

(2014) 02 CAL CK 0022
In the Calcutta High Court

Case No : M.A.T. No. 385 of 2013 and C.A.N. Nos. 3315 and 3444 of 2013

State of West Bengal

APPELLANT

Vs

Sabir Ahamed Khan

RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2014) 4 CHN 1 : (2015) 4 WBLR 1084

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

Bench : Division Bench

Advocate : Bikash Mukherjee, Advocates for the Appellant; Atarup Banerjee, Bapin Baidya and Sandipan Pal, Advocates for the Respondent

Judgement

Arun Mishra, C.J.

In re: C.A.N 3315 of 2013

1. There is a delay of 175 days in filing the appeal. An application being C.A.N. 3315 of 2013 has been filed for condonation of the delay under section 5 of the Limitation Act. The application is not opposed by the respondents. Delay is condoned. The application is allowed. The petitioners filed the writ application against the decision of the Municipality denying permanent status to the petitioners on and from their date of joining. Basing on the tripartite agreement they were confirmed as permanent employee in Group "C" category on and from 1st February, 1994 along with they joined in services in the year 1990.

2. The petitioners also relied upon a Government Memo dated 10th March, 1996 which gave right that casual workers who were engaged in different Municipalities after 31st December, 1991 would be eligible for absorption in the duly sanctioned vacant Group "C" posts within the approved stalling patterns of the Municipalities concerned strictly on the basis of seniority and with prior approval of the Board of Councilors subject to the fulfilment of other terms and conditions laid down under the Labour Department Memo dated 13th March,

1996 read with Memo Nos. 1700 EMP of 3rd August, 1979 and 1650 EMP dated 28th August, 1980. It was the stand of the Municipality that relief should be given to the petitioners only with effect from 10th March, 1996 not before it.

3. After hearing the learned counsel for the parties, the Single Bench has directed that permanent status be given with effect from 10th March, 1996 and pay of arrears, if any, be also paid to them. Aggrieved thereby, the Intra Court Appeal has been preferred by the State of West Bengal.

4. Learned counsel appearing on behalf of the State has submitted that such circular has no force in view of the Hon'ble Supreme Court decision in the Secretary, State of Karnataka and Others Vs. Umadevi and Others, . Thus, the relief could not have been granted with effect from 10th March, 1996.

5. Learned counsel for the writ petitioners/respondents has submitted that before decision of Uma Devi (supra), order of regularisation had been passed by the concerned Municipality acting upon various orders issued by the State Government itself. They have not been disturbed by the decision of Uma Devi (supra). He has relied upon an order dated 20th/23rd September, 2005 passed by the concerned Municipality in which pursuant to the Government Order dated 14.01.2000 of Joint Secretary, Government of West Bengal, Municipal Affairs Department & subsequent G.O dated 19.09.2005 of the Director of Local Bodies, respondents/writ petitioners were absorbed in Group "C" post in the relevant pay scale with retrospective effect from 01.08.2005 on the terms and conditions as specified in the order. Learned counsel has also relied upon a Division Bench decision of this Court in M.A.T. 912 of 2006 (Loknath Ganguly and Ors. vs. State and Ors.) decided on 17.07.2006 in which similarly situated employees were given benefit of absorption with effect from 14.01.2000 and it is submitted that pursuant to the decision of the similarly situated employees the respondents/petitioners have already been given benefit of the order passed by the Division Bench of this Court with effect from 14th January, 2000 which order was passed by the Division Bench in M.A.T 912 of 2006. Learned counsel has further submitted that there is no error or illegality in the order passed by the Single Bench directing the permanent status to be conferred with effect from 10th March, 1996 as for absorption, the Municipality could not have sit tight over the matters for years together.

6. After hearing the learned counsel for the parties, we are of the opinion that though the regularization is not possible on the basis of such circular after Uma Devi's case. However in the instant case the order of absorption had been passed before decision of Uma Devi's case which has not been disputed and pursuant to the decision of Division Bench of this Court relief has already been given to other similarly situated employees including the respondents with effect from 14th January, 2000. Thus, when Division Bench of this Court in M.A.T. 912 of 2006 (Loknath Ganguly and Ors. vs. State and Ors.) decided on 17.07.2006 has given the relief with effect from 14.01.2000 which has been implemented by the Municipality. It would be unjust and improper to take away the said relief

which is already given to the respondents on the basis of Uma Devi's case (supra) as Uma Devi has been decided subsequently. In Uma Devi Hon'ble Apex Court itself has directed as one time measure where the employees had served for ten years, they should be regularised. Order passed by the Division Bench of this Court is in that spirit and absorption/regularization had been made in the instant case before the decision of Uma Devi by the Municipality concerned pursuant to the order issued in 2005 by the State Government. Consequently, we find that order passed by the Single Bench giving relief from 10th March, 1996 deserves to be modified considering the peculiar facts and circumstances of this case as another Division Bench of this Court has given relief from 14th January, 2000 and by that time 10 years service had been completed. We find it just and proper to hold the relief, which has been given by the Municipality on the basis of Division Bench order with effect from 14th January, 2000 should not be taken away as respondents are entitled to such benefits. It has also been observed by the Hon'ble Supreme Court in Uma Devi's case that regularization which has been made before its decision need not be reopened based upon the judgment. The Apex Court has observed:

"One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the Courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases aboveresferred to and in the light of this judgment. In the context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the Courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization . if any already made, but not sub judice need not be reopened based on this judgement, but there should be no further bypassing of the Constitutional requirement and regularizing or making permanent, those not duly appointed as per the Constitutional scheme."

(emphasis applied by us)

7. In view of the aforesaid decision, we are not inclined to accept the submission raised by the learned Counsel appearing on behalf of the State that regularization could not have been ordered by the Municipality acting upon the Government orders as regularization had been made earlier acting on its order. However, the status as well as other effect which had already been given from

14th January, 2000 shall be maintained by the Municipality concerned. The order is modified to the aforesaid extent.

8. The appeal is partly allowed. In view of the aforesaid order the application being C.A.N. 3444 of 2013 for stay is also disposed of.