

22.3. 2022
Court No. 19
Item no.23
sn

W.P.A.12212 of 2021

Apurba Fulmali

Vs.

The State of West Bengal & Ors.

Md. Salahuddin

Md. Ahsanuzzaman

Md. Raziuddinfor the petitioner

Mr. Pantu Deb Roy

Mr. Anand Farmania ..for the State

The petitioner has alleged that the decision of the concerned Block Development Officer, dated May 3, 2021 has been passed illegally and without consideration of the law and the facts in issue.

The petitioner claims to have been engaged in the post of Sweeper (Cleaner) in the office of Jajigram Gram Panchayat at a monthly remuneration, of Rs.500/-. The petitioner moved this Court by filing a writ petition bearing No. W.P.28803(W) of 2017, claiming enhancement of his remuneration, security of tenure upto 60 years and certain terminal benefits in terms of the memorandum No.1107-F(P) Howrah dated February 25, 2016 issued by the Principal Secretary to the Government of West Bengal, Finance Department, Audit Branch, with effect from March 1, 2016.

The State respondents raised an objection at the time of disposal of the writ petition on the ground

that the petitioner was not entitled to the benefit either as per the memorandum No.9008-F(P) dated September 16, 2011 or the memorandum dated February 25, 2016, which was extension of the memorandum dated September 16, 2011.

It was the contention of the State respondents that the petitioner was not appointed against any sanctioned post or a regular vacancy. The said appointment was entirely at the whim of the Pradhan, Jajigram Gram Panchayat, District Birbhum.

The writ petition was disposed of by this Court by an order dated June 25, 2018 with a liberty to the petitioner to ventilate his grievance before the concerned Block Development Officer. On the basis of such direction, the petitioner approached the Block Development Officer. The order dated March 30, 2021 has been passed by the Block Development Officer, Murarai-II Development Block, Paikar, Birbhum. The same has been impugned before this Court. The prayer of the petitioner for extension of the benefits as per the memorandum dated February 25, 2016 was rejected on the following grounds:-

a) The engagement letter of the petitioner was not produced.

b) Only the resolution dated October 8, 2011 adopted by the members of the Jajigram Gram Panchayat was produced before the authority.

c) Prior approval had not been taken from the appropriate authority, while engaging the petitioner.

d) The copy of the resolution was not sent to the higher authority either for approval or for intimation.

e) The petitioner had not served for 10 years which was the minimum requirement as per notification dated September 10, 2011.

The learned Advocate for the petitioner challenges the said order, as being cryptic, unreasoned and arbitrary. According to him, the order suffers from an incorrect interpretation of law.

The benefits of the circular dated September 16, 2011 with effect from January 1, 2011 were given to the casual workers/contractual workers/daily rated workers, who had been engaged in different establishments of the Government of West Bengal and who had completed 10 years of service with a minimum of 240 days in a year, on and from April 1, 2010. Such engagement was to be made in terms of G.O. 1974-F|(P) dated December 22, 2010. This is the parent circular which provides as follows:-

“i) After careful consideration of the matter and in suppression (sic) supersession of the aforesaid orders and all other orders issued

by other Departments in the matter, the undersigned is directed by order of the Governor to say that the casual / daily rated / contractual workers, who are remaining attached to various establishments of the Government Departments / Directorates / Regional Offices / Other Organizations for not less than 10 years continuously as on 01.08.2011 and have rendered service for at least 240 days each year will be allowed the following benefits: i) The casual / daily rated / contractual workers who have rendered 10 years of service continuously with at least 240 days attendance each year may remain engaged in the same status and capacity till their attaining the age of 60 years.

The Continuity of service shall have to be certified by a competent officer not below the rank of Assistant Secretary in the case of a secretariat Department, Director in the case of a Directorate and Assistant Engineers / SDO / BDO in the case of Regional Offices. The concerned officer, who certifies may be advised to exercise extreme precautions and take assistance of an office of WBA & AS, if necessary.

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ix) It is reiterated that Officer / Officers responsible for any further engagement of such casual / daily rated / contractual worker will be personally liable for violation of this Order. However, having regard to the exigencies of situation and in order to facilitate smooth running of any project / administration or for serving academic interest where it is absolutely necessary contractual engagement may be made for a very limited period not exceeding 1 (one) year. This engagement shall be made on strict observance of recruitment rules and against sanctioned vacancies. Simultaneously steps should be taken to fill up the vacancies on regular basis following recruitment rules. Such contractual engagement may be renewed from time to time, but not exceeding a total period of 6 (six) years. No claim to regularization of this contractual service in terms of GO No. 8305-F dated 26.09.2005 read with GO No. 642-F dated 24.01.2006 shall lie.

This above memorandum is the parent order and the memorandum dated February 25, 2016 is an extension of the same, and the benefits contained in the memorandum of September 2011 was sought to be revised. The rates were enhanced and the period of engagement was categorized. Different rates were fixed for different periods of service.

The petitioner claims to have rendered service in the Gram Panchayat office. The petitioner has not been able to produce any documents before this Court to show that the petitioner had been appointed against a sanctioned vacancy and as per the recruitment rules. Even contractual/temporary or daily rated workers were mandatorily required to be engagement through a recruitment process. This was provided to ensure that an opportunity be granted to all the interested parties to participate and compete. The back door appointment of the petitioner and the resolution of the Panchayat authorities cannot be used as a foundation for claiming the benefits which have been granted by the Government to contractual/casual/daily rated, who have worked in the establishments.

The engagement of the petitioner was neither against a sanctioned vacancy nor was the permission of the Government taken. The recruitment was not

made as per the recruitment rules. Thus, the parent circular/memorandum No. 9008F(p) dated September 16, 2011 was not followed and as such, the petitioner cannot be granted the benefit as per the memorandum dated February 25, 2016. The 2016 memorandum only deals with the revision of rates and provides for category wise remuneration vis-à-vis the tenure of service.

The Panchayat authorities, who engaged the petitioner are not before this Court. The panchayat authorities did not attend the hearing before the Block Development Officer.

The State Government cannot be saddled with the burden of payment of enhanced remuneration to a person who was engaged without following the due process of law. As per the memoranda, unilateral decisions of the members of the gram panchayat cannot be a substitute for recruitment rules. There are no documents before the court which would indicate that the petitioner was continuing in such service and had been allowed to work in the regular establishment continuously.

If the Panchayat authorities had engaged the petitioner privately, as per their own resolution, the state respondents are not liable to bear the burden and the memoranda are not applicable.

Accordingly, the writ petition is disposed of, without any interference.

There will be however no order as to costs.

All parties are directed to act on the basis of a server copy of this order and/or the learned advocate's communication.

(Shampa Sarkar, J.)