

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

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 136 of 2016

Hemanta Kumar Pal & Ors.

Vs.

Bangiya Gramin Vikas Bank & Ors.

For the petitioners : Mr. Sardar Amjad Ali

..... learned
Senior Advocate

Mr. Masum Ali Sardar..... advocate

For the respondent : Mr. Baidurya Ghosal,
Ms. Avipsha Dutta Roy..... advocates

Heard on : 17.06.2022

Judgment on : 18.08.2022

Hiranmay Bhattacharyya, J.:

1. The petitioner have prayed for issuance of a writ in the nature of mandamus commanding the respondents to formulate the policy of absorption of the petitioner as class 4/ Sub staff of the respondent no. 1 Bank with permanent status.
2. Facts leading to the filing of this writ petition in a nut shell are as follows-

3. The writ petitioners were engaged as Part Time Sweepers (for short “PTS”) during the period between January, 1990 and January, 2000 and were posted at different branches of Bangiya Gramin Vikash Bank (which was formerly known as Murshidabad Gramin Bank). The petitioners claim that at the time of engagement they were paid fixed monthly wages at the rate of Rs. 1050 which was subsequently enhanced. The petitioners claim that the sponsor bank that is United Bank of India for short “UBI” being the fifth respondent proceeded to hold recruitment process in the post of sub-staff by switching over from full time sweeper and absorption of permanent part time sweepers. The petitioners claim that Bangiya Gramin Vikash Bank being the first respondent bank ought to have formulated a policy in the light of the policy of absorption adopted by the sponsor bank namely the UBI. The petitioners further claimed that though they were engaged as PTS but they had to do other duties and also had to perform the election duties as Polling Officers like the regular employees. The petitioners, therefore, claim that they should be absorbed either as Group IV staff or as sub-staff by giving them a permanent status upon formulation of a policy of absorption.
4. The stand of the first respondent bank is that the petitioners were engaged as PTS on consolidated wages and there is no condition in the engagement letter for their regularization in service. It was further stated that the first respondent bank has no policy for regularization of service of PTS and as such

their services cannot be regularized as claimed in the writ petition. It was further stated therein that as per the appointment and promotion rules for Regional Rural Banks as notified by the Government of India, Ministry of Finance Department of Financial Services, Sub-staffs (Group-C) vacancies are to be filled after making reference to employment exchange, Sainik Board or other agencies catering to the welfare for scheduled castes and scheduled tribes, physical handicapped persons or other special category of persons as are recognised by the Central Government or the State Government having jurisdiction over the Regional Rural Bank concerned. It was further stated that the first respondent bank is governed by the independent board constituted under the Regional Rural Bank Act, 1976 and the policy of the United Bank of India does not regulate the functioning of the first respondent bank. The first respondent bank thus, prayed for dismissal of the writ petition.

5. Sardar Amjad Ali learned senior advocate for the petitioners contended that the petitioners had been rendering service for a long period of time and the nature of the job performed by PTS is perennial in nature which will be evident from the fact that their services has been continued for a long period of time. By referring to the documents annexed to the supplementary affidavit Mr. Ali contended that the petitioner devoted much more time than what is mentioned in the letter of engagement and also that they had to perform jobs in addition to the job of

sweeping and cleaning for which they were initially engaged. By referring to a decision of the Hon'ble Supreme Court in the case of *Narendra Kumar Tiwari and ors. vs. State of Jharkhand and ors.* reported at (2018) 8 SCC 238 Mr. Ali contended that this Court should direct the authorities of the first respondent bank to formulate a policy for absorption of the writ petitioners in the light of the directions given by the Constitution Bench in the case of *Secretary, State of Karnataka vs. Umadevi* (3) reported at (2006) 4 SCC 1. He also relied upon a decision of the High Court of Judicature for the State of Telengana and Andhra Pradesh in Writ Petition No. 24779 of 2011 delivered on 27.12.2017 in the case of *SK.Gouse Vs. Chaitanya Godavari Grameena Bank* to support his contention that the High court can pass a direction upon the respondent authority to formulate a scheme for regularisation. He further contended that the Chaitanya Godavari Grameena Bank formulated a scheme for regularisation and a direction may be passed upon the respondent Bank to formulate a similar scheme for the writ petitioner. He also referred to an order dated 05.12.2012 passed in CPA 915/2010 arising out of WP 6379 (W) of 2002 to support his contention that this Hon'ble Court directed appointment of the said writ petitioner in the post of Office Attendant (Messenger).

6. Mr. Ghoshal learned advocate for the first respondent bank seriously disputed the contentions raised by Mr. Ali. He

contended that the writ petitioners do not have any right to be absorbed either as Group IV staff or as sub-staff (Group- C) as there is no policy for absorption of PTS as sub-staff of the first respondent Bank. He further submitted that the recruitment for the post of Group- C are to be made by direct recruitment and not by way of absorption of the PTS. He further contended that it is the settled law that the service of part time, temporary or ad hoc employees cannot be regularised.

7. Heard the learned advocates for the parties and perused the materials placed.
8. The engagement letter of the petitioner no. 1 has been annexed to the writ petition. It appears from the said letter that such engagement of the petitioners is in the nature of part time engagement and it was specifically mentioned in the said engagement letter that the same does not in any way entitle the person engaged to any right to claim any sort of permanent employment in the bank. It is not the case of the petitioners that they were engaged against any vacant or sanctioned post.
9. The petitioners claim for absorption is based on the ground that they are rendering service interruptedly as PTS under the first respondent bank for a long period of time and also that their services are indispensable for the running of the bank and the nature of the job is perennial in nature.
10. The Constitution Bench of the Hon'ble Supreme Court in the case of *Umadevi (3)* (supra) held that unless the appointment

is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointment.

