
(2008) 09 CAL CK 0049
In the Calcutta High Court
Case No : F.M.A. No. 66 of 2007

Shri Adhirath Mondal

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 24-09-2008

Acts Referred:

Citation : (2008) 4 CALLT 330 : (2009) 120 FLR 1180

Hon'ble Judges : Tapan Mukherjee, J;Pranab Kumar Chattopadhyay, J

Bench : Division Bench

Advocate : Malay Kumar Basil, Laxmi Kanta Pal and Bandhu Brata Bhula, for the Appellant;Ashoke Sarkar and Madhumita Dutta and Dipankar Ghosh and Eashita Mandal, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—This appeal has been preferred on behalf of the writ petitioner assailing the judgment and order passed by the learned single Judge whereby and whereunder the said learned Judge rejected the claim of the appellant/writ petitioner regarding regularisation of his service.

2. It appears from the records that the appellant herein was appointed in a Group "D" post of Night Guard-cum-Sweeper in Nakole Gram Panchayat on 30th January, 1991 pursuant to the resolution adopted by the members of the said Gram Panchayat. The said appointment of the appellant was thereafter, confirmed in the meeting of the Gram Panchayat on July 8, 1993.

3. It has been alleged on behalf of the appellant that the new Pradhan of the said Gram Panchayat after taking charge of the office initially did not allow the appellant/writ petitioner to sign the Attendance Register and thereafter, informed the said appellant that the members of the Gram Panchayat had passed a resolution to terminate his service although no disciplinary proceeding was ever initiated in this regard by the said Gram Panchayat.

4. The appellant herein filed a writ petition before this Hon'ble Court which was

numbered as C.O. No. 15909 (W) of 1993. On 25th April, 1994, Hon"ble Justice Altamas Kabir (as His Lordship then was) passed an interim order on the said application directing the Pradhan of the Nakole Gram Panchayat to allow the appellant herein to continue his duties as Night Guard-cum-Sweeper immediately after communication of this order and also to pay remuneration.

5. The relevant portion of the said order is set out hereunder:

Pending the hearing of this application, having regard to the statements made in paragraphs 4, 5 and 8 of the writ petition, the concerned Gram Panchayat, and more particularly the Pradhan thereof, is directed to allow the petitioner to continue his duties as Night Guard cum Sweeper immediately upon communication of this order and to pay him his remuneration from such date onward. The period during which the petitioner was not allowed to function will be considered at the time of final hearing of this application...

6. The Pradhan of the said Gram Panchayat, however, did not allow the appellant herein to work and, therefore, a contempt application was filed before this Court. On September 9, 2005, learned single Judge was ultimately pleased to finally dismiss the writ petition. Challenging the said order of the learned single Judge, appellant herein preferred the instant appeal.

7. Mr. Malay Kumar Basu, learned senior counsel of the appellant herein relied on a notification dated 8th October, 2003 issued by the Department of Panchayats & R.D., Government of West Bengal wherein specific provision was made for regularisation of the irregular appointments in the Panchayat bodies. The relevant portion of the aforesaid notification dated 8th October, 2003 is quoted hereunder:

iii) Such irregular appointments can -only be regularised on availability of suitable vacancies in the regular establishments of the concerned Panchayat bodies;

8. The Pradhan of the Nakole Gram Panchayat has filed an affidavit wherein it has been admitted that the appellant herein was appointed in the post of Night Guard-cum-Sweeper and subsequently, such appointment was confirmed unanimously in a meeting of the Gram Panchayat. Even after confirmation of the aforesaid appointment of the appellant as a Group "D" staff, the said Gram Panchayat in a meeting held on 6th September, 1993 terminated the service of the appellant.

9. As mentioned hereinbefore, the said order of termination was, however, not allowed to be effective in the eye of law pursuant to the mandatory order passed earlier by Altamas Kabir, J. (as His Lordship then was) in the previous writ petition filed on behalf of the appellant herein.

10. Mr. Ashoke Sarkar, learned Counsel representing the State-respondents submits that the appointment of the appellant should be treated as illegal and not an irregular one since the said appointment was made by the Gram

Panchayat in absence of any vacancy. Mr. Sarkar referred to and relied on the decision of the Supreme Court in the case of Punjab State Warehousing Corp., Chandigarh Vs. Manmohan Singh and Another, Headnote "D" in support of his aforesaid contentions.

11. We are unable to accept the aforesaid argument advanced on behalf of the State-respondents only on the ground that pursuant to the aforesaid notification dated 8th October, 2003 irregular appointment can be regularised only on availability of suitable vacancies which presupposes that appointments made in absence of suitable vacancies should be regarded as irregular appointments and the same can be regularised on availability of suitable vacancies.

12. For the aforementioned reasons, the decision cited by the learned Counsel of the State-respondents in the case of Punjab State Warehousing Corpn., Chandigarh (supra) cannot be made applicable in the facts of the present case.

13. In the affidavit filed before this Court, the Pradhan of the Nakole Gram Panchayat specifically admitted that the appellant herein was appointed after a valid resolution and received monthly salary. The relevant paragraphs from the aforesaid affidavit filed on behalf of the Pradhan are set out hereunder:

5. That the records show that the appellant Sri Adhirath Mondal was appointed after a valid resolution, unanimously taken on 7th January, 1991 by 2/3rd Members of the then Gram Panchayat. The records further show that his name was there in the original Attendance Register, maintained for the other permanent staff and the said appellant had put his signature as a regular employee for the period from February, 1991 to the month of August, 1993.

6. That the Attendance Register further shows all of a sudden when new Pradhan came, he on the Attendance Register put a remark that "For Sri Adhirath Mondal separate Attendance may be maintained".

7. The name of the appellant, Sri Adhirath Mondal also appeared in the Cash Book. He was getting salary @ Rs. 300/- per month.

8. That by the letter dated 12th July, 1993, the service of the appellant, Sri Adhirath Mondal was confirmed after an unanimous resolution which was taken by the 2/3rd members of the then Gram Panchayat. Such resolution was taken on 8th July, 1993.

14. In the said Nakole Gram Panchayat one Group "D" post of Gram Panchayat Karmee is still lying vacant which has been brought to the notice of this Hon'ble Court by the present Pradhan of the Gram Panchayat by filing the aforesaid affidavit.

15. Considering the submissions of the learned Counsel of the respective parties and taking note of the facts disclosed by the Pradhan, Nakole Gram Panchayat in the affidavit filed before this Court we are of the opinion that notwithstanding the fact that the initial appointment of the appellant in the concerned Gram

Panchayat was irregular but such irregular appointment of the appellant can be regularised in terms of the notification dated 8th October, 2003 issued by the Department of Panchayats & R.D., Government of West Bengal specially when a Group "D" post is lying vacant in the concerned Gram Panchayat.

16. The learned single Judge, however, failed to take note the specific provisions made in the aforesaid notification dated 8th October, 2003 for regularising the irregular appointments and erroneously dismissed the writ petition.

17. For the reasons discussed hereinabove, we are unable to approve the aforesaid decision of the learned single Judge and direct the respondent authorities particularly, the respondent Nos. 4 and 5 herein to regularise the appointment of the appellant in the vacant Group "D" post at an early date but positively within a period of four weeks from the date of communication of this order.

18. With the aforesaid observations and directions, we allow this appeal and set aside the judgment and order under appeal passed by the learned single Judge.

19. In the facts and circumstances of the present case, there will be, however, no order as to costs.

Let urgent xerox certified copy of this judgment and order, if applied for, be given to the learned advocates of the parties on usual undertaking.

Tapan Mukherjee, J.

20. I agree.