

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

WP.ST 415 of 2010

**S.K. Sarifuddin & Ors.
VS.
The State of West Bengal & Ors.**

For the Petitioners: Mr. Harishankar Chattopadhyay,
Mr. Chittranjan Panda, Advocates

For the State : Mr. Tapan Kumar Mukherjee, AGP
: Mr. Somnath Naskar, Advocates

Heard & Judgment on : August 29, 2023

DEBANGSU BASAK, J.

- 1.** The writ petition is directed against an order dated June 17, 2010 passed in OA 1532 of 2009 by the West Bengal Administrative Tribunal.
- 2.** By the impinged order, the Tribunal, rejected the claim of the writ petitioners for absorption/regularization in Government service.
- 3.** Learned advocate appearing for the writ petitioners submits that, subsequent to the finding rendered by the Tribunal with regard to quality of engagement of the writ petitioners, as casual master roll workers, it

does not lie in the mouth of the State to contend that the writ petitioners were contractual workers.

4. Learned advocate relies upon **(2023) SCC Online 771 [Om Prakash Banerjee vs. The State of West Bengal & Ors.]**, **(2013) 11 SCR 1 [Nihal Singh & Ors. vs. State of Punjab & Ors.]** and an unreported decision of the co-ordinate Bench in **WP No. 15434(W) of 2015 [Arup Kumar Roy & Ors. vs. State of West Bengal & Ors.]** and submits that **Secretary, State of Karnataka & Ors. vs. Umadevi (3) & Ors. [2006(4) SCC 1]** is not an impediment for grant of the prayer for absorption/regularization to the writ petitioners.

5. Learned advocate for the writ petitioners draws the attention of the Court to a writing dated August 14, 2009 and to the annexures thereof. He submits that a section of the employees, casual/master roll workers were absorbed. The writ petitioners are similarly situated and circumstanced as those persons and should be given the similar facilities.

6. State is represented.

7. By the impugned order the Tribunal returned a finding and the writ petitioners 'were engaged as casual master roll workers without having any sanctioned post against such engagement and without following any due selection process.'

8. The Tribunal proceeded to take note of the pronouncement of **Umadevi (3)** (supra) and found that the writ petitioners could not be granted the relief of absorption/regularization as, the writ petitioners were engaged without following the due selection process and without any sanctioned posts.

9. The co-ordinate Bench in **Arup Kumar Roy** (supra) considered a factual situation, which is completely different to those obtaining in the

present case. The coordinate Bench noted that, peculiar situation may arise not foreseen by the Judges pronouncing the judgment in **Uma Devi (3) (supra)**. Noting the facts of that case before the co-ordinate Bench, the Court held that, the writ petitioners before such Court were willing to work and was not allowed to work. In such context, the continuity of their services was taken into consideration. Moreover, the initial appointments of the writ petitioners therein were valid and were declared to be so as opposed to irregular initial appointments spoken of in **Uma Devi (3) (supra)**.

10. Nihal Singh (supra) considered a situation of grant of absorption to persons who were recruited for the purpose of combating terrorism prevailing in the State of Punjab at that material point of time. In the context of utilization of services of such persons to combat terrorism, the Supreme Court observed that, the necessity for appointment of such persons was felt by the State. Therefore, the State appointed such persons. Therefore, it was not within the domain of the State to contend that there was no sanctioned posts in respect of such appointment. Factual scenario again is different in the present case.

11. In Om Prakash Banerjee (supra), the Supreme Court noted that the High Court in its order dated September 3, 2010 recorded the submission of the authorities that resolution pertaining to the absorption of the writ petitioners therein was already in place and that the same was sent for approval. Such a factual scenario is not obtaining so far as the writ petitioners are concerned.

12. The writ petitioners fall foul in the parameters laid down in **Umadevi (3) (supra)**. They were not appointed to any sanctioned post nor were they appointed by a selection process.

13. In such circumstances, we find no ground to interfere with the impugned order.

14. WP.ST 415 of 2010 is accordingly **dismissed** without any order as to costs.

(Debangsu Basak, J.)

15. I agree

(Md. Shabbar Rashidi, J.)

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