11. Paragraph 53 of the said decision carves out an exception to the aforesaid general principles against regularization. The essential requirements for regularization under the exceptions carved out in paragraph 53 of the said decision are as follows-
 - (i) The employees should have worked for 10 years or more but without intervention of orders of the courts or tribunals.
 - (ii) That they have so worked in a duly sanctioned posts and
 - (iii) They should have possessed the minimum qualification stipulated for the appointment.
12. If the aforesaid conditions are satisfied then such appointments could be regularized as per the decision of the Hon'ble Supreme Court in *Umadevi (3)* (supra).
13. The Hon'ble Supreme Court in the case of *State of Rajasthan and ors. vs. Daya Lal & Ors.* (2011) 2 SCC 429 after taking into consideration various decisions of the Hon'ble Supreme Court on the issue of regularization culled out the well settled principles relating to regularization and parity in pay. The Hon'ble Supreme Court held thus-

“12. We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:

(i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be 'litigious employment'. Even temporary, ad hoc or daily- wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a

direction for framing of fresh schemes providing for successive cut-off dates.

(iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part-time temporary employees.

(v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute.”

14. The Hon'ble Supreme Court in *Daya Lal* (supra) thus, held that part time employees who are not working against any sanctioned post are not entitled to seek regularisation. It was further held therein that absorption, if any, has to be in accordance with the scheme for regularisation.
15. Since the petitioners were not working against any sanctioned post, by applying the ratio laid down in *Daya Lal* (supra), this court holds that the writ petitioners being part time employees are not entitled to seek regularisation merely on the ground that they are rendering service for a long period of time.
16. The petitioners have prayed for a direction upon the authorities of the respondent no. 1 Bank to formulate a policy of absorption of the petitioners as in the case of Chaitanya Godavari Grameena Bank a scheme of such nature has been formulated. The issue as to

whether the high court in exercise of power under Article 226 of the Constitution of India can direct the authority to frame a scheme for regularization is no longer *res integra*.

17. The Hon'ble Supreme Court in the case of *Union of India and ors. vs. Ilmo Devi and another* reported at 2021 SCC Online SC 899 held that as per the settled proposition of law, the regularization can be only as per the regularization policy declared by the state/government and nobody can claim the regularization as a matter of right *de hors* the regularization policy. The Hon'ble Supreme Court was further pleased to observe that the direction passed by the High Court to reformulate the policy and take a decision to sanction the post was beyond the power of judicial review of the High Court in exercise of the power under Article 226 of the Constitution of India. Formulation of a policy for absorption or regularisation falls within the domain of the respondent authority. The High Court in exercise of the power of judicial review cannot direct the respondent no. 1 to frame such policy.
18. The decision in the case of *Chaitanya Godavari* (supra), cited by the writ petitioner runs counter to the decision of the Hon'ble Supreme Court in *Ilmo Devi* (supra) and, therefore, the decision cannot be said to be a binding precedent.
19. In *Narendra Kumar Tiwari* (supra) the Hon'ble Supreme Court after taking note of the fact that the State of Jharkhand was created only on 15.11.2000 and the cut-off date for completion of 10 years of continuous service as per the decision of the constitution bench in *Umadevi (3)* (supra) was fixed on 10.04.2006, the Hon'ble Supreme

Court was of the view that the regularization rules must be given a pragmatic interpretation and the benefit of 10 years of completed service is to be calculated till the date of promulgation of the regularization rules. On such factual background the Hon'ble Supreme Court held that in case the person concerned completed 10 years of service on the date of promulgation of the regularization rules they should be regularised unless there is some valid objection to their regularisation like misconduct etc. The said decision is distinguishable on facts and as such the same do not have any manner of application to the facts of the instant case.

20. The order dated 05.12.2012 passed in contempt jurisdiction do not lay down any ratio. The Hon'ble judge was pleased to hold that the contemnors have no choice but to comply with the order which was not appealed against. In view thereof the said order do not have any manner of application to the facts of this case as the ratio *decidendi* of a decision is only binding as a precedent. In view thereof the said decision is of no assistance to the petitioner.

21. The Hon'ble Supreme Court of India in the case of *Union of India and ors. vs. Vartak Labour Union* reported at (2011) 4 SCC 200 after considering various decision of the Hon'ble Supreme Court was pleased to express the hope that the Government would consider formulation of the scheme for absorption. Since the petitioners are working as PTS for a long period of time and also that Chaitanya Godavari Grameena Bank has framed a scheme for regularisation of Messengers cum Sweepers/ Daily Wage Workers working on casual basis/ casual labour or Office Attendants in Group C, this Court

can only express the hope that the respondent No. 1 would consider formulation of an appropriate scheme for absorption and/or regularisation.

22. For the reasons as aforesaid this court is of the considered view that in exercise of the powers under Article 226 of the Constitution of India, this court cannot direct the first respondent to frame a policy for absorption or for regularisation of the writ petitioners.
23. However, since the writ petitioners are rendering their services as PTS for a long period of time, this Court feels that the respondent no. 1 Bank would consider formulation of an appropriate scheme for absorption and/or regularisation of the services of the PTS engaged by the said respondent Bank. The writ petition stands disposed of with the above observations. There shall be, however, no order as to costs.
24. Urgent photostat certified copy of this judgment be given to the parties upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)