

D/L
Item No. 08
14.09.2023
KOLE

**FMA 282 of 2023
With
IA CAN 1 of 2023**

**Bipad Kumar Mondal & Ors.
-Vs.-
The State of West Bengal & Ors.**

*Mr. Mohan Kumar Sanyal,
Mr. D. Sanyal,*

...for the appellants.

*Mr. Rajarshi Basu,
Mr. K. M. Hossain,*

...for the State.

*Mr. S. Sen,
Mr. Sunil Gupta,
Mr. H. Islam,*

...for zilla parishad.

By consent of the parties, the appeal and the connected application are taken up for hearing together.

This appeal is directed against a judgment and order dated January 9, 2023, whereby the writ petition of the appellants being WPA 28054 of 2022, was disposed of by a learned Single Judge, without granting any effective relief.

The appellants were engaged as casual workers in Murshidabad Zilla Parishad (in short 'the Zilla Parishad') on different dates between 1995 and 2000. In an earlier round of litigation the appellants had approached this court seeking regularization of their services. Such prayer was rejected by a learned Single Judge by an order dated March 10, 2022, whereby, their earlier writ petition being WPA 7926 of 2018, was dismissed. The present appellants preferred an appeal against such dismissal order. The Division Bench, without

going into the merits of the claim for regularization, directed the Zilla Parishad to consider the claim of the appellants with special reference to Memo No. 9008-F(P) dated September 16, 2011 issued by the Finance Department, Audit Branch, Government of West Bengal. That memorandum deals with *inter alia*, security of tenure and appropriate emoluments and retiral benefits to be paid to daily rated/casual/contractual workers engaged in different departments of the Government and the local bodies either in their regular establishment or any scheme or project.

Pursuant to such direction of the Division Bench, the Sabhadhipati of the Zilla Parishad passed a reasoned order dated July 28, 2022. The Sabhadhipati held that the appellants/writ petitioners could not claim benefit under the said Memorandum of 2011 since they were not appointed against sanctioned vacant posts. Moreover, there was no proper recruitment process upon publishing public advertisement. Hence, the pre-conditions for applicability of the 2011 Memorandum, are not there in so far as the appellants/writ petitioners are concerned. The Sabhadhipati rejected the claim of the writ petitioners. Assailing the order of the Sabhadhipati, the appellants herein filed the present writ petition.

The learned Single Judge discussed in details the provisions of the 2011 Memorandum. The learned Judge also noticed that there was an earlier Memorandum dated April 23, 2011, which provided guidelines for extending the benefits to the casual, daily rated/contractual workers. The

learned Judge further observed that the 2011 Memorandum was issued in supersession of the 2010 Memorandum. The 2011 Memorandum also provided that no further engagement be made of Group-D employees on casual/contractual/daily rated basis. The learned Judge disposed of the writ petition with the following observations:-

“It is an admitted position that the state filature wound up long ago i.e. in 2011. Thereafter the petitioners were allowed to perform different make shift jobs by the Murshidabad Zilla Parishad on sympathetic grounds. Such engagement was neither against sanctioned vacant posts nor in any project. No advertisement was published for such engagement. Neither was any recruitment process followed. The emoluments were being paid to such persons from the fund of the Murshidabad Zilla Parishad.

The capacity in which the petitioners were allegedly working since 1995, 1996, 1997, 1998 and 1999 is not available before this Court. No document has been submitted which would indicate the date and manner of engagement. At best, the same could be personal arrangements between the petitioners and the Zilla Parishad. The Zilla Parishad found that the petitioners were engaged in a project under the Sericulture Department for a brief period and the production unit closed in 2011.

The subsequent continuation of the petitioner for doing the odd jobs by the Zilla Parishad would not amount to engagements as envisaged in the memorandum. The Murshidabad Zilla Parishad engaged the petitioners on sympathetic ground and their honorarium was paid from the funds of the Zilla Parishad.

Under such circumstances, the order impugned is justified and the same has been passed in consonance with the memorandum dated September 16, 2011.

This order shall not prevent the petitioners from being continued in their present engagement by the Zilla Parishad and as per the terms and conditions that may be imposed by the Zilla Parishad, only if the petitioners are still working under the Zilla Parishad since 2011 till date.”

Being aggrieved, the writ petitioners have come up before us by way of this appeal.

We have heard learned Counsel for the parties. We see no apparent infirmity in the order under appeal. It is an admitted position that the appellants were not engaged pursuant to any recruitment process. They were not engaged in sanctioned vacant posts. Admittedly, the State filature where they were rendering service on contractual basis wound up in 2011. Thereafter, the appellants did odd jobs for the Zilla Parishad which permitted the appellants to continue as contractual workers on sympathetic grounds. The emoluments were being paid to the appellants from the funds of the Zilla Parishad.

In the above factual scenario, we are *ad idem* with the learned Single Judge that no right accrued in favour of the appellants whether for regularization or for claiming benefit under the 2011 Memorandum. Without there being a legal right in favour of the appellants, no writ of mandamus can be issued. Hence, although we may have sympathy for the appellants in view of the fact that they have been rendering service, albeit on contractual basis, for a long time, we are not able to grant any relief to the appellants.

Learned Advocate for the appellants says that the appellants should be at least paid minimum wages as per the

provisions of the Minimum Wages Act and in accordance with the circulars of the Labour Department, Government of West Bengal. We cannot issue any such direction. However, if the appellants make any such representation to the appropriate authority, such authority should dispose of such representation, in accordance with law, as expeditiously as possible, after granting an opportunity of hearing to the appellants or their authorized representatives.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to be admitted by the respondents.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)