

AD 34.
March 4, 2021
SG & subrata bh.

WPCT 1 of 2021

Union of India and others
-versus-
Naba Kumar Dey and others

M/s. Sanajit Kumar Ghosh,
Madhusudan Mukhopadhyay, Advocates
...for the petitioners.

Mr. Amitabha Ghosh,
Sk. Sujauddin, Advocates
... for the respondent Nos.1 & 2.

Order dated February 05, 2019 passed by the Central Administrative Tribunal (for short, 'the Tribunal'), Calcutta Bench, Kolkata in OA No.350/1484/2016 has been challenged by filing this writ petition. The Tribunal while recording its findings noticed that the respondent Nos.1 and 2 have been serving in the Railways on temporary basis since 1991.

Keeping in view the judgment of Hon'ble the Supreme Court, in paragraph 5 of the Tribunal's order, it is mentioned hereunder:

"The decision in Umadevi (3) was intended to put a full stop to the somewhat pernicious practice of irregularly or illegally appointing daily-wage workers and continuing with them indefinitely. In fact, in para 49 of the report, it was pointed out that the rule of law requires appointments to be made in a constitutional manner and

the State cannot be permitted to perpetuate an irregularity in the matter of public employment which would adversely affect those who could be employed in terms of the constitutional scheme. It is for this reason that the concept of a one-time measure and a cut-off date was introduced in the hope and expectation that the State would cease and desist from making irregular or illegal appointments and instead make appointments on a regular basis.”

Learned counsel for the petitioners submitted that other similarly situated employees who were working on temporary basis were regularised after the record was checked and they were found medically fit. Fingerprint documents were not found in the case of the respondent No.1 whereas in the case of respondent No.2 the school certificate furnished by him was found to be false. Hence, they could not be regularised.

On the other hand, learned counsel for the respondent Nos.1 and 2 submitted that ever since they were engaged in the year 1991, they are working on regular basis. In case the petitioners have lost the record, the respondent No.1 should not be made to suffer. The particulars of the school in which the respondent No.2 studied, are as follows:

“Ganendra Shikshaniketan, 44/K/30
Debendra Chandra Dey Street, Calcutta –
15, date of entering–1970, date of leaving–

December, 1975, examination passed in the year 1979.”

The petitioners got verification from a different school i.e. “Jnanendu Siksha Niketan High School, 7/1, Kulia Tangra 2nd Lane, Kolkata-700015” where it has been mentioned that no record of the respondent No.2 had been found in the relevant record books. There was nothing wrong with the certificate as the respondent No.2 never studied in that school.

After hearing learned counsel for the parties we find that the respondent Nos.1 and 2 are in service with the petitioners since 1991 on temporary basis, is not in dispute. In case the record has been lost by the petitioners, the respondent No.1 cannot be made to suffer. As far as the respondent No.2 is concerned, apparently the inquiry was made from a wrong school, as is evident from the names and addresses of two schools as mentioned above. He is also working since the year 1991.

With the aforesaid facts on record, in our opinion, direction issued by the Tribunal for regularisation of their services cannot be interfered with, especially once the admitted case is that similarly placed employees have been regularised. The cases of the respondent Nos.1 and 2 were not considered on flimsy grounds.

The writ petition is accordingly dismissed with costs ₹5,000/- each, to be paid to the respondent Nos.1 and 2. The same shall be

transferred in their bank accounts alongwith salary for the month of April, 2021.

(Rajesh Bindal, J.)

(Aniruddha Roy, J.)