

04.04.2023
DL-52
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 18310 of 2022

Bhabesh Kumar Roy Sarkar
Vs.
State of West Bengal & Ors.

Mr. Soumya Majumder,
Mr. Victor Chatterjee,
Mr. Barnamoy Basak

....for the petitioner.

Mr. Naba Kumar Das,
Mr. Subhabrata Das

....for the State.

The petitioner has been working on contractual basis as a Lower Division Clerk under the District and Sessions Court, Kalimpong at Gorubathan Sub-Divisional Court. The petitioner has prayed for regularisation of his service. The petitioner states that there are various sanctioned posts like that of Lower Division (LD) Assistant, Judicial Cashier-cum-Assistant of the Bench Clerk (Group – C) permanent sanctioned posts which are available. The petitioner's prayer for regularisation was initially rejected by the Joint Secretary, Judicial Department, Government of West Bengal on July 10, 2018 on the ground that the Finance Department regretted the Judicial Department's proposal for regularisation of service of the petitioner. Subsequent representation of the petitioner was also rejected by the Joint Secretary,

Judicial Department, Government of West Bengal on October 31, 2019 on the same ground that the request for regularisation of the petitioner's service by the department concerned was regretted by the Finance Department. Thereafter, the petitioner made various other representations till May 11, 2022. Since the petitioner's prayer for regularisation was not acceded to, the present writ petition was filed.

From a report on affidavit affirmed by the Joint Secretary, Department of Finance, it appears that the Finance Department has no objection to the petitioner's appointment being regularised since the petitioner has fulfilled the conditions under Finance Department's Memo No.9008-F(P) dated September 16, 2011. The petitioner could be brought under the purview of the 2011 order and the subsequent orders thereto, in the event the sanctioned post against which the petitioner was engaged is lying vacant. In terms of para 14 of the 2011 memo, the authority concerned for giving such approval to the petitioner's prayer for regularisation was the Additional Chief Secretary/Principal Secretary/Secretary of the department concerned after making necessary enquiries. The Judicial Department was directed to take necessary action.

Considering the materials placed on record, this Court finds from the letter of rejection dated July 10, of 2018 and the letter of rejection dated October 31, 2019 that the Judicial Department itself forwarded the name of the petitioner for regularisation and that was not approved of by the Finance Department.

Therefore, this Court deems that the Judicial Department does not have any objection to the petitioner's contractual appointment being regularised.

In the light of the discussions hereinabove, this Court directs the respondent no.2 or any other authority delegated by him to consider the prayer for regularisation of the petitioner's services within a period of three months from date considering the statements made in the report affirmed by the Joint Secretary, Finance Department on February 3, 2023.

With the directions aforesaid, **WPA 18310 of 2022 is disposed of.**

Needless to mention that till such time the prayer for regularisation of the petitioner is considered, the service of the petitioner as a contractual employee, Lower Division Assistant will not be disturbed.

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

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

(Lapita Banerji, J.)