

Item No.13.

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON: 13.02.2023

DELIVERED ON: 13.02.2023

CORAM:

**THE HON'BLE MR. JUSTICE T. S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**FMA 818 of 2017
With
I.A. No.CAN 1 of 2016 (Old CAN 9068 of 2016)**

**Sardar Necharul Haque.
Vs.
State of West Bengal & ors.**

Appearance:-

**Mr. Soumitra Banerjee,
Mr. Sudhanshu Nath**

.... for the appellant.

Mr. Basabjit Banerjee

..... for the respondents.

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)

1. This intra Court appeal by the writ petitioner is directed against the order dated 4th July, 2016 passed in W.P. No.9107(W) of 2015. The appellant had filed the writ petition to consider his representation dated 17th March, 2015 to provide him an opening for joining under the West Bengal Power Development Corporation Limited in regular establishment or to regularise services of the appellant in the Bandel Thermal Power Station Recreation Club under the West Bengal Power Development Corporation Limited (for brevity, "the said Recreation Club"). The learned Single Bench by the impugned order took note of the letter of appointment issued to the appellant, signed by the General Secretary of the said Recreation Club and that there is no pleading in the writ petition that the said Recreation Club is an authority within the meaning of Article 12 of the Constitution of India and therefore, the prayer for regularisation cannot be entertained.

2. The learned Advocate appearing for the appellant would vehemently contend that the said finding recorded by the learned Writ Court is factually incorrect and in paragraph 8 of the affidavit filed in support of the writ petition, a specific pleading has been made to the said effect. Furthermore, it is contended that other similarly placed persons have been

regularised in the West Bengal Power Development Corporation Limited and the appellant alone has been singled out.

3. We have heard the learned Advocate appearing for the respondents on the above submissions.

4. Firstly, the order of appointment has been issued to the appellant by the General Secretary of the said Recreation Club. It is stated in the said letter of appointment dated 26th May, 1992 that the committee of the said Recreation Club resolved in the executive committee meeting that the appellant, who is working as a part time attendant in the said Recreation Club at the relevant time be appointed as full time attendant with effect from 1st May, 1992 by allowing the lowest ceiling of minimum wages including the enhancement from time to time for his every working days on "No work no pay" basis for the interest of the said Recreation Club and other terms and conditions of his service will remain unchanged.

5. The said Recreation Club undoubtedly will not qualify to satisfy the definition of a "State" within the meaning of Article 12 of the Constitution of India. Furthermore, the letter of appointment has been issued pursuant to a decision taken by the executive committee of the said Recreation Club and the appointment was on daily wage basis and the order clearly

states that it will be on "No work no pay" basis. The appellant, who is said to have worked for several decades and still continues to discharge his duties in the said Recreation Club. The appellant submitted representations requesting for regularisation of the services either in the West Bengal Power Development Corporation Limited or as a regular employee in the said Recreation Club and first of such representations was given on 28th June, 2012. This was followed by other representations as well and the appellant sought for considering his representation dated 17th March, 2015. The Secretary of the said Recreation Club has also recommended and forwarded the representation of the appellant to the respondent / West Bengal Power Development Corporation Limited. With these facts, the appellant sought for issuance of a writ of mandamus.

6. Firstly, we note that paragraph 8 of the affidavit filed in support of the writ petition does not state in as many words that the said Recreation Club will fall within the purview of the definition of a "State" under Article 12 of the Constitution of India. What they seek to plead is that the West Bengal Power Development Corporation Limited would sanction funds in favour of the said Recreation Club, which proves that they are part and parcel of the West Bengal Power Development Corporation Limited.

7. In this regard, a proceedings sanctioning deficit grant for the financial year 2013-2014 was referred to. The document referred to and the pleadings of the appellant are self-serving. Admittedly, as the name denotes it is a Recreation Club consisting of an executive committee, who manages the affairs of the said Recreation Club, in all probability, the Members of the said Recreation Club may be employees of the West Bengal Power Development Corporation Limited or a power plant. Thus, by itself the said Recreation Club cannot be brought within the definition of "State" under Article 12 of the Constitution of India.

8. That apart, if the appellant pleads that he was in continuous employment and there was a permanent post, those are all issues, which are disputed questions of fact and by now the law has been well-settled that in a writ proceeding, direction to regularise the services cannot be granted and more so, in the facts and circumstances of the case on hand.

9. Thus, we find that there are no grounds to interfere with the order passed by the Learned Single Bench. Accordingly, the appeal fails and is hereby dismissed.

10. There shall be no order as to costs.

11. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM, J)

I agree,

(HIRANMAY BHATTACHARYYA, J.)

NAREN/PALLAB (AR.C)