

25.09.2023

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WPCT 90 of 2023
Prabir Ghoshal & Another
– *Versus* –
The Union of India & Others

Mr. Dinendra Nath Chatterjee,
Mr. Madhusudan Mandal
... for the Petitioners.
Mr. D. N. Ray,
Ms. Sayani Roy Chowdhury
... for the UoI/Respondents.

The present writ petition has been preferred challenging an order dated 9th January, 2023 passed in an Original Application, being O.A./1055/2022 (Kolkata).

The father of the petitioner no.1, being the petitioner no.2 herein was engaged as GDSMD at Rakshatpur Branch Post Office and he retired on 22nd January, 2020. The post office was in the residence of the petitioner no.2 during the period from 28th September, 2008 till 22nd January, 2020. The petitioner no.1 also worked as a substitute on temporary basis during the period of leave of the petitioner no.2 from 1st April, 2017 to 3rd October, 2017. The service of the petitioner no.1 was thereafter discontinued and aggrieved thereby, the petitioner no.2 submitted a representation to the Superintendent, Post Office, Purulia with a prayer for engagement of the petitioner no.1 in the concerned post. The petitioner no.1 also submitted a representation on 7th October, 2021. As the said representations were not considered, the petitioners approached the learned Tribunal and the said

application was disposed of with a direction upon the competent authority to consider the representation submitted by the petitioner no.1 on 7th October, 2021. Pursuant to such direction the representation was considered and a speaking order was passed by the respondent no.3 on 4th April, 2022. Aggrieved thereby, the petitioners again approached the learned Tribunal and upon contested hearing, the same was dismissed by an order dated 9th January, 2023.

Mr. Chatterjee, learned advocate appearing for the petitioners submits that as the residence of the petitioner no.2 was utilised for functioning of the concerned post office and as the petitioner no.1 was allowed to work as a substitute for a substantial period of time, the authorities ought to have considered the claim of the petitioner no.1 for engagement in the said post. Such arguments, as advanced on behalf of the petitioners, were not considered by the learned Tribunal.

Per contra, Mr. Ray, learned advocate appearing for the respondents submits that the representation of the petitioner no.1 was duly considered and in the speaking order it was detailed that there is no statutory provision towards engagement of the petitioner no.1 as GDSMD since he had previously discharged services during the period of leave obtained by the petitioner no.2. Utilization of the residence of the petitioner no.2 also cannot be a ground for engagement of the petitioner no.1.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

It appears that the petitioner no.1 was engaged as a substitute on temporary basis during the period of leave obtained by the petitioner no.2 from 1st April, 2017 to 3rd October, 2017. Such service as rendered and utilization of the residence of the petitioner no.2 for functioning of the concerned post office did not confer any enforceable right upon the petitioner no.1 towards continuance of such engagement. There is also no provision under the rules for continuance of such engagement. In the said conspectus, the learned Tribunal refused to exercise discretion in favour of the petitioner no.1.

The learned Tribunal upon dealing with the factual issues arrived at specific findings and we do not find any error in the order impugned.

In view thereof, the writ petition is dismissed.

There shall, however, be no order as to costs.

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

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)