

18.12.2023.  
Court No.13  
Item No. 267  
ap

**W.P.A. No. 8597 of 2020**

**Akbor Ali & Ors.  
Versus  
The State of West Bengal & Ors.**

Mr. Rahul Karmakar,  
Ms. Gargi Goswami,  
Mr. Sourav Guchhait.

...For the petitioner.

1. Despite service of notice, the State is not represented. Notice-of-service filed in Court today be taken on record.
2. The petitioners are all guards at Pumping Stations operated by the Gram Panchayat under the Scheme of the PHE Department, Government of West Bengal. They have been engaged by the concerned Gram Panchayat. Their wages are paid by the PHE Department of the Govt. of West Bengal.
3. The petitioners have been serving for more than 15 years as guards. There are no sanctioned posts of Guards for the Water Pumps in any Gram Panchayat.
4. The petitioners do not seek regularization or permanent absorption in Panchayat of the State Service.
5. Each of the petitioners, three of whom are retired, had filed the instant writ petition seeking the benefit of the Circular No.2966-F(P) dated 23<sup>rd</sup> April, 2010 and Circular No. 11794-F(P) dated 22<sup>nd</sup> December, 2010. The said two Circulars were introduced by the State to

address the demands of casual/daily rated/contractual workers, who sought absorption in the State Services as on the date of the said Circulars.

6. Every Ministry and Departments thereunder including the autonomous bodies and Panchayats were engaging casual/daily rated/ contractual workers for well over 15 years. The posts in which the petitioners worked i.e. Security Guards for the pumps are not sanctioned either by the Gram Panchayat level or by the PHE. Yet the petitioners' services were obtained continuously as casual labourers for well over 15 years. Their services are needed by the State.

7. The continuation of the petitioners' services as Security Guards is further strengthened in a recommendation of the Chief Engineer, Head Quarter, PHE Directorate, recommending on 09.07.2011 permanent absorption of the petitioners as Security Guards by the PHE. The recommendation is annexed to page 5 Annexure P-7 of the writ petition.

8. The Government, realizing its responsibilities to provide some benefits to casual worker, issued the aforesaid Circulars which culminated in the terms and conditions more fully described in Circular No.9008-F(P) dated 16<sup>th</sup> September, 2011. By the said Circular which excluded from its purview, persons engaged on contractual basis against the sanctioned posts, it was proposed that there would be a Pay Band of

Rs.6,600/- (Rs.4900+Rs.1700) for such casual daily rated employees.

9. The said persons were entitled to work up to the age of 60 years. At the age of 60, after searing to work, a sum of Rs.1,00,000/- would be provided as a One Time Terminal Benefit.

10. The benefits of the aforesaid Circular dated 16<sup>th</sup> September, 2011 were increased and revised from time to time in the years 2013, 2015 and 2018.

11. The petitioners approached this Court by way of a writ petition being W.P. No. 27389 (W) of 2014 (Sri Manindra Adhikari & Ors. – Vs. – The State of West Bengal & Ors.) praying for the benefits of the original Memorandum being 2966-F(P) dated 23<sup>rd</sup> April, 2010 wherein Deputy Secretary, PHE Department was directed to consider their representation. The impugned order was passed rejecting the petitioners' claim.

12. It is erroneously found in the impugned order that the petitioners were working as contractual/daily rated workers since 1995. There is no evidence of any contractual engagement of the petitioner whatsoever on record.

13. The next argument of the Chief Engineer was even though the petitioners worked as Casual Labourers and not as contractual, they were against the post that were not sanctioned.

14. This Court is inclined to accept the argument of the learned Counsel appearing on behalf of the

petitioners that the engagement is casual/Badli and has been done primarily in the case of the petitioners and many similarly situated persons because there is in fact no sanctioned posts of Security Guards either in the PHE or in the concerned Gram Panchayat.

15. This Court is of the clear view that the petitioners are casual workers engaged as Security Guards. They cannot claim any permanent absorption in the State in view of the dicta of the Hon'ble Supreme Court of India in the case of ***Secretary, State of Karnataka & Ors. -Vs.- Uma Devi (III)*** reported in ***(2006) 4 SCC 1***. It is essentially in this backdrop that the State had formulated a Scheme for giving some benefits, like a fixed pay band, a retirement age and a lump sum terminal benefit upon superannuation.

16. This Court is of the view that the petitioners are clearly covered within the meaning of Circular No.2966-F(P) dated 23<sup>rd</sup> April, 2010, Circular No. 11794-F(P) dated 22<sup>nd</sup> December, 2010 and Circular No.9008-F(P) dated 16<sup>th</sup> September, 2011 and all modifications thereunder.

17. Let all arrears and the salaries and monthly remuneration as per the aforesaid circular dated 16<sup>th</sup> September 2011, revised from time to time till date, be paid to the petitioners within a period of two months from date mandatorily and positively. There shall be an order of mandamus in this regard.

18. With the aforesaid directions, the instant writ petition shall stand disposed of.

19. There will be no order as to costs.

20. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

***(Rajasekhar Mantha, J.)***