

17.04.2023

Court : 04
Item : 6-7-8
Matter : WPST
Status : TAGGED
Bench Id : 266048
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WPST 1688 of 2008 (6)
with
CAN 1 (4410) of 2010
with
CAN 2 (3701) of 2014
with
CAN 3 (7123) of 2014
(Satya Das & Ors. Vs. State of West Bengal & Ors.)
with
WPST 68 of 2018 (7)
(The State of West Bengal & Ors. Vs. Usha Shaw)
with
WPST 1689 of 2008 (8)
(Surajit Bandopadhyay Vs. The State of West Bengal & Ors.)
with
CAN 1 (3702) of 2014
with
CAN 2 (5972) of 2017

Mr. Anindya Lahiri, Advocate
Mr. Ravi Kumar Dubey, Advocate
.....for the Petitioner (item nos. 6 & 8)
Mr. Tapan Kumar Mukherjee, Learned AGP
Mr. Pinaki Dhole, Advocate
Mr. Avishek Prasad, Advocate
.....for the Petitioner (Item No. 7)
Mr. Tapan Kumar Mukherjee, Learned AGP
Mr. Somnath Naskar, Advocate
.....for the State (Item No. 6)
Mr. Biswaroop Bhattacharya, Advocate
.....for the Respondent (Item No. 7)
Ms. Chaitali Bhattacharya, Advocate
Mr. Kartick Chandra Kapas, Advocate
.....for the State (Item No. 8)

An impression was created upon us on the last occasion that the aforesaid three writ-petitions were directed to be heard analogously by a coordinate Bench vide order dated 10.11.2021 and accordingly an order was passed by us on 10.04.2023 to tag all the three writ-petitions together which is listed today.

Our attention is further drawn to an order dated 26.11.2018 passed in WPST 68 of 2018 wherefrom it appears that the said writ-petition was directed to be tagged with the other two writ-petitions on the submissions advanced by Mr. Bhattacharya, learned Advocate appearing on behalf of the respondent in WPST 68 of 2018.

Learned Advocates appearing for the respective

Counsel uniformly submits that the issue involved in WPST 68 of 2018 is distinct and separate from the issues involved in other two writ-petitions.

In view of the uniform stand taken by the learned Counsels, WPST 68 of 2018 is detached from the aforesaid two writ-petitions and to be heard separately so that separate order can be passed.

So far as WP 1688 of 2008 and WP 1689 of 2008 are concerned, those relates to regularization and/or absorption in regular service having rendered as casual/contractual workers for a considerable period of time. The petitioners were working as Gauge Readers in various Gauge Stations under the Executive Engineer or Urban and Waterways Department, Government of West Bengal. They contended that they worked continuously/uninterruptedly and even more than 240 days in a year and, therefore, their appointment to be regularized and/or they are to be absorbed to a permanent/sanctioned post as regular employee. By the impugned order, the Tribunal after taking into consideration the law expounded by the Constitutional Bench decision in the case of ***Secretary, State of Karnataka & Ors. Vs. Umadevi*** reported in ***(2006) 4 SCC 1***, disposed of the aforesaid tribunal application with the categorical observation that since the petitioners are in service, it would be open to the State-Respondents to consider the case of absorption of the petitioners, if situation, so arises, provided the petitioners fulfil the minimum requirement of such absorption, in accordance with law.

The applicants before the Tribunal aggrieved by such observations filed the instant writ-petition before this Court. Obviously, taking into account, the various caveats having highlighted in the aforesaid Constitutional Bench decision,

the writ-petitioners have candidly submitted that such claim which was made at a relevant point of time has effaced by subsequent events or in other words by subsequent decision taken by the Government in this regard.

From the records, it appears that by virtue of a Memorandum dated April 23, 2010, the Government after taking into consideration that for implementation of various schemes/projects of the various Departments of the Government, the controlling authorities have been compelled to engage casual, daily-rated workers and, therefore, the issue of security of tenure, appropriate emoluments and certain retirement benefits in respect of those employees is required to be considered and ultimately it was decided that such casual/daily-rated workers shall be engaged till they attain the age of 60 years and will be paid remuneration which will be minimum pay with corresponding category of workers of Pay Band-I (PB-I) i.e. Rs.6,600/- p.m. with enhancement @ 5% every three years. It was specifically indicated that those categories of employees shall not be entitled to any other allowances.

Subsequently, another Memorandum dated September 16, 2011 was issued by the Finance Department, Government of West Bengal wherein the earlier Memorandum dated April 23, 2010 and December 22, 2010 was superseded and it was reiterated that they will continue to be engaged in such a manner till he/she attains the age of 60 years when he/she will be paid an amount of Rs.1 lakh as one-time cessation engagement benefit. It is further indicted therein that the casual/daily-rated/contractual workers who have already got the benefit with reference to 01.04.2010 as cutoff date will continue to get the benefit in terms Memorandums dated 23.04.2010 and 22.12.2010, while the others will be covered in terms of provision of the

said Memo. The subsequent Memorandum dated May 20, 2013, February 25, 2016 and February 8, 2019 would reveal that the Government revised the remuneration and also enhanced the benefit of cessation of engagement.

The cumulative fact of the aforesaid Memorandums issued subsequently by the Government reveals that such casual/daily-rated/contractual workers who were at one point of time engaged in a scheme or project and were permitted to continue rendering such services were given a protection of such engagement till they attain the age of 60 years and one time cessation benefit were also extended.

By virtue of the aforesaid Memorandums issued by the Government, the security as to the engagement till they attained the age of 60 years were permitted and extended to such employee with a further benefit at the time of cessation. Since the aforesaid writ-petitioners were not found to have come under the exception carved out in the Constitution Bench decision rendered in *Umadevi (supra)*, such engagement were continued under the beneficial scheme formulated by the Government and, therefore, the benefits as extended therein is admissible to the writ-petitioners. Since the majority of the writ-petitioners are still engaged and discharging their duties, they are entitled to the remuneration indicated in the aforesaid Memorandums as discussed above and such engagement would continue till they attained the age of 60 years.

So far as the other such employees who have already attained superannuation after issuance of the said Memorandum, appropriate Government is directed to extend the benefit in terms of the extant Memorandum extending the benefit to the workers having attained the age of 60 years within a week from date.

Though feebly, it has been contended by the learned Additional Government Pleader that some of the writ-petitioners were getting the higher amount of those have been provided under such Memorandum and the moment they are brought under the said Scheme the excess payment required to be adjusted and/or recovered.

We do not accept the aforesaid contention of the Government. The amounts were paid treating those employees as casual/daily-rated/contractual workers rendering their services under the particular scheme/project and, therefore, the amount has been paid for their work. It is not expected for a nodal employer to recover the amount as it come under the relevant scheme framed for the benefit of such employee. Even apart there is no role which can be visualized having played by the petitioners for getting an amount excess of the remuneration which has been fixed under the aforesaid Scheme and in absence of any fraud or misrepresentation, it is not open after such a long period of time for the Government to recover the excess amount.

With these observations, the writ-petitions being **WPST 1688 of 2008** and **WPST 1689 of 2008** are **disposed of**. The connected applications being **CAN 1 (4410) of 2010**, **CAN 2 (3701) of 2014**, **CAN 3 (7123) of 2014**, **CAN 1 (3702) of 2014 & CAN 2 (5972) of 2017** filed in connection with respective writ-petitions are also **disposed of**.

The order of the Tribunal is modified in the light of the observations made hereinabove.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

