(2013) 08 CAL CK 0048

In the Calcutta High Court

Case No : F.M.A. 169 of 2009

Sankar Banerjee and Others APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:
West Bengal Panchayat Act, 1973 — Section 6(1)

Citation : (2014) 1 CHN 410 : (2014) LabIC 673

Hon'ble Judges : Arun Mishra, C.J;Joymalya Bagchi, J

Bench : Division Bench

Advocate : ;D.N. Batabyal and Shri Sujit Chowdhury, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, C.J.—The intra court appeal has been preferred questioning the legality of the judgment and order dated 2nd February, 2007 passed by the Single Bench in W.P. No. 16659 (W) of 2002. The prayer was made by the petitioners in the writ petition for recasting the gradation list and to grant seniority from the initial date of their joining the service in the erstwhile Panchayat. In the alternative, prayer was made to grant their seniority from the date of inclusion of the Panchayat in the Mahestala Municipality i.e. with effect from 3.12.1993. It was the case of the petitioners that they were working in the erstwhile gram panchayat of Mahestala, Thakurpukur and Metiabruz Blocks as Tax Collecting Sarkars. Notification was issued on 3.12.1993 by which Government of West Bengal appointed various persons as Commissioners of the Mahestala Municipality which was constituted by another notification of the same date. A copy of the said notification was filed as Annexure P-1.

2. On 21.12.1993, the concerned District Magistrate passed an order whereby he made a declaration to the effect that as per the provisions of West Bengal Panchayat Act, all the properties, funds, assets, rights, liabilities and the staffs of gram panchayat should transfer to the newly constituted Mahestala Municipality.

3. It was submitted by the learned Counsel for the petitioner that they were existing staffs of gram panchayat on the date of their inclusion in Mahestala Municipality. Therefore, in terms of the order dated 21.12.1993 read with Section 6(1) of the West Bengal Panchayat Act, 1973, they would be deemed to have become the employees of the said Municipality with effect from the date of such inclusion of the Gram Panchayat i.e. 3.12.1993.

4. It was also submitted by the petitioners that on 14.2.1994, the District Magistrate, South 24-Paraganas issued a letter to the Chairman of Mahestola Municipality furnishing the names of the Tax Collecting Sarkars who had been engaged in the concerned Gram Panchayat to consider the claims of such Tax Collecting Sarkars for absorption on regular posts or engagement on commission or on daily wage basis in the Municipality in question.

5. A formal letter of appointment being Annexure P-4 was issued with effect from 1.4.1994. The order dated 25.3.1994 indicates that they were continuing in service on the same terms and conditions as was admissible to them by the erstwhile Gram Panchayat. They were drawing monthly allowance of Rs. 60/-plus commission. Commission was bifurcated. In case of collection of Rs. 6000/-, commission will be @ 10%, in case of collection of above Rs. 6000/- to Rs. 8,000/-, commission will be @ 15% and in case of collection of Rs. above Rs. 8,000/-, commission will be @ 20%. Thus, they were engaged on the basis of monthly allowance of Rs. 60/- plus commission. It is pertinent to mention that they were not holding regular posts. They were paid monthly allowances plus commission. Even the District Magistrate has mentioned in the communication that they be engaged on any regular post or be engaged on commission or on daily wages basis, as they were continued in the erstwhile Gram Panchayat in the aforesaid manner.

6. Earlier a writ petition was filed, being C. O. No. 4704 (W) of 1995. It was decided vide order dated 12.2.1998 and the following order was passed:

The grievance of the petitioners is that they were employed as Tax Collectors by various Gram Panchayat. The area of those Gram Panchayats merged into Maheshtola Municipality. Hence, their service stood transferred to the said Municipality. The Municipality, respondent No. 6 was not treating them at par with other municipal employees and the petitioners were not being paid their salaries and other emoluments like other municipal employees. The case of the respondent No. 6 that so many posts of Tax Collectors were not available under the said Municipality and so all persons cannot be absorbed on regular basis.

The writ petition is disposed of with the following directions.

1. that the respondent Nos. 1 and 3 are hereby directed to assess the actual number of posts of Tax Collectors required for the Maheshtola Municipality order creation of so many posts and absorb the petitioners against the said posts.

