

05.12.2022

DL No. 92

BM

Court No.21

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 11216 of 2022

Arghya Roy

Vs.

The State of West Bengal & Ors.

Mr. Swapan Kumar Pal

... for the petitioner

Mr. Tapan Kumar Mukherjee

Mr. Tuli Sinha

... for the respondent no.1

Mrs. Sipra Majumdar

Mr. Prativa Ghatak

... for the State

Mr. Pal, learned counsel appearing on behalf of the petitioner submits that the petitioner was working as a temporary traffic home guard on daily wages for the Barrackpore Commissionerate, North 24 Parganas. He has been temporarily demobilised from September 9, 2020.

By an order dated August 31, 2020 issued by the Joint Commissioner of Police, Barrackpore, the petitioner was permanently demobilised due to prolonged absenteeism/derelection of duty. The petitioner's name was directed to be struck off with effect from August 31, 2020.

Mr. Pal submits that the same was done without any opportunity of hearing to the petitioner and is in violation of the principle of natural justice. The representations of the petitioner made on December

21, 2020 and May 13, 2022, have not been considered by the Deputy Commissioner of Police, Barrackpore/the respondent no.3.

It is further submitted that out of 26 candidates 25 candidates are still employed by the Barrackpore Commissionerate but the petitioner is not employed.

Mr. Mukherjee, learned counsel appearing for the respondent no.1 submits that the petitioner was not required to be given an opportunity of hearing before his demobilisation since he was employed as a daily wage earner. His service was on daily wage basis. There was no question of disciplinary proceeding being held against the contractual employee.

Mr. Pal also relies on an exception to the report filed on behalf of the respondent nos.2 to 5. He provides a chart in the said exception to show that the petitioner has been getting full wages from December, 2019 till August, 2020. Therefore, there can be no question with regard to he being liable for prolonged absenteeism.

Having considered the rival submissions of the parties and the materials placed on record, this Court finds that prima facie the petitioner cannot be demobilised on the ground of prolong absenteeism. This court directs the representations dated December

21, 2020 and May 13, 2022 be considered by the respondent no.3 within eight weeks from date upon opportunity of hearing to the petitioner.

Let a reasoned order be passed and the same be communicated within two weeks thereof. The report annexing the notifications dated October 1, 2019, December 28, 2021, September 29, 2022 handed over in court today is retained with the records.

Let the representation of the petitioner be considered as per the extant rules /circulars /guidelines of the Government of West Bengal.

With the direction aforesaid **WPA 11216 of 2022** is **disposed of**.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

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

(Lapita Banerji, J.)