
(2020) 01 CAL CK 0153
In the Calcutta High Court

Case No : Civil Application (CAN) No. 11974 Of 2019 In Writ Petitions (WP) No. 28210 (W) Of 2016

Manindra Nath Singha & Ors

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 06-01-2020

Acts Referred:

Citation : (2020) 01 CAL CK 0153

Hon'ble Judges : Rajasekhhar Mantha, J

Bench : Single Bench

Advocate : Chitta Ranjan Chakraborty, Sandip Dinda, Ekramul Bari, Tanuja Basak

Final Decision : Disposed Of

Judgement

Rajasekhhar Mantha, J

In re: CAN 11974 of 2019

Sufficient grounds have been made out for recall of the order dated December 4, 2019. The instant writ application is restored to its original file and number.

Accordingly, CAN 11974 of 2019 is allowed and disposed of.

In re: W.P. 28210 (W) of 2016

The petitioners claim to have come to know of the seniority position of the 5th respondent only in the year 2015 for the first time. They moved this Court, since according to the petitioners, the 5th respondent who entered service in 2003 ought to have been graded accordingly. The petitioners have been appointed in the year 1999.

The 5th respondent represented by Mr. Ekramul Bari, who has made detailed submissions on his behalf.

The brief facts leading to the dispute as to when the 5th respondent was actually

appointed are as follows.

Sometime in the year 1999, the 5th respondent Ashok Kumar Saha worked in the Gram Panchayat concerned for three months, i.e., between July to November 1999. He did not work in the Gram Panchayat thereafter. He approached this Court by way of writ application being W.P. 21007 (W) of 1999 for permanent absorption. The said writ application was disposed of by order dated June 11, 2003 passed by a Co-ordinate Bench of this Court. By the said order, the 5th respondent's case was directed to be considered by the Block Level Selection Committee (BLSC). The BLSC in its meeting held on September 16, 2003 recorded that the petitioners, in fact, worked only for three months in 1999 and despite objection of the Block Development Officer (BDO), recommended petitioners' case for regularization.

The BLSC also found that the 5th defendant was prevented from working as Gram Panchayat Karmee. The DLSC, therefore, held that for the period from 1999 to 2003 he would not be entitled to any remuneration but the said period would be considered for length of service and on leave without pay.

The order came to light for the first time from the affidavit-in-opposition of the State as well as the 5th respondent. The petitioners claim that the said order is illegal.

The District Panchyat & Rural Development Officer, Malda, by order dated June 5, 2009 held that the 5th respondent's service was terminated by the Prodhan of the Majhra Gram Panchyat in the year 1999 as per the direction of the then District Magistrate. By a subsequent order he was reinstated vide letter dated September 22, 2003. In the meantime, the District Magistrate of Hooghly vide letter dated October 28, 2009 ordered that the 5th respondent's service would be regularized from July 29, 1999, which was held to be the actual date of joining service as a Gram Panchyat Karme. His service from December 1, 1999 to September 21, 2003 was directed to be treated as on leave without pay.

This Court finds that the order of the BLSC as also the order of the District Magistrate dated October 28, 2009, ex facie without jurisdiction. A person, who was not recruited in accordance with normal rules, should have been treated as illegally backdoor entry. Admittedly, such person did not perform any duty in the Gram Panchayat from December 1, 1999 to September 21, 2003. He therefore could not have by any stretch of imagination claimed to have on service until 2003.

In fact, the 5th respondent could not have been absorbed or treated as a permanent Gram Panchayat Karmee in the first place.

Mr. Bari, learned Counsel for the 5th respondent submits that the prayers in the writ application do not indicate any challenge either to the District Magistrate's order or the order passed by the BLSC. He further submits that he has no objection to the petitioners being granted the promotion without any disturbance

to his client's position in the seniority list.

The learned Counsel for the petitioners submits that they at no occasion challenged the same by reason of pendency of the writ application and also that there is deemed challenge to such orders.

This Court held that the 5th respondent's service itself could not have been regularized in the first place in the manner done. The question of considering him on service from December 1, 1999 could not have arisen at all. The 5th respondent, therefore, could not have been in the seniority list as having joined service from December 1, 1999.

This Court, however, does not wish to interfere with the service of the 5th respondent. He shall remain in service as a Gram Panchayat Karmee but shall be deemed to have joined service w.e.f. September 21, 2003. The seniority list for the purpose of promotion to the post of Gram Panchayat Sahayak shall be recast and altered accordingly.

As for the prayer of the petitioners for grant of promotion, it is now well settled that one cannot claim to be entitled to promotion per se but is only entitled to be considered therefor.

The petitioners' case for promotion to the post of Gram Panchayat Sahayak shall be considered after recasting of the seniority list of the post of Gram Panchayat Karmee by treating the 5th respondent as having joined service on September 21, 2003 and not from any prior date.

The District Magistrate, Malda shall cause re-assessment of the promotion process based on the above directions.

It is made clear that after recasting of the seniority list if the 5th respondent is, in fact, entitled to promotion based on the number of vacancies, he shall be granted the same in accordance with law.

With the aforesaid directions, the instant writ petition being WP 28210 (W) of 2016 is disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties.