

Item No.4
12.04.2023
Court. No. 19
GB

WPA 4538 of 2023

Prashanta Kumar Das & Ors.
Vs
The State of West Bengal & Ors.

Mr. Om Narayan Rai,
Mr. Piyus Chowdhury

...for the Petitioners.

Mr. Srijan Nayak,
Mrs. Rituparna Maitra

...for the State.

The petitioners claim extension of the benefits of the Memorandum no. No.9008-F(P) dated September 16, 2011 and Memorandum No.1107-F(P) dated February 25, 2016. They contend that although they were engaged as ‘Jeebika Sebaks’ under a particular scheme, their services had been utilized by different gram panchayats even after the scheme had lapsed. Hence, enhanced remuneration and the benefits of the memoranda, should be allowed to them.

Mr. Rai, learned advocate appearing on behalf of the petitioners submits that the Joint Secretary to the Government of West Bengal, Department of Panchayats and Rural Development by a memorandum dated April 7, 2016, clarified that persons engaged in ‘project missions’ were also covered by the aforementioned memoranda which dealt with periodic enhancement of remuneration and security of tenure in service, in respect of casual/daily rated/contractual workers in all departments and projects.

Mr. Nayak, learned advocate for the State respondents submits that the petitioners had served as ‘Jeebika Sebaks’ in

a particular project. The scheme was discontinued. The petitioners could not be treated as casual/daily rated/contractual workers. According to Mr. Nayek, the engagement of casual/daily rated/contractual workers under the Panchayats and Rural Development Department was to be made through a specific recruitment process, by open advertisement and against sanctioned posts. Such system was not followed when the petitioners had been engaged.

Mr. Rai submits that after the projects were over, the petitioners were continued by the different gram panchayats irrespective of the fact that the project in which they were initially engaged, had lapsed. Their service had been utilized.

Such disputed questions of fact cannot be gone into as it appears that the petitioners were engaged under different gram panchayats at different points of time. Entire assessment of the situation, the process of engagement and/or continuity in the engagement and the funds from which the remuneration or honorarium were paid to the petitioners, are to be gone into in further detail.

Mr. Rai has also drawn the attention of the Court to the memoranda dated April 7, 2016 which, inter alia, states that persons engaged in all 'project missions' will qualify for the enhanced remuneration and security of tenure in service. Reference is also made to a chart which indicates that on the basis of the memorandum dated April 7, 2016, name of some of the petitioners were forwarded by the local authority for grant of such benefit.

Without going into the merits of the claim of the petitioners, this writ petition is disposed of with a direction upon each of the petitioners to file separate application before the Additional Chief Secretary, Department of Panchayats and Rural Development, Government of West Bengal with the following details and supporting documents:-

- a) Date of initial engagement as 'Jeebika Sebaks' and the duration of such engagement.
- b) Subsequent continuity of their engagement in any capacity under any gram panchayat or block.
- c) The present status with regard to their engagement as daily rated/casual/contractual workers under any Panchayati Raj Institution.
- d) Whether any honorarium or remuneration had been paid after their continuation and the funds from which such money was sourced.

Once the representations of the petitioners are received, the said authority shall dispose of each of the applications by passing separate orders upon hearing the petitioners or their learned advocate, the Pradhan of the gram panchayat in which they allegedly are working or had been continued for a substantial period of time after the project had been discontinued and any other interested party.

The Additional Chief Secretary shall decide whether the petitioners who were engaged as 'Jeebika Sebaks' under a particular scheme of the Government of India, were

continued in the establishments under the Panchayati Raj Institutions to render some sort of service. If the answer is in the affirmative, the following issues shall be decided.

- A) The capacity in which the petitioners were engaged after completion of the project and whether the said engagement had been done by the gram panchayats.
- B) Whether any honorarium or remuneration had been paid to these persons who were re-engaged by the different gram panchayats.
- C) Whether the re-engagements were with approval from the higher authorities.
- D) Whether the remunerations were paid from the own funds of the panchayat authority.
- E) Whether the engagements were privately done by the gram panchayats after discontinuation of the project.
- F) Whether the memoranda dated April 7, 2016 issued by the Joint Secretary to the Government of West Bengal, Department of Panchayats and Rural Development, would be applicable in case of the petitioners who were engaged under a project and were continued thereafter.
- G) Whether the petitioners were entitled to any arrear payment on the basis of the aforementioned notifications/memoranda.

Once these issues are decided, the authority will be in a position to decide whether the petitioners have a legitimate

claim to the benefits in terms of the memoranda mentioned hereinabove. If the memoranda apply, necessary steps shall be taken by the authority to disburse the amount with arrears.

A reasoned order shall be passed and communicated to all concerned. If the petitioners are found to be ineligible, reasons shall be assigned for denial of the benefits.

It is made clear that the order of the Additional Chief Secretary to the Government of West Bengal, Department of Panchayats and Rural Development dated July 26, 2021 shall not influence the decision making process. While passing the order impugned, the authority had proceeded on the basis that the petitioners who were exclusively engaged in a scheme floated by the Government of India were not entitled to the benefits of the two memoranda and the appropriate authority to pay any remuneration and arrears would be the Government of India. Although, the specific case of the petitioners were that after the project floated by the Government of India had been discontinued, the engagement of the petitioners were continued as casual workers or otherwise by the gram panchayats but they had not been paid any remuneration and least of all the benefits of the memoranda mentioned hereinabove. The impugned order is set aside.

The issues which have been framed by the Court hereinabove, should be answered, so that the factual aspect can be clarified and on the basis thereof, the status of the

petitioners and their legal right to the benefits can be determined afresh.

The entire exercise shall be completed within a period of six months from the date of communication of this order.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)