

WPA 14398 of 2022

Jagannath Mahata
Vs.
The State of West Bengal & Ors.

Mr. Sankar Banerjee

....for the petitioner

Mr. Somnath Ganguli

Mr. Manas Kumar Sadhu

...for the State

The petitioner was engaged as a daily rated worker in the office of the Sub-Divisional Officer, Jhargram, Sadar. The petitioner was doing the duty/job of a 'receiving clerk'. The petitioner got his wages time to time from different available contingency funds of the district. The petitioner was not engaged against any permanent vacancy.

Mr. Banerjee, learned counsel appearing on behalf of the petitioner submits that the petitioner should be considered for any suitable job as a casual worker even if the job of the petitioner as a 'receiving clerk' is no longer available. The petitioner has visited the office of the SDO on several occasions since June 2022. However, the petitioner has not received his wages since June, 2022 and was also not allowed to perform his duty as a 'receiving clerk'. Initially, a Report on Affidavit was filed by the District Magistrate, Jhargram/respondent No. 3. It appears from the said Report that the petitioner has prayed for permanent absorption. However, there is no scheme for such

absorption. Without applying through proper selection process the petitioner cannot be absorbed.

No appointment/engagement letter was ever issued to the petitioner. Since the petitioner was found to be irregular and was also found to have created trouble at the office premises the petitioner was not thought to be 'fit' as a daily rated worker. The petitioner was allowed to continue with his work till June, 2022, on humanitarian grounds.

After filing of the writ petition, the petitioner did not attend the office. Therefore, it was not possible for the respondent authorities to pay the petitioner from July, 2022 onwards.

The attendance sheet of the petitioner for June, 2022 is also annexed to the Report by the respondent No. 3.

Since the petitioner is a physically handicapped person, this Court by an order dated August 24, 2023 directed the respondent No. 4/SDO to give a hearing to the petitioner and consider his case sympathetically.

In compliance of the order passed by this Court a hearing was given to the petitioner on September 15, 2023. After discontinuation of the petitioner's service since June 2022, the work of the 'receiving clerk' was allotted to two persons one of whom is working as LDC since February 2017. The same work has also been allotted to another permanent employee who has been appointed since 1986.

From the Report filed by the SDO it appears that there is no requirement of casual employee at the said office any longer. Therefore, the petitioner could not be considered for any further engagement.

Mr. Banerjee places reliance on an unreported judgment by a Co-ordinate Bench passed in WP(C) No. 26934 of 2022 (**Tintu K. & Anr. Vs. Union of India & Ors.**) at the High Court of Kerala. In that case the petitioners were engaged after a due process of selection and they were not back door entrants. It was held that even though the petitioners were contractual employees, they were entitled to a notice with regard to unsatisfactory nature of their service during the period of their contract. Their services could be terminated only on a finding of the unsatisfactory nature of their performance. In that case since such findings were absent, it was held that the petitioners could not be sent out of service on the ground of unsatisfactory performance, by the authorities.

In the present case, the petitioner was a daily rated worker. He was not a contractual employee whose contract was for a stipulated period pursuant to a scheme. There are no Government orders with regard to the continuance of temporary employees and contractual employees during the covid period. The engagement was not done after a due selection process.

This Court finds that the decision of **Tintu K.** (supra) does not aid the case of the petitioner in any manner.

The petitioner was a daily rated worker and he has been discontinued from service since he failed to attend his duty/absented himself frequently. There is no perversity in the decision making process of the respondent authority.

According, **WPA 14398 of 2022** is **dismissed**.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent certified website copies of this order, if applied for, be made available to the parties subject to compliance with all requisite formalities.

(Lapita Banerji, J)