

21.08.2023
DL-22
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 18964 of 2023

Gopi Krishna Das
Vs.
The State of West Bengal & Ors.

Mr. Rajendra Banerjee,
Mr. Dip Jyoti Chakraborty,
Ms. Ipsita Ghosh
...for the petitioner.

Mr. Lalit Mohan Mahata,
Mr. Ziaul Haque
....for the State.

This is a second round of litigation. A Coordinate Bench of this Hon'ble Court by an order dated January 30, 2023 passed in WPA 1228 of 2023 directed the authorities concerned to pass a reasoned decision taking into consideration the Finance Department's memo dated September 16, 2011 and the subsequent memoranda regarding the benefits of the aforesaid memorandum being applicable in respect of the petitioner.

The petitioner claims to be engaged by the Burwan Panchayat Samiti as a group – 'C' employee. Pursuant to the order passed by the Coordinate Bench, a reasoned order was passed by the District Panchayat and Rural Development Officer (DP & RDO), Murshidabad on March 21, 2023. Such reasoned order is impugned in the present writ petition.

Mr. Banerjee, learned counsel appearing on behalf of the writ petitioner submits that the reasoned order is erroneous since it suffers from error of law/facts on the face of the records. In the impugned order, the authorities have relied on clauses (ix) and (x) of the memo dated September 16, 2011 vide no.9008-F(P) issued by the Finance Department. The aforesaid clauses related to the engagements that are prospectively done. The said clauses cannot be made applicable to the employees who were already in service on August 1, 2011.

Mr. Mahata, learned counsel appearing on behalf of the State authorities submits that since the petitioner was not engaged against any regular/sanctioned post, the prayer for absorption of the petitioner cannot be considered by the authorities concerned.

Considering the rival submissions of the parties and the materials placed on record, this Court is of the view that the memo dated September 16, 2011 was applicable for casual/contractual/daily rated employees who worked continuously for not less than 10 years on August 1, 2011. Such employees had to render service for at least 240 days per year. It is not in dispute that the petitioner rendered 240 days or more of service per year since his engagement in 2006.

The stipulation with regard to 10 years of continuous service was relaxed by the memo dated May 20, 2013. The number of years of engagement in respect of the casual/daily rated/contractual workers was required to be determined as on April 1, 2013 vide memo dated May 20, 2013.

This Court upon perusal of records finds that clauses (ix) and (x) of the memo dated September 16, 2011 related to any *further* engagement of casual/daily rated/contractual workers. Clauses (ix) and (x) are reproduced hereinbelow:-

“(ix) It is reiterated that Officer/Officers responsible for any further engagement of such casual/daily rated/contractual worker will be personally liable for violation of this Order. However, having regard to the exigencies of situation and in order to facilitate smooth running of any project/administration or for serving academic interest where it is absolutely necessary contractual engagement may be made for a very limited period not exceeding 1 (one) year. This engagement shall be made on strict observance of recruitment rules and against sanctioned vacancies. Advertisement shall be published in newspaper and applications shall be invited from eligible candidates to fill up those temporary vacancies. Simultaneously steps should be taken to fill up the vacancies on regular basis following recruitment rules. Such contractual engagement may be renewed from time to time, but not exceeding a total period of 6 (six) years. No claim to regularisation of this contractual service in

terms of G.O. No.8305-F dt. 26-09-2005 read with G.O. No.642-F dt. 24-01-06 shall lie.

(x) The provisions of this Order will not be applicable where contractual engagement has been made without any sanctioned post and for any specific project for a very temporary period upto a maximum 6 (six) years or completing up of the project whichever is earlier. Thus in such cases steps will not be required to be initiated for filling up the posts through regular appointments as per the Recruitment Rules, since the posts are temporary by nature.”

From the said clauses, it appears that any subsequent/further or prospective engagement of casual/daily rated/contractual worker, if made by the officers responsible for the same, they would be personally liable for violation of 2011 order. Only in cases of exigencies, such contractual engagements may be made for a very limited period, not exceeding one year. Such engagement **shall** be made on strict observance of recruitment rules and against sanctioned vacancies. Advertisements shall be published in newspapers and applications will be invited from the eligible candidates to fill up such temporary vacancies. Such contractual engagement may be renewed from time to time but shall not exceed a period of six years. Even if the petitioner did not render 10 years of continuous service as on August 1, 2011 still the petitioner's case may be

considered under the memo dated May 20, 2013 vide no.4011-F(P).

Therefore, the petitioner may also be given the benefits of the subsequent memo dated February 25, 2016 vide no.1107-F(P).

Since the DP & RDO held that the clauses (ix) and (x) of memo dated September 16, 2011 are applicable to the cases of contractual/casual/regular employees who were engaged and working prior to the effective date of the 2011 memo, this Court finds that the decision making process suffers from perversity/infirmity.

Accordingly, the Impugned order dated March 21, 2023 is set aside and/or quashed.

DP & RDO is directed to pass a reasoned decision within 6 weeks from date of this order upon giving an opportunity of hearing to the petitioner. The reasoned order so passed shall be communicated to the petitioner within 2 weeks of passing thereof.

In deciding the petitioner's case for grant of benefits under the 2011, 2013 and 2016 memo, the authority concerned shall take into consideration the observations made by this Court.

With the directions aforesaid, **WPA 18964 of 2023 is disposed of.**

Since no affidavits have been directed to be exchanged in the writ petition, the allegations

contained therein are deemed not to have been admitted by the respondents.

All parties shall act on the server copy 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.)