

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 719 of 2020

Goutam Kumar Jha ...Petitioner

-Vs-

The State of West Bengal & Ors. ...Respondents

With
W.P.A 2049 of 2020

Nupur Dutta ... Petitioner

-Vs-

The State of West Bengal & Ors. ... Respondents

With
W.P.A 723 of 2020

Jayanta Mahato ... Petitioner

-Vs-

The State of West Bengal & Ors. ... Respondents

With
W.P.A 9416 of 2020

Mushtak Shekh ... Petitioner

-Vs-

The State of West Bengal & Ors. ... Respondents

With
W.P.A 9418 of 2020

Bablu Mohammad ... Petitioner

-Vs-

The State of West Bengal & Ors. ... Respondents

With
W.P.A 9420 of 2020

Uttam Dhar ... Petitioner

-Vs-

The State of West Bengal & Ors. ... Respondents

For the Petitioners	:	Ms. Susmita Saha Dutta Mr. Niladri Saha
For the State	:	Mr. Santanu Kumar Mitra Mr. Amartya Pal Mr. Pinaki Dhole Ms. Ananya Neogi
For the Raiganj Municipality	:	Mr. Sirsanya Bandopadhyay Mr. Arka Kumar Nag Ms. Deboleena Ghosh
Reserved on	:	19.05.2025
Pronounced on	:	14.07.2025

Rajarshi Bharadwaj, J:

1. The present writ petitions, taken up together due to the commonality of issues involved, are directed against the alleged inaction of the respondent authorities in regularizing the services of the petitioners, who have been serving for considerable durations in various capacities under the Raiganj Municipality herein respondent No.3 and the impugned issuance of a recruitment notice dated 28.12.2019 for filling Group-D and other posts, allegedly overlooking the legitimate expectations of the petitioners.
2. For the sake of convenience, W.P.A. 719 of 2020 is treated as the lead matter, and the facts of that case are referred to wherever necessary. The issues involved in all the writ petitions being similar, this judgment shall govern all the connected writ petitions as well.
3. The lead petitioner in WPA 719 of 2020, Shri Goutam Kumar Jha, was initially engaged as an unskilled labourer under a contract and subsequently appointed under the Raiganj Municipality on a fixed monthly remuneration of ₹1700/- with effect from 01.03.2006, pursuant to a resolution dated 27.02.2006 of the Board of Councillors.

4. Over the years, multiple resolutions and communications emanated from the Municipality requesting the Director of Local Bodies, Government of West Bengal, to accord approval for the regularization of the petitioner along with fifteen others similarly situated. Despite repeated representations from the petitioners and supportive recommendations from the municipal authorities, no affirmative decision was forthcoming from the State.

5. Subsequently, the Director of Local Bodies, vide letter dated 06.07.2018, indicated his consent to initiate recruitment procedure for these employees if required. Notably, no categorical rejection of the petitioners' absorption proposals was communicated to them.

6. In a parallel development, by orders of a Division Bench of this Court in **A.S.T. No. 242 of 2014 (*Prasanta Kumar Das & Ors. v. State of West Bengal & Ors.*)**, directions were issued for the creation of posts and regularization of similarly circumstanced employees, resulting in the creation of 13 sanctioned posts under the Raiganj Municipality.

7. Despite this precedent and prolonged engagement of the petitioners in municipal functions, the respondents issued a fresh recruitment notification dated 28.12.2019 for multiple posts, including those allegedly held by the petitioners, without first addressing their claims for regularization.

8. However, by an order dated 21.01.2020, the Hon'ble Justice Amrita Sinha was pleased to stay the final result of the recruitment process initiated by the said notice. Till date, no review or appeal has been preferred against the said order. Neither in the Affidavit-in-Opposition filed by the Raiganj Municipality nor by the State Respondents has the legality of the said recruitment notice been affirmed or defended.

9. The petitioners continue to discharge municipal functions and seeks regularization along with similarly placed employees owing to which the present petitions have been preferred.

10. Learned counsel appearing for the petitioners submits that the petitioners were initially engaged in municipal service in various Group-D capacities under Raiganj Municipality on a fixed monthly remuneration, pursuant to certain resolutions passed by the Board of Councillors. At the time of their initial engagement, the West Bengal Municipal Employees' (Recruitment) Rules, 2005 had not come into force and hence there existed neither sanctioned posts nor any recruitment procedure under the statute.

11. The petitioners continued in an uninterrupted service for over a decade, during which the Municipality repeatedly requested the Director of Local Bodies to accord approval for their regularization. At no point has the Director of Local Bodies directed their disengagement or opposed their continued service. In fact, the Director's letter dated 06.07.2018 invited the Municipality to initiate the process of regularization, if required.

12. The petitioners contended that their appointments were not illegal but at most "irregular," made to meet administrative exigencies. There was no fraud, nepotism or violation of Articles 14 and 16 of the Constitution. Their engagement was supported by official resolutions and their services were rendered essential throughout, including acknowledgement by successive Chairmen and administrators.

