

03.05.2023
Item No. 08
Crt.No.11
b.r.

FMA 1018 of 2022
with
IA No. CAN 1 of 2022

Jagannath Mukherjee
-vs-
State of West Bengal & Ors.

Mr. Bhudeb Chatterjee
Mr. Rajendra Banerjee
Ms. Somosree Saha
..... for the appellant.

Mr. Santanu Kumar Mitra, Sr. Govt. Adv.
Ms. Jyotsna Roy Mukherjee
..... for the State.

Party/parties is/are represented in the order of their name/names as printed above in the cause title.

Under challenge in this appeal is the order of the Hon'ble Single Bench dated the 14th of June, 2022 in the writ petition being WPA 3492 of 2015. By way of the said impugned order, the Hon'ble Single Bench was pleased to turn down the prayer of the writ petitioner/the appellant herein for regularisation of his service in a Group-C post of the College-in-issue.

Mr. Chatterjee, Learned Senior Counsel appearing with Mr. Banerjee, Learned Counsel points out that the appellant has been in regular service of the College-in-issue since 1998. The appellant was appointed as an accountant-cum-cashier-cum-clerk by the Governing Body of the College-in-issue and is

discharging his duties diligently till date. Although the appellant made several representations to the College-in-issue for regularisation of his service, the matter was not pursued by the College-in-issue with the State Authorities.

Mr. Chatterjee draws the attention of this Court to the order of the Director of Public Instructions (DPI), Government of West Bengal dated the 8th of May, 2014 which, *inter alia*, states that since no proposal regarding the claim of the appellant for regularisation was received from the College-in-issue, the Higher Education Department of the Government is not in a position to take any step.

It has also been stated in the said reasoned order of the DPI dated 8th May, 2014 passed pursuant to an order of the Hon'ble Court in an earlier writ petition, being WP No. 7573(W) of 2012, that eight non-teaching posts have been approved for recruitment to the College-in-issue by the Higher Education Department with the concurrence of the Finance Department. Mr. Chatterjee submits that out of the eight non-teaching posts, two posts are still vacant and both belong to the unreserved category. It is also clarified that the appellant is also from the unreserved category.

Per contra, Mr. Mitra, Learned Senior Counsel appearing for the State-Respondents, relies on the reasoned order of the DPI dated 8th of May, 2014 (*supra*).

Mr. Mitra points out that by the order impugned in this appeal, the Hon'ble Single Bench has permitted the appellant/the writ petitioner to approach the Court for appropriate relief in the event a regular recruitment procedure is undertaken by the College to fill up the Group-C posts particularly that of the Lower Division Clerks (LDCs).

Having heard the parties and considering the materials placed, this Court is of the view at this stage that the appellant deserves to be protected in his present service. This Court is also *prima facie* of the view that the appellant is deserving of protection as laid down in *Paragraph-53 of the Uma Devi -vs- State of Karnataka, reported in (2006) 4 SCC Page-1*.

From the facts in issue, this Court further finds that the appellant has been in regular substantive service against a sanctioned post with the approval of the Governing Body of the College-in-issue for the past 25 years.

Accordingly the appointment of the appellant to discharge service in a sanctioned post is not a

backdoor entry. The appellant is also not under protection of any order from a Court or Tribunal.

This Court also notes that out of eight non-teaching posts sanctioned for recruitment by the Higher Education Department with the concurrence of the Finance Department (*supra*), two posts in the unreserved category are still vacant to which the appellant belongs.

In the backdrop of the above discussion, *status quo* with regard to the present service of the appellant shall be maintained until further orders.

Furthermore, one post in the Group-C category shall be kept vacant in any recruitment process pertaining to the College-in-issue, subject to appropriate orders in this appeal.

Let Affidavit-in-Opposition be filed within four weeks after the reopening of the Court after the Long Summer Break of 2023. Affidavit-in-Reply be filed within two weeks thereafter.

Liberty to mention **strictly** upon notice to the other side after the period granted to exchange affidavits stands complete.

Let notice of this order be served by the appellant on the respondent-College-in-issue which is not represented today.

Let Affidavit of Service to the above effect be filed on the next date.

Affidavit of Service filed in Court today be retained with the record.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

(Supratim Bhattacharya, J.) (Subrata Talukdar, J.)