

9.1.2023
Sl.No.7/sn

WPA 28054 of 2022

Bipad Kumar Mondal & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Pratip Kumar Chatterjee
..for the petitioners
Mr. Rajarshi Basu
Mr. K.M.Hossain
..for the State

The petitioners claim to have been engaged as casual workers in the Murshidabad Zilla Parishad at different points of time since 1995 to 2000. Earlier, the petitioners approached this Court seeking regularization. Such prayer was turned down by a co-ordinate Bench of this Court by an order dated March 10, 2022 passed in WPA 7926 of 2018. The petitioners preferred an appeal being FMA 586 of 2022.

The learned co-ordinate Bench came to a specific finding that the Memorandum dated September 16, 2011 relied upon by the petitioners in support of their claims for regularisation would not be applicable as the said Memorandum did not deal with the issue of regularization. The learned Court observed that the question of even being considered for regularization in service, would only arise had the petitioners been engaged in the regular establishment against vacant posts through a recruitment process.

Aggrieved, the petitioners preferred an appeal. Without going into the merits of the claims of the petitioners, the Hon'ble Division Bench observed that the case of the petitioners should at least be considered with special reference to the memorandum being no. 9008-F(P) dated September 16, 2011. The memorandum dealt with security of tenure, retirement benefits and appropriate emoluments to be paid to the daily rated/casual/contractual workers engaged in different departments of the government and the local bodies, either in their regular establishments or in any scheme or project.

Pursuant to the directions of the Hon'ble Appeal Court, the Sabhadipati, Murshidabad Zilla Parishad passed a reasoned order dated July 28, 2022. The only issue for consideration by the authority, as per direction of the Hon'ble Appeal Court was whether the memorandum no. 9008-F(P) dated September 16, 2011, would be applicable in case of the petitioners.

The claim of the petitioners was that the monthly remuneration must be enhanced to Pay Band-I with 5% increment every 3 years, security of tenure upto the age of 60 years and a one time benefit of Rs.3 lakhs at the time of retirement at the age of 60 years.

The order impugned reflects that to be eligible for the benefits of the memorandum the engagements should have been made against sanctioned vacant posts and upon observance of recruitment rules. Advertisement should have been published in the newspapers. Applications should have been invited from the eligible candidates for filling up those temporary vacancies. The benefits were to be given as per the said memoranda provided that the workers completed 10 years of continuous service and had rendered service for at least 240 days in a year.

The petitioners did not fulfill the eligibility criteria as stated in the memorandum no. 9008-F(P) dated September 16, 2011. The benefits of security of tenure appropriate emoluments and one time retirement benefits at the age of 60 years, could not be extended to the petitioners as per the order impugned. It was found that the petitioners were not engaged against any sanctioned vacant post. No recruitment process was followed. The petitioners were engaged in a project (State filature) and they used to get wages proportionate to their production. Such project was under the Sericulture department and was discontinued way back in 2011. Thus, Clause (x) of the memorandum no. 9008 F(P) dated September 16, 2011 not found to be applicable.

According to Mr. Chatterjee, learned advocate for the petitioners, the Memorandum dated September 16, 2011 was to provide security of tenure, appropriate emoluments and terminal benefits to the casual/daily rated/ contractual workers engaged in various government departments local bodies and schemes for a period of more than 10 years. Thus, the petitioners who were engaged in state filature on and from 1995 onwards were entitled to the benefits. Their work was supervised by the Murshidabad Zilla Parishad. No ban could be imposed by the government with regard to the eligibility of such persons to get benefits of the circular.

The Hon'ble Division Bench directed the authority to restrict the decision to the eligibility of the petitioners for the benefits under the memorandum dated September 16, 2011. Memorandum dated April 23, 2010 was published as guidelines to provide certain benefits to the casual/daily rated/contractual workers. The memorandum no. 9008 F(P) dated September 16, 2011 was issued and published providing further guidelines with regard to the implementation of the 2010 Memorandum. The eligibility criteria and the parameters were laid down. Such memorandum was in supersession to the memorandum no. 2966 F(P)

dated April 23, 2010. The nature of benefits and the eligibility criteria was laid down in Clauses (i) to (xv) thereof. The memorandum also provided that no further engagement of Group-D employees in the manner laid down the memorandum dated May 26, 2009 of the concerned departments and local bodies etc. could be done on or after April 1, 2010. Officer or officers responsible for such engagement would be personally liable for violation of the order dated September 16, 2011.

The Government of West Bengal, Finance Department, Audit Branch framed the guidelines to provide security of tenure, appropriate emoluments and terminal benefits to the daily rated/casual/temporary workers working in government departments and local bodies. Certain eligibility criteria were to be fulfilled by the workers who claimed the benefits. One such condition being that the contractual engagement should have been made against sanctioned posts, following the recruitment rules and pursuant to an advertisement. In case of schemes or projects the engagements upto a period of over six years or for a short term would not be covered by the memorandum.

It is an admitted position that the state filature wound up long ago i.e. in 2011. Thereafter the petitioners were allowed to perform different

make shift jobs by the Murshidabad Zilla Parishad on sympathetic grounds. Such engagement was neither against sanctioned vacant posts nor in any project. No advertisement was published for such engagement. Neither was any recruitment process followed. The emoluments were being paid to such persons from the fund of the Murshidabad Zilla Parishad.

The capacity in which the petitioners were allegedly working since 1995, 1996, 1997, 1998 and 1999 is not available before this Court. No document has been submitted which would indicate the date and manner of engagement. At best, the same could be personal arrangements between the petitioners and the Zilla Parishad. The Zilla Parishad found that the petitioners were engaged in a project under the Sericulture Department for a brief period and the production unit closed in 2011.

The subsequent continuation of the petitioner for doing the odd jobs by the Zilla Parishad would not amount to engagements as envisaged in the memorandum. The Murshidabad Zilla Parishad engaged the petitioners on sympathetic ground and their honorarium was paid from the funds of the Zilla Parishad.

Under such circumstances, the order impugned is justified and the same has been passed

in consonance with the memorandum dated September 16, 2011.

This order shall not prevent the petitioners from being continued in their present engagement by the Zilla Parishad and as per the terms and conditions that may be imposed by the Zilla Parishad, only if the petitioners are still working under the Zilla Parishad since 2011 till date.

This writ petition is disposed of.

There will be, however, no order as to costs.

All parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)