13. Attention has been drawn to the judgment in **Prasanta Kumar Das (supra)**, where a Division Bench of this Court directed regularization of similarly situated employees in Raiganj Municipality. It is submitted that the facts of the present petitions are on even stronger footing, as the petitioners' long service and the municipality's consistent support establish a legitimate expectation of regularization.

14. Further reliance has been placed on **State of Jammu & Kashmir v. District Bar Association, Bandipora** reported in (2017) 9 SCC 410, **Narendra Kumar Tiwari v. State of Jharkhand** reported in (2018) 8 SCC 238 and the recent judgment in **Jaggo v. Union of India** reported in 2024

SCC OnLine SC 3826—all of which underscore the right to regularization in cases where employees have rendered continuous and indispensable service over an extended period.

15. The Learned counsel for the petitioners also submits that the recruitment notice dated 28.12.2019, which attempts to fill the very posts they have occupied for over a decade, was stayed by a coordinate Bench of this Court on 21.01.2020. Moreover, the notice was issued not by the West Bengal Municipal Service Commission, but by the Chairman of Raiganj Municipality, in violation of established recruitment protocol. No appeal or review has been filed against the said stay order till date.

16. In view of the above submissions, it is submitted by the petitioners that the respondents be directed to regularize the petitioners' services forthwith in terms of applicable law and precedents.

17. The Learned Counsel for the State herein respondent no.2 submits that the petitioners were appointed by the Municipality without obtaining prior approval of the State Government, in violation of Labour Department Order No. 100-EMP/N/17/79 dated 13.03.1996 and the Director of Local Bodies' Order No. 292/DLB/C-33G-2/92(119) dated 22.10.1997, both of which prohibit engagement of casual workers without such approval.

It is further submitted that although the Municipality, by resolution dated 10.04.2017, resolved to seek Government approval and later sent a proposal for absorption of 16 candidates, no approval was obtained prior to the petitioners' appointment. The appointment was made without any proper selection process and is, therefore, irregular and illegal.

The State further submits that directions were issued to the Municipality to initiate a proper recruitment process, initially by letter dated 06.07.2018 and later through directives dated 18.11.2019, extending the timeline up to 31.05.2020. However, there was no subsequent communication from the Municipality regarding compliance.

It is also submitted that the Government created 13 posts for absorption of long-serving casual workers who had been engaged since 1993, pursuant to a court direction in **Prasanta Kumar Das (Supra)**, the petitioner, having been appointed only in 2006 on a fixed-pay and contractual basis, does not fall

within the scope of that order. The State denies any obligation to regularise such irregular appointments and prays for dismissal of the writ petitions.

18. The Learned counsel for the respondent nos. 3 to 5 submits that the writ petitions are not maintainable either in law or on facts and are based upon misconceived and presumptive notions that the respondent authorities have deliberately denied the petitioners absorption into the sanctioned post. It is contended that the petitioners were initially engaged as unskilled labourer under a contract and subsequently, vide memo dated 28.02.2006, was engaged by the Municipality on a fixed remuneration on an ad hoc basis, without any sanctioned post or governmental approval.

19. It is submitted that the engagement was neither sanctioned nor approved by the Directorate of Local Bodies and as such, no right accrues to the petitioners for regularization or absorption under any sanctioned post. The Municipality has no independent authority to create or regularize posts and only the Directorate of Local Bodies, Government of West Bengal, i.e., Respondent No. 2, has the power to regularize casual workers.

20. The respondent further denied that the petitioners had any *locus standi* to file the instant writ petitions, as they had not participated in the recruitment process initiated through notice dated 28.12.2019. The respondents called upon the petitioners to disclose their educational qualifications on affidavit to demonstrate whether they possess the minimum eligibility criteria required under the rules for any of the posts advertised.

21. It is further submitted that even though the Municipality had communicated with the Directorate of Local Bodies on several occasions regarding the petitioners' services, no approval for regularization was granted by the said authority, and in fact, no direction was ever issued to the Municipality to absorb or regularize the petitioners or similarly situated persons.

22. The respondents specifically denied the petitioners' assertion that the Directorate's communication dated 06.07.2018 conveyed any consent for regularization. It is submitted that the petitioners' interpretation of the said letter is erroneous and unsustainable.

23. Learned counsel for the respondent Municipality also argued that the notice dated 28.12.2019 for fresh recruitment was validly issued after obtaining approval from the Directorate of Local Bodies and that there exists no illegality in the said recruitment process warranting judicial interference. The respondent further submitted that no candidate, including the petitioners, were barred from participating in the said process if otherwise eligible and the fact that the petitioner did not apply or participate reflects the absence of merit in their claims.

24. The respondent Municipality expressed its concern that the writ petitions are being used as a pressure tactic to hold the recruitment process and the administrative machinery to ransom, under the pretext of service regularization. It is, therefore, submitted that the petitions have not been filed in bona fide exercise of legal rights and that the balance of convenience does not favour the petitioners. Therefore, the writ petition deserves to be dismissed with exemplary costs, and the pending recruitment process should be allowed to proceed unhindered in the interest of administrative exigency and fairness to all eligible candidates.