2. if all the petitioners cannot be absorbed against the posts of Tax Collector, the

State Government may consider their appointment against any other vacant posts available or against any other suitable posts, to which they are found suitable according to their qualification.

7. A gradation list was prepared pursuant to the direction issued by this Court. In the gradation list, the date of joining was shown as 15.4.1996 whereas the petitioners claim that they joined in the service on 3.12.1993. Thus, they claim their seniority from 3.12.1993.

8. It is the case of the respondent that the petitioners were not holding regular posts in the Gram Panchayat. They were serving on purely monthly allowance and commission basis. They were not regular employees and staffs of the Gram Panchayat prior to inclusion of those Gram Panchayats in Maheshtola Municipality. In the affidavit-in-opposition filed in the writ petition, it has been mentioned that after the order was passed by this Court, the Department of Municipal affairs created 23 vacant posts on 31.12.1998 for the said Municipality and on 12.2.1999, the Board of Councillors of the said Municipality took a resolution for appointment of those Tax Collectors on the said vacant sanctioned posts. Thereafter, the formal letter of appointment was issued in respect of the petitioners making it effective from the forenoon of 5.3.1999.

9. The respondent further contended that although the appointments were made with effect from 5.3.1999, yet in the gradation list, date of joining was shown as 15.4.1996 because they were engaged in the said municipality on and from 15.4.1996 on the basis of daily wages. Prior to 31.12.1998, there was no post at all and the petitioners were working on daily wage basis and on commission basis.

10. The Single Bench has dismissed the writ petition. Hence, the intra court appeal has been preferred.

11. The learned Counsel appearing on behalf of the appellant has submitted that as the petitioners were working in the erstwhile Municipality as Tax Collecting Sarkars, they were entitled for the posts with effect from the creation of the Municipality if not from the earlier date when they were engaged by the erstwhile Gram Panchayat. It has also been submitted by the learned Counsel appearing on behalf of the appellants that by virtue of the order, Annexure P-4, the appellants were entitled to continue in the services as all the assets and liabilities of the erstwhile Gram Panchayat were taken over by the Municipality. As such, seniority ought to have been recorded in the gradation list of the Municipality when the decision was taken to form the Municipality.

12. It is apparent from the Annexure P-4, the document filed by the petitioners themselves, in what capacity they were working in the erstwhile Gram Panchayat. They were not holders of any regular post. They were drawing monthly allowance of Rs. 60/- plus commission @ 10%, 15% and 20%, as the case may be, depending upon the collection made by them. The concerned District Magistrate had recommended their continuation of service on commission

basis on regular posts or on commission basis or on daily basis. However, they were continued in services in the same capacity in which they were working in the erstwhile Gram Panchayat. It is not the case of the petitioners that they were holding the regular posts in the erstwhile Gram Panchayat which was abolished and thereafter on constitution of the Municipality, they continued in the same terms and conditions as they were drawing monthly allowance of Rs. 60/- and commission. None of them was appointed on regular basis. There was no post available of Tax Collecting Sarkars either in the Gram Panchayat or in the Municipality. For the first time, the posts were created on 31.12.1998 by the State Government in the Municipal Council. Thereafter, they were appointed on regular basis and in the gradation list, their engagement had been shown with effect from the date they were taken in the municipal service on daily wage basis.

13. In that view of the matter, the petitioners could not have been granted seniority from the year 1993 as they were not holding any post. They were working on monthly allowance or on daily wage basis. It was not a regular employment and the posts for the first time were created on 31.12.1998. When they were not holding any regular post. They were not in existence they cannot claim any seniority while working on monthly allowance and commission basis.

14. It was also submitted by the learned Counsel for the appellants that since in the gradation list, their engagement had been shown with effect from 1996, their seniority should be made effective from date, P-4 was issued. In our view, the petitioners cannot claim such seniority as they were not working on duly sanctioned posts because these posts were sanctioned only on 31.12.1998.

15. Thus, we find that the claim of seniority with effect from 1993 was unsustainable and the Single Bench has rightly rejected writ petition by giving elaborate reasons. We find no case is made out so as to interfere in the order passed by the Single Bench. Thus, the appeal is devoid of merits and the same is hereby dismissed.

16. There will be, however, no order as to costs. Urgent photostat certified copy of this order, if applied for, be given to the appearing parties upon compliance of necessary formalities.

