

13.05.2025
Court No.1
Item No.31
pk/AP

**HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI**

**SAT 8 of 2022
With
CAN 2 of 2022**

**Hossain Miah
Vs.
M/s. Paritosh Bhowmik & Co. and Ors.**

Ms. Suman Sehanabis (Mondal)
Ms. Anwasha Chakraborty

... For the Appellant.

1. The second appeal has come up for admission before this Court. The appellant filed a civil suit before the Court of the learned Civil Judge (Junior Division), Additional Court, Sadar, Cooch Behar being Title Suit No.51 of 2012.

2. In the said suit the plaintiff prayed for a decree that the appointment of the defendant No.2 in place of the appellant is illegal. It is further argued that the defendant No.2 was appointed by the Pradhan of a Gram Panchayat whereas it is the defendant No.1 contractor, who has been entrusted by the PHE to appoint pump operators in the water pump functioning at a Panchayat under the PHE.

3. The first Court found favour with the appellant and set aside the appointment of the defendant no.

2. The appellant was directed to be appointed to the post by the first Court.

4. On an appeal being preferred by the Prodhan of the Gram Panchayet before the lower appellate court being T. A. 36 of 2017 the decree passed by the first Court was reversed and the suit was dismissed. The facts are undisputed. What is however relevant and found favour with the lower appellant court is a principle of law.

5. The first Court failed to notice that a contract of service is not specifically enforceable under Section 34 read with Section 14 of the Specific Relief Act, 1963. The provisions of Section 41 of the Specific Relief Act are also applicable. The Lower Appellate Court applying the law on the subject by reference to several decisions was of the view that the First Court committed error on fact as well as law.

6. It is even otherwise evident from the facts noted by the lower appellate court, that the appellant was never issued any letter of appointment. He has demonstrated his alleged service based on signatures in a logbook.

7. It is laid down in the Uma Devi decision that appointments made without following a due process

of law was illegal. No rights flow from such appointments.

8. The suit itself was taken up and dismissed by the Lower Appellate Court.

9. This Court finds that there are no substantial questions of law that arise as the issue has been decided on a simple accepted principle of law that a contract of service is not specifically enforceable.

10. In view of the above, SAT 8 of 2022 fails and hereby dismissed.

11. Consequently, CAN 2 of 2022 shall stand dismissed.

12. There shall be no order as to costs.

13. All the 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.)