

09.11.2021

Ct. no.04
rpan / 01

WPCT 26 of 2020
Joydeep Mukherjee
- Versus -
Union of India & Ors.

Mr. Kalyan Chakraborty,
Mr. Somnath Bhattacharya,
Mr. Rananjay Chatterjee,
Mr. Ashok Halder,
Ms. Shaista Afreen

... for the petitioner.

Mr. M. M. Verma,
Ms. Ashima Roy Choudhury

... for the respondents.

The present writ petition has been preferred challenging an order dated 18th December, 2019 passed by the learned Central Administrative Tribunal, Calcutta Bench, Kolkata in OA 350/1684/2016.

Mr. Chakraborty, learned advocate appearing for the petitioner submits that the petitioner was initially appointed as GDS (Gramin Dak Sevak) Packer-cum-Mail Peon under the Post Master, Benachity Mukshya Dak Ghar, Durgapur, Burdwan *vide* letter of appointment dated 14th December, 2009. However, the respondents did not pay his salary for the period from 14th December, 2009 to 1st June, 2011 and also took steps to forcibly oust the petitioner from the said post. Aggrieved thereby, the petitioner preferred an original application, being OA – 759 of 2012

which was disposed of by an order dated 3rd July, 2013 directing the respondents to pay the salary to the petitioner pertaining to the concerned period. Surprisingly, in the midst thereof, the petitioner was illegally terminated by an order dated 30th May, 2011 issued by the respondent no.5. Challenging the said order, the petitioner again approached the learned Tribunal by an original application, being OA-350/00444/2015. The same was disposed of by an order dated 20th July, 2015 granting leave to the petitioner to file an exhaustive representation. Pursuant thereto, a representation was submitted by the petitioner but his claim was rejected by an order dated 13th October, 2015. The infirmities in the said order were not taken into consideration by the learned tribunal while deciding the original application, being OA-350/1684/2016.

Mr. Chakraborty argues that as the petitioner has discharged continuous service in the concerned post for a substantial period of time without any break, necessary direction ought to have been issued by the learned tribunal upon the respondents to permanently appoint him in the vacant post. In support of the contention that the petitioner is rendering continuous service, Mr. Chakraborty has drawn our attention to the

documents annexed to the supplementary affidavits filed before this Court.

Per contra, Mr. Verma, learned advocate appearing for the respondents submits that the petitioner was initially engaged purely on temporary basis as an 'outsider' without taking prior approval from the competent authority. However, the respondent authorities have paid the salary towards such temporary engagement as directed by the learned tribunal in an earlier application. The petitioner cannot claim regularization on the basis of such temporary service as rendered and such prayer was rightly refused by the learned tribunal

He further submits that when the authorities took steps to fill up the vacancy in a regular manner, the petitioner participated in the selection process but was unsuccessful.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Records reveal that in the first original application filed by the petitioner, being OA-759 of 2012 the petitioner himself did not press the relief for consideration of his candidature in the vacant post. However, prayer for disbursement of salary for the period from 14th December, 2009 to 1st

June, 2011 was allowed by the tribunal. Pursuant to such order, the authorities disbursed an amount of Rs.55,521/-. In the said conspectus, the petitioner cannot reinvigorate his claim towards permanent absorption in the vacant post and such prayer was rightly refused by the learned tribunal. However, the learned tribunal observed that if the petitioner is continuing as a daily rated mazdoor, he may be allowed to continue until a regular incumbent joins the particular post. The said order, in our opinion, does not suffer any error, least to say any patent error of law warranting interference of this Court.

Accordingly, we are unable to grant the relief, as prayed for and the writ petition, being WPCT 26 of 2020 is dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Sugato Majumdar, J.) (Tapabrata Chakraborty, J.)