

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 Md. Shabbar Rashidi

**MAT 1833 of 2024
IA NO: CAN/1/2024**

Swapan Kumar Hota & Ors.

vs.

The State of West Bengal & Ors.

For the Appellants : Mr. Saptanshu Basu, Senior Advocate
Mr. Soumen Kumar Dutta, Advocate
Mr. Subham Dutta, Advocate

For the State : Mr. Indranil Roy, Senior Advocate
Mr. Tapas Kr. Mandal, Govt. Advocate

For the Respondent
Nos. 3,4,5 & 6 : Mr. Koushik Chatterjee, Advocate
Mr. Nilanjan Adhikari, Advocate
Ms. Oindrila Sinha, Advocate

For the Private
Respondent : Mr. Soumya Majumder, Senior Advocate
Mr. Suryaneel Das, Advocate
Mr. Chiranjit Pal, Advocate
Ms. Tamoghna Pramanick, Advocate

Heard on : 11.02.2025

Judgment on : 11.02.2025

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of the writ petitioners and is directed against the judgment and order dated September 12, 2024 passed in WPA 18 of 2021.
2. By the impugned judgment and order, learned Single Judge dismissed the writ petition of the appellants.
3. Learned Senior Advocate appearing for the appellants submits that, the appellants are casual employees of Contai Municipality. He draws the attention of the Court to the averment made in paragraph-3 of the writ petition. He submits that, the appellants were appointed on casual basis to different posts of Contai Municipality commencing from May 2, 1995 till March 1, 2000.
4. Learned Senior Advocate appearing for the appellants draws the attention of the Court towards a scheme for absorption introduced by the authorities on June 28, 2004. He submits that, such scheme postulates that, appointees between the period January 1, 1986 till July 13, 1994 to sanctioned posts in the Municipality and at a particular pay scale were granted approval of appointment and consequential benefits were afforded to them. He submits that, the Municipality relaxed the time period fixed

for scheme for absorption dated June 28, 2004. He draws the attention of the Court to various instances where casual employees of Contai Municipality were accorded grant of approval in relaxation of the scheme for absorption dated June 28, 2004. He submits that, since, Contai Municipality relaxed scheme for absorption dated June 28, 2004 for certain employees, the same benefit should be extended to the appellants.

5. Learned Senior Advocate appearing for the appellants submits that, the appellants are not questioning the grant of approval to the employees who were granted the same by the relaxation of the scheme for absorption. All that the appellants seek is equal treatment as that of those persons for whom the scheme for absorption was relaxed for grant of approval.
6. Respondents are represented.
7. Appellants approached the Writ Court for grant of approval of their appointments from the date of their respective appointments.
8. Admitted facts before Court are as follows:-
 - i) Appellants were appointed on causal basis to various posts in the Contai Municipality for the period commencing from February 1, 1995 till March 1, 2000;
 - ii) State of West Bengal formulated a scheme for absorption by a Memo bearing No.300/MA/0/C-4/1A-7/2000 dated June 28, 2004;

- iii) Apparently, in relaxation of such Memo certain employees of Contai Municipality were granted approval for appointment by the authorities.
 - iv) There is nothing on record to establish that the appointments of any of the appellants were against any sanctioned post.
9. Scheme of absorption formulated by the writing dated June 28, 2004 is as follows:-

ORDER

No.:300/MA/0/C-4/ 1A-7/2000 Dated Kolkata, the 28th June, 2004

WHEREAS it appears that a considerable no of appointments/promotion were made in a number of Urban Local Bodies against sanctioned vacancies holding earstwhile scale of Rs. 380-910/- and below during the period from 01.01.86 to 13.07.1994 without obtaining prior approval of the Government.

WHEREAS in absence of approval of the Government the Urban Local Bodies are facing difficulties relating to the finalization of pension cases of the retired employees.

NOW THEREFORE, the Government, After due consideration, is pleased to decide that the approval of the Government for such appointments/promotions for the aforesaid period, made against the vacancies in sanctioned posts of the concerned Urban Local Bodies, shall be deemed to have been accorded.

10. Scheme of absorption stipulates the period of appointment, that is between January 1, 1986 till July 13, 1994. It stipulates that the appointments must be against sanctioned vacancies. It also stipulates that the appointments should be in the erstwhile scale of Rs. 380-910/-. All these conditions must be fulfilled for its applicability.
11. In the facts and circumstances of the present case, none of the appellants were appointed against any sanctioned vacancies. Their appointments were subsequent to July 13, 1994. Two of the three conditions of the scheme of absorption are absent for the appellants.
12. Learned Single Judge noted such fact and therefore, held that, scheme of absorption dated June 28, 2004 cannot come to the assistance of the appellants before us. Learned Single Judge also took into account subsequent writings of the State to arrive at a finding that such writings also did not assist the appellants in seeking grant of approval of their appointments.
13. Instances exist where, persons apparently appointed on casual basis subsequent to July 13, 1994 were recommended for grant of approval of appointment and again apparently, such approval for appointment were granted. It is trite law that, the appellants cannot seek negative equality. The request for grant of approval by the Municipality as also grant of approval by the State were contrary to the scheme dated June 28, 2004.

Therefore, we cannot issue mandatory order or a writ of mandamus commanding the respondents to undertake an exercise which is not permissible.

14. We find no ground to interfere with the order impugned.
15. **MAT 1833 of 2024** along with connected applications are **dismissed** without any order as to costs.

(Debangsu Basak, J.)

16. I agree.

(Md. Shabbar Rashidi, J.)

CHC