

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

HON'BLE JUSTICE SUBRATA TALUKDAR

WP No. 9941 (W) of 2017

***Sk. Ansarul Alam @ Ansarul Islam
-Vs.-
The State of West Bengal & Ors.***

For the Petitioners	: Mr. Tarak Nath Datta Mr. Samaresh Chandra Dhara
For the State	: Mr. Yasin Ali Ms. Tapati Samanta
For the Resp. Nos. 3,4 & 8	: Mr. Uttam Kumar Bhattacharyya
Heard on	: 03/12/2019
Judgment on	: 25/09/2020

Subrata Talukdar, J:

In this writ petition, the petitioner has made a prayer for issue of a writ in the nature of Mandamus commanding the concerned Respondent Authority to take steps for payment of both arrear and regular wages to the petitioner in accordance with law.

The petitioner contends through Learned Counsel, Mr. Datta, assisted by Mr. Dhara, Learned Advocate, that he was appointed in casual capacity to work on daily wages as an unskilled worker on a *no*

work no pay basis. It is also contended that the appointment of the petitioner was under the *MGNREGS* Scheme.

The petitioner raises the grievance that without reasonable basis he has been paid less than the fixed monthly wages. Accordingly, the petitioner prays for restoration of arrear and regular wages. Ld. Counsel for the petitioner places reliance on a Memo No. 958/DRDC/PMZP dated 21st of June, 2012, which treats the initial appointment of the petitioner under the District Rural Development Cell (for short the Cell) of the Purba Medinipur Zilla Parishad (for short the said Parishad) as an *MGNREGS* unskilled labour. The petitioner claims remuneration commensurate to the terms of his appointment as spelt out by the Memo.

On behalf of the concerned Respondents authority, i.e. the Parishad, it is stated that after the petitioner joined in 2012 till 31st of July, 2016, only a single Attendance Register was being maintained for signature by the petitioner. After the 1st of August, 2016 with the induction of two more casual labourers, a single consolidated Attendance Register was newly prepared to be signed by all 3 casual workers, including the petitioner.

The Respondents/the Parishad take the specific stand that after 1st of August, 2016, the petitioner did not sign the new consolidated Attendance Register. The physical record of duty shows the petitioner to be continuously marked as *Absent*. No cogent reason has been shown by the petitioner for refusing to sign on the new register.

It is further submitted that the petitioner received his regular salaries on a *no work no pay* basis after taking into cognizance confirmation of his attendance as recorded in the Attendance Register. Since Saturdays and Sundays were office holidays, no presence on the register was necessary. *Apropo* no claim to wages could be placed during the said two non-working days in a week.

During the hearing this Court had the opportunity to call for the original Attendance Registers kept in the office of the said Cell. A Report was also called for from the Chief Executive Officer of the Parishad pursuant to an order of this Court dated 27th of September, 2018 in this writ petition.

Having heard the parties and considering the materials placed, this Court arrives at the following findings:-

- (I) That the petitioner admittedly joined duties in 2012 and presumably being then the sole unskilled labourer employed under the Respondents Authority, had the benefit of being the sole signatory in the Attendance Registers which cover the period between 25th June, 2012 till the end of July, 2016.
- (II) It is interesting to note that in relation to the Attendance Registers referred to at **Para (I)** above, the pages covering 25th June, 2012 to 30th April, 2015, are found to be countersigned by the Supervising Authority/the Supervisor of the petitioner.
- (III) The Attendance Registers which commence from the 1st of August, 2016 till 28th April, 2017 and, thereafter continue in a fresh Attendance Register from 2nd May, 2017 till 28th February,

2019, show the petitioner to be continuously *absent* till 31st of January, 2018 and thereafter from 1st February, 2018 there is no column showing the name of the petitioner.

(IV) Therefore, the Attendance Registers as referred to in **Para (II)** and **Para (III)** above, show the petitioner to be absent between 1st of August, 2016 till 28th April, 2017 and thereafter from 2nd May, 2017 to 31st January, 2018. From 1st February, 2018 there is no name of the petitioner in the Attendance Register.

(V) Presuming that the Attendance Registers referred to in **Para (I)** above and relied upon by the petitioner is correct, the petitioner can only show counter signatures of his Supervising Authority/ Supervisor in his sole Attendance Register between 25th June, 2012 to 30th April, 2015. After 30th April, 2015 the petitioner, even arguably accepting the subsisting single person Attendance Register, cannot show any countersignature of or verification by his Supervising Authority/Supervisor. Thereafter, on and from 1st August, 2016, the joint Attendance Register shows him to be continuously absent.

(VI) Thus, on a cumulative reading of the Attendance Registers (supra), it is evident that the petitioner failed to rely upon signatures duly authenticated/countersigned/verified by his Supervising Authority/Supervisor for the period beyond 30th April, 2015 till the end of July, 2016. Subsequently, in the joint Attendance Registers maintained from 1st August, 2016 till 28th February, 2019, the petitioner is absent first by signature and

then by the column carrying his name, although the signatures of two other casual workers regularly appear and the same have been duly countersigned by the Supervising Authority/Supervisor. This Court also notices that the petitioner relies on bills sent by Post to the Respondents claiming payment. The method of despatch by Post provides evidence of lack of physical proximity of the petitioner with his place of work.

In the backdrop of the above discussion, this Court finds the presumption of facts and the weight of evidence to be against the petitioner.

This writ petition must therefore fail.

W.P. No. 9941 (W) of 2017 stands accordingly **dismissed**.

Parties are permitted to act on a server copy of this order downloaded from the official website of the Hon'ble Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Subrata Talukdar, J.)