25. Having heard the learned counsel for the parties and perusal of the records this Court is of the view that the core issue in the writ petitions is whether the petitioners, who have rendered over decades of continuous, uninterrupted service in Raiganj Municipality against vacant and necessary posts, albeit without formal regularization, are entitled to be absorbed into service on a regular basis, especially in light of their long-standing engagement, institutional recommendations and judicial precedents on regularization of casual employees.

26. This Court notes that the petitioners were engaged not in a clandestine or illegal manner but pursuant to a formal resolution of the Board of Councillors of the Municipality. Their appointments were made in response to acute administrative exigency and a shortage of municipal staff. At the relevant time, i.e. prior to 12.09.2006, the West Bengal Municipal Employees' (Recruitment) Rules, 2005 had not yet come into force. Therefore, there were no codified service rules or prescribed procedure for appointment to municipal posts.

27. The distinction between illegal and irregular appointments, as laid down by the Hon'ble Supreme Court in ***State of Karnataka v. Uma Devi*** reported in **(2006) 4 SCC 1**, is crucial. The Court emphasized that while appointments made in violation of constitutional mandates i.e., without sanctioned posts or due process are illegal and not eligible for regularization, appointments made irregularly such as without prior approval but against vacant posts and under bona fide exigencies which may be regularized based on long, uninterrupted service.

28. In the present case, the appointments were not contrary to any prevailing service rules as no such rules existed at that time and were made transparently by the statutory authority. Thus, the petitioners' appointments, at best, may be termed irregular but not illegal.

29. This Court finds compelling parallels with the Division Bench decision in ***Prasanta Kumar Das (supra)***, wherein the Hon'ble Court directed the creation of sanctioned posts and regularization of similarly placed workers in Raiganj Municipality who had been appointed under similar circumstances. It was held therein that in the absence of recruitment rules at the time of initial engagement and in view of long-standing service under official sanction, the engagement could not be termed illegal. The said judgment has not been overturned and has been implemented by the creation of 13 sanctioned posts and the subsequent regularization of those petitioners.

30. The petitioners' legitimate expectation is also reinforced by consistent actions and communications issued by the Municipality perse from 2017 to 2019 requesting the Director of Local Bodies to approve their regularization. At no point was any adverse order passed by the State Government or the Director against the petitioners' continuation. The Director's letter dated 06.07.2018 even advised initiation of the process, if needed, for regularization.

31. The recruitment notice dated 28.12.2019, which seeks to fill the said posts occupied by the petitioners, has been stayed by this Court vide order dated 21.01.2020 and no appeal or review has been preferred against such interim order. Further, the said notice was issued by the Chairman of the Municipality in violation of the settled law that recruitment to municipal posts is to be conducted only by the West Bengal Municipal Service Commission.

32. Reliance is also placed on the recent judgment of the Hon'ble Supreme Court in **Jaggo v. Union of India (supra)** where the Apex Court held that sustained and essential service over long periods by workers, even if initially engaged without a formal process, cannot be brushed aside. Such workers are entitled to regularization and their roles cannot be dismissed as irregular or insignificant. The Hon'ble Court reaffirmed the humanitarian and constitutional need to distinguish genuine long-serving employees from backdoor entrants.

33. Additionally, the Courts in **Narendra Kumar Tiwari (supra)** cautions against the exploitative practice of indefinitely continuing irregular appointments and then terminating them on technical grounds. The Court therein affirmed that where appointments were made in the interest of administration, their long-standing nature transforms the employment into a legitimate service claim.

34. It is also relevant to note that there is no evidence or pleading by the respondents suggesting the petitioners were ever disengaged, faced departmental action or performed their duties in a manner unsatisfactory.

Their continuous retention and reliance by the Municipality only confirm the need for and the merit in their services.

35. For the foregoing reasons, the petitioners' appointments were not illegal, but at most procedurally irregular, having been made at a time when no formal recruitment framework was in place. Their long and uninterrupted service spanning nearly two decades in performing essential municipal functions, combined with the repeated recommendations and affirmations by the competent municipal authorities, clearly establishes a case of legitimate expectation for regularization. The constitutional goal of fairness in public employment, as embodied in Article 14 of the Constitution, mandates that such employees cannot be arbitrarily casted away without due consideration of their bona fide contributions. The *doctrine of equality*, read in conjunction with the judicially recognized distinction between "illegal" and "irregular" appointments, fully supports the regularization of the petitioners in the present factual context, as has already been directed in similarly placed matters by coordinate Benches of this Hon'ble Court. Accordingly, this Court holds that the petitioners' employment is to be regularized with immediate effect.

36. Accordingly, the writ petitions being WPA 719 of 2020, WPA 2049 of 2020, WPA 723 of 2020, WPA 9416 of 2020, WPA 9418 of 2020 and WPA 9420 of 2020 are allowed.

37. All pending applications are accordingly disposed of.

38. There shall be no order as to costs.

39. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(RAJARSHI BHARADWAJ, J)