

07 12.09.2023
rkd Ct.15

W.P.A. 20899 of 2014

Shaktipada Rajwar & Ors.

-vs-

The State of West Bengal & Ors.

Mr. Saibal Kumar Acharya,
Mr. Sukhendu Bikash Mukherjee

....for the petitioner.

Mr. Malay Singh,
Mr. Bibekananda Tripathy

....for the State.

The writ petition is instituted, *inter alia*, challenging order dated 29th May, 2014 issued by the Joint Secretary to the Government of West Bengal, Panchayats and Rural Development Department whereby claim of the petitioners to get the benefit under Finance Department Memo No. 4011-F dated 20th May, 2013 as well as another order No.9008-F dated 16th September, 2011, has been negated.

Mr. Acharya, learned advocate representing the petitioners while questioning the decision of the Joint Secretary submits that petitioners are working as Tubewell Mechanic in different Gram Panchayats under Jhalda-II Panchayat Samity, District- Purulia for a considerable period of time and in support of the same certificates have been annexed to the supplementary affidavit which has

been filed today and the same is taken on record.

It has also been submitted that considering the Clause (x) of the Memo dated 16th September, 2011 prayer of the petitioners for enhancement of remuneration cannot be refused since on similar circumstances Hon'ble Division Bench granted identical relief while disposing of an intra Court appeal being MAT 2129 of 2014 (**Prasanta Kumar Sardar & Ors. -vs- State of West Bengal & Ors.**). The order of the Hon'ble Division Bench dated 10th April, 2015 was assailed before the Hon'ble Supreme Court by filing special leave to appeal and the same was dismissed vide order dated 16th January, 2017. Therefore, it has been contended on behalf of the petitioners that they are entitled to get similar relief as it was granted by the Hon'ble Division Bench by passing order dated 10th April, 2015.

The decision of the Joint Secretary dated 29th May, 2014 refusing to grant benefit under Government Memoranda dated 16th September, 2011 and 20th May, 2013 has been defended by the learned advocate representing the State respondents. It has been submitted that petitioners were never formally appointed as casual/daily rated/contractual workers in different Gram

Panchayats under Jhalda-II Panchayat Samity therefore question of engaging the petitioners against sanctioned posts as contemplated under Clause (x) of the Government Memorandum dated 16th September, 2011 does not arise and as such they are not entitled to get the benefit of Government Memoranda dated 16th September, 2011 and 20th May, 2013.

While considering the prayer made on behalf of the petitioners to get the benefit of Government Memoranda dated 16th September, 2011 and 20th May, 2013 for enhancement of their remuneration this Court is required to find out whether the conditions as contemplated under Clause (x) of the Government Memorandum dated 16th September, 2011 is fulfilled or not. For better understanding of the issue Clause (x) is quoted below:

“(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 winding 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.”

It has been submitted by learned advocate representing the petitioners that petitioners were not appointed in connection with a specific project but they were appointed as contractual workers in different Gram Panchayats.

Since petitioners were not appointed in connection with project therefore in terms of Clause (x) it needs to be examined whether petitioners were appointed against sanctioned posts or not.

In pursuit of finding answer query is posed to the learned advocate for the petitioners when petitioners were appointed as contractual workers and whether appointment letters were issued by the respondent authorities or not; this Court does not get any satisfactory reply and on perusal of the writ petition as well as supplementary affidavit barring certain certificates in support of engagement of the petitioners which were issued in the year 2023 nothing has been produced in support of their engagement as contractual workers in the concerned Gram Panchayats.

In view of failure on the part of the petitioners to produce appointment letters showing their engagement as contractual workers that too

against sanctioned vacancies this Court does not find any infirmity in the order passed by the Joint Secretary dated 29th May, 2014 whereby prayer of the petitioners to extend the benefit under Government Memoranda dated 16th September, 2011 and 20th May, 2013 have been refused.

In **Prasanta Kumar Sardar** (supra) relief was granted to the appellants in the context of finding made in the order that petitioners/appellants were working in the concerned Gram Panchayat since 1999.

In view of absence of appointment letters in support of the engagement of the petitioners the situation is completely different so far the present case is concerned and the decision of the Hon'ble Division Bench in **Prasanta Kumar Sardar** (supra) does not come in aid of the petitioners. The order of Hon'ble Supreme Court dated 16th January, 2017 was passed on the Special Leave Petition filed by the State of West Bengal against the order of the Hon'ble Division Bench passed in **Prasanta Kumar Sardar** (supra) is a dismissal of Special Leave Petition and such order was passed on the ground of delay in filing the petition.

In aforesaid scenario this Court does not find any merit in the writ petition and the same

stands dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)