Amal Kr. Sen, ld. A.A.G.
Mr. Lal Mohan Basu.

..for the State.

Re: CAN 2 of 2024

1. CAN 2 of 2024 has been filed seeking condonation of delay of 62 days in filing the instant appeal
2. Sufficient grounds are available to explain the delay of 62 days in filing the instant appeal. Hence, the delay is condoned.
3. Accordingly, CAN 2 of 2024 is allowed and disposed of.

Re: MAT 1631 of 2024

4. The appeal is directed against judgment and order dated 24th May, 2024 passed by a Single Bench of this Court in WPA 11521 of 2012.

5. Before the Single Bench order dated 10th March, 2012 passed by the Chairman of the Dhuliyan Municipality cancelling the appointment of 13 writ petitioners was challenged. The Single Bench found that the initial appointment of the petitioners was without any formal approval of the Board of Municipality or the Director of local bodies much less the State.

6. At paragraph no. 17 of the judgment, the Single Bench observed as follows:

“Para 17: On perusal of records it transpires that selection was made by the said Municipality vide resolution dated 27th February, 2009 which is annexed to the affidavit-in-opposition used on behalf of the Municipality affirmed on 4th February, 2013. On careful reading of the said resolution dated 27th February, 2009 takes this Court to an inescapable conclusion that the candidates were selected in the meeting dated 27th February, 2009 which led the concerned authority of the said Municipality to include names of the candidates in the resolution itself against each and every SSK. If responsibility was to be shouldered by the newly formed managing committees of the respective SSKs to select the candidates then how before such selection is made by the managing committees the petitioners were found eligible to be engaged as Siksha Sahayikas as it transpires from the resolution dated 27th February, 2009. Therefore, nothing was left for the respective managing committees of the newly established SSKs for selection of candidates upon conducting valid procedure for scrutinizing the eligibility of the candidates as contemplated under the relevant scheme.”

7. These are just some of the irregularities noted in the letters of appointment. Paragraph nos. 18 and 19 of the judgment, the Single Bench found several other irregularities which are as follows:

Para 18: By no stretch of imagination the letters of contract which are annexed as P-1 to the writ petition should be treated as documents depicting observance of the procedure in order to select candidates for being engaged as Siksha Sahayikas by the respective managing committees. The documents being annexed as P-1 were issued in a prescribed format based on the selection made by the municipality vide resolution dated 27th February, 2009. In between the decision taken by the said Municipality on 27th February, 2009 and the issuance of the letters of contract being Annexure-P-1 to this writ petition engaging the candidates as Siksha Sahayikas w.e.f. 1st February, 2010, nothing is on record which supports that the exercise was carried out by the respective managing committees of the newly formed SSKs in order to complete the selection process to select the petitioners. In view of the failure on the part of the respective managing committees to conduct the selection process to scrutinize eligibility of the petitioners as required under the aforesaid relevant scheme negates the contention of the petitioners that they were engaged by the respective managing committees. Since the flaw alluded above as found in engaging the petitioners based on resolution dated 27th February, 2009 and mere letters of contract were issued by the respective managing committees of the newly formed SSKs the ratio of the decisions of the Apex Court in **K. Shyam Sunder** (supra) and **State of Bihar** (supra) do not come in aid of the petitioners since in both the decisions it has been enunciated by the Apex Court that change of elected government ought not to be treated as a consideration for discharging the previous stand, decisions of the erstwhile elected government. As this Court is not satisfied with the manner of engagement of the petitioners as expressed above the ratio of **Pomal Kanji** (supra) that Court can mould the law is also found to be inapplicable.

Para 19: This Court cannot shut its eyes to the glaring illegalities made while engaging petitioners vide resolution of the said Municipality dated 27th February, 2009 since it has been disclosed during course of hearing that the then Chairman of the said Municipality namely, Chainbanu Khatun, herself participated in the selection process by remaining present in the meeting of the municipality dated 27th February, 2009 was engaged as Siksha Sahayika of Uttarpara SSK. Said Chainbanu Khatun is petitioner no. 35 in the present writ petition claiming re-engagement upon cancellation of engagement of the candidates who were selected based on the process which was initiated in April, 2012. There were other allegations of illegalities which have been elaborated while recording submissions made on behalf of the said Municipality in details. It has been alleged some of the candidates were engaged whose ages were below the prescribed lower age limit of 40 years. There were candidates who were residing in the panchayat areas got selected by the said Municipality whereas while defining the eligibility criteria it has been provided in the aforesaid relevant scheme that

candidate has to be the resident of the ward where SSK situates and in the event of on-availability of the candidate the resident of nearest ward can be considered for being engaged subject to fulfillment of other conditions. In terms of the approval granted by the Joint Secretary vide Memo dated 21st February, 2008 permitting the said Municipality to engage two Siksha Sahayikas against each SSK and each ward would have two SSKs. Therefore, in 19 wards under the said Municipality there would be 38 SSKs and 76 total numbers of Siksha Sahayikas. But on perusal of the resolution dated 27th February, 2009 it transpires against ward nos. 8, 12, and 13 one SSK was opened instead of two; in ward nos. 5, 9, 10 and 17 instead of two, three SSKs were opened which is contrary to the Memo dated 21st November, 2008 issued by the Joint Secretary wherein it was specifically provided that two SSKs would be allocated against each ward. Most striking feature of the said resolution dated 27th February, 2009 was the decision to open three SSKs under ward no. 9, namely, Habibur Smriti Sishu Siksha Kendra, Ketabuddin Smriti Sishu Siksha Kendra and Uttarpa Sishu Siksha Kendra whereas the said Municipality was required to open two SSKs and in the 3rd SSK (Uttarpa Sishu Siksha Kendra) which was established against the permission granted by the Joint Secretary vide Memo dated 21st November, 2008 the then Chairman namely, Chainbanu Khatun was engaged as Siksha Sahayika.

8. Having regard to the above findings of the Court, this Court is unable to sustain the arguments advanced by Mr. Bhattacharjee, learned counsel for the appellants. The procedure followed and the engagement in payment of petitioners itself was illegal in its entirety.

9. In that view of the matter, the impugned order calls for absolutely no interference.

10. However, this Court is of the view that no recoveries can be made from the appellants or the other writ petitioners since some service has been rendered against the payment.

11. MAT 1631 of 2024 fails and is hereby dismissed. Consequently, connected pending application being CAN 1 of 2024 is also dismissed.

12. There will be no order as to costs.

13. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)