

08 04.03.2022
rkd Ct.15

W.P.A. 29339 of 2014
(IA NO: CAN 1/2020 (Old No: CAN 2766/2020)
(Through Video Conference)

Sri Kartick Chandra Barik
-vs-
State of West Bengal & Ors.

Mr. Siddharta Bannerjee,
Mr. Kuna Ganguly,
Mr. Tirupati Mukharjee

....for the petitioner.

Mr. Basudeb Gayen

....for the Municipality.

Mr. Pinaki Dhole

....for the State.

The writ petition pertains to regularization of service of the petitioner who was working as Driver initially on no work no pay basis with effect from 9th October, 1987 and subsequently, on temporary basis with effect from 1st of November, 1988.

It has been contended on behalf of the petitioner by Mr. Banerjee, learned advocate that on being appointed temporarily as driver with effect from 1st of November, 1988 his pay was fixed in regular scale as it appears from page 35 of the writ petition. Thereafter on utilization the service of the petitioner as driver from 1988 increment and usual allowances were abruptly stopped on and from March, 2010.

Being aggrieved by such alleged unreasonable steps taken by the respondent authorities petitioner approached the Baidyabati Municipality for redressal of his grievance which could not yield any result as a result whereof the first writ petition being W.P. 13380(W) of 2014 was triggered. Same was disposed of vide order dated 15th May, 2014 by a coordinate Bench with a direction upon the Director of Local Bodies, Government of West Bengal, being the respondent no.4 to pass a reasoned order on the claim of the petitioner for regularization as driver.

Pursuant thereto the respondent no.4 took up the issue and passed order on 8th September, 2014 whereby the prayer of the petitioner for regularization was spurned. Such order dated 8th September, 2014 is the subject matter of challenge in the present writ petition.

It has been contended on behalf of the petitioner that since the pay of the petitioner was fixed in regular scale vide order of the Chairman of the Municipality on 3rd November, 1988 with effect from 1st November, 1988 by this time petitioner ought to have been regularized. In addition thereto, reliance has been placed on another order of the coordinate Bench passed on the writ petition being

W.P. 18863(W) of 2007 preferred by another similarly circumstanced candidate whereupon the coordinate Bench granted relief to the petitioner in W.P. 18863(W) of 2007. Therefore it has been strenuously prayed before this Court that similar relief should be granted to the petitioner in the present writ petition.

During course of hearing notice of this Court has been drawn to Memoranda dated 15th December, 2003 as well as 8th March, 2005 whereby appointment of some of the casual employees working in Baidyabati Municipality were approved in terms of the direction of the Governor being Pre'92 Casual Workers. Therefore it has strenuously been contended on behalf of the petitioner that the petitioner herein being Pre'92 Casual Worker should be accorded appointment upon regularization of his service.

Mr. Gayen, learned advocate appears on behalf of the Baidyabati Municipality and Mr. Dhole, learned advocate appears on behalf of the State respondents including the Director of Local Bodies, Government of West Bengal who have jointly made submissions thereby both of them have defended the impugned decision of the respondent no.4. It has been submitted on behalf of

the respondent authorities that since the petitioner was initially appointed on no work no pay basis and, subsequently, on casual basis therefore he has no right of regularization specially when such appointment was not made against the sanctioned post and at the time of appointment of the petitioner the procedure which was required to be followed in terms of the settled norms was not complied with.

This Court has heard the learned advocates representing the petitioner as well as respondent authorities and has also perused the relevant documents available on record. On perusal of the reasoned decision of the respondent no.4, it appears that before taking such decision the contention of the Municipal Authority was taken care of and thereby the respondent no.4 made a specific finding that the petitioner was not appointed against the sanctioned post following the recruitment rules. In addition thereto, allowances and the increments of the petitioner was stopped in 2010. Furthermore, it was also mentioned in the order of the respondent no.4 that the Circulars dated 13th August, 1979, 28th August, 1980 and 13th March, 1996 of Labour Department which were issued for regularization/absorption of casual

appointees or *ad-hoc* appointees were directed not to be given effect to pursuant to the Memo dated 2nd December, 2009 being No.1518/SIW issued by the Chief Secretary, Government of West Bengal and such Memo dated 2nd December, 2009 was issued pursuant to the order of the Hon'ble Division Bench dated 24th August, 2009 passed on a writ petition being W.P.S.T. 483/2009 (Rabindranath Ghosh & Ors. -vs- State of West Bengal). Therefore the respondent no.4 ultimately decided against the claim of the petitioner and the prayer for regularization/absorption was refused.

This Court has perused the order dated 26th June, 2013 passed by a coordinate Bench on W.P. 18863(W) of 2007 which might have been passed, as it appears, without considering the order of the Hon'ble Division Bench dated 24th August, 2009 passed on W.P.S.T. 483 of 2009.

Petitioner has also relied upon Memoranda dated 15th December, 2003 as well as 8th March, 2005 whereby approval was granted in favour of some of the similarly circumstanced Pre'92 Casual Workers but this Memorandum in the present case cannot be given any credence in view of the decision of the Hon'ble Division Bench dated 24th August, 2009 passed on the writ petition being

W.P.S.T. 483 of 2009.

Since it appears from record that the writ petitioner was not appointed against the sanctioned post without following relevant recruitment rules at the material point of time, no enforceable right accrues in favour of the petitioner which can be protected by issuance of Mandamus. In this regard reliance has been placed on the judgment of the Apex Court, report in 2006 Vol. 4 SCC 1 (State of Karnataka -vs- Uma Devi). Accordingly, this Court does not find any merit in the writ petition and the same stands dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)