

Item No. 296

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

29.09.2023

Ct-24

A.G.M.

WPA 6764 of 2023

Sonu Harijan
v.
The State of West Bengal & Ors.

Mr. Samarendra Nath Biswas
... for the petitioner.

Mr. Usof Ali Dewan
Mr. Asif Dewan
... for respondent nos. 4 and 5.

The father of the petitioner was an employee of the Jiaganj-Azimganj Municipality in the post of NS Cleaner who died in harness on 12th March, 2018. The petitioner has been permitted to work in the Municipality since August, 2017.

The Municipality permitted the petitioner to serve in the post of NS Cleaner of the Municipality and the petitioner was initially being paid Rs. 4,000/- only per month but presently is being paid an enhanced remuneration of Rs. 6,000/- only.

Seeking regularization in the sanctioned post, the petitioner filed writ petition before this Court being WPA 18344 of 2021, which stood dismissed on 14th January, 2022 by holding that the petitioner does not have any legal right to be permanently appointed as she was not appointed through a regular selection process.

The Court observed that if the Municipality decides to fill up the post in accordance with law, then the petitioner shall be allowed an opportunity to participate in the selection process upon condoning of the age bar, if the petitioner is otherwise eligible and is working continuously since 2017 till the date of recruitment.

In the present writ petition, the petitioner has highlighted the fact that despite several vacancies being available, the Municipality is not taking steps for filling up the vacant sanctioned post.

It has been submitted that it is practically impossible to survive with Rs. 6,000/- per month.

The Municipality is literally exploited the petitioner for performing full time work by only paying Rs. 6,000/- per month.

The petitioner relies upon the decision delivered by the Hon'ble Supreme Court in the matter of State of Karnataka & Others –versus- Umadevi & Ors reported in (2006) 4 SCC 1.

Paragraph 46 wherein the Court was pleased to observe that if sanctioned posts are vacant, the state will take immediate steps for filling those posts for regular process of selection.

Learned advocate representing the Municipality submits that the Municipality does not have the funds to make regular engagement. The DLB has not taken any steps for appointment.

On a query from the Court, the learned advocate representing the Municipality submits that the DLB is yet to be requested seeking approval for initiating the selection process for regular recruitment.

The petitioner has submitted that he is serving as a casual employee since 2017 at a paltry remuneration of Rs. 4,000/- per month enhanced to Rs. 6,000/- only

per month. Admittedly, there are various sanctioned posts that are vacant as on date.

It is highly improper for the Municipality to get work done by engaging the casual employees.

Since the nature of work performed by the petitioner is of a permanent status, the Municipality ought to take steps for filling up the vacation sanctioned post.

Though it is not for the Court to issue writ of mandamus compelling the Municipality to initiate recruitment process but at the same time the Court can not keep its eyes shut to the submission made by the petitioner that she is being exploited to perform regular full time work upon payment of Rs. 6,000/- per month.

In view of the above, the instant writ petition is disposed of by directing the Municipality to take steps for initiating regular selection process for filling up the vacant sanctioned post in accordance with the directions passed by the Hon'ble Supreme Court in the matter of Umadevi & Ors (supra).

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)