

06.06.2023
Item 16 to 18
Court No.6.
AB

**R.V.W. 111 of 2020
In
WPST 78 of 2020**

**Tanmoy Chatterjee
Vs
The State of West Bengal & Others**

With

**R.V.W. 13 of 2021
In
WPST 79 of 2020**

**Subhas Chandra Patra
Vs
The State of West Bengal & Others**

With

**R.V.W. 14 of 2021
In
WPST 82 of 2020**

**Anup Kumar Sarkar
Vs
The State of West Bengal & Others**

Mr. Debasish Kundu,
Mr. Souma Subhra Ray,
Ms. Susmita Mondal

....For the Review Applicants.

Mr. Tapan Kr. Mukherjee,
Ms. Debdooti Dutta....For the State.

A Judgment and Order dated November 20, 2020, whereby five writ petitions being WPST 78 of 2020, WPST 79 of 2020, WPST 80 of 2020, WPST 81 of 2020 and WPST 82 of 2020 were dismissed, is under review in the present three applications at the instance of three of the writ petitioners.

The petitioners challenged an order passed by the State Administrative Tribunal refusing to interfere and direct the State Government to consider the applications of the petitioners for being considered for regular recruitment simply on the premises that they were contractual employees as Drivers for quite sometime and were eligible for preferential treatment, particularly, because of the fact that some of them have crossed the age limit for direct recruitment. A Coordinate Bench noticed that the petitioners had been invited for direct recruitment. The Coordinate Bench dismissed the writ petitions observing as follows:

“We have perused the impugned order of the Tribunal which has been rendered after considering the binding judicial precedent of this Court that having regard to the quality of employment as contractual appointees the petitioners could not claim any preferential treatment either for regularization or preferential treatment while persons are recruited under the direct recruitment process. The substantive rules and the notification do not provide for modifying the age limit as regards persons who are employed as contract appointees. The recruitment process has not yet been completed but that does not mean that the contract appointees could be provided any preferential treatment as sought for by the petitioners.”

Three of the writ petitioners have sought review of the said judgment and order by filing these three review applications.

Learned Advocate for the review applicants relies on the decision of a Full Bench of this Court in the case of **Gobinda Chandra Mondal Vs Principal**

Rabindra Mahavidyalaya & Others reported in **2013(1) CHN 9** and on the decision of the Hon'ble Supreme Court in the case of ***State of Rajasthan Vs Surendra Mohnot & Others*** reported in **(2014) 14 SCC 77**. Learned Counsel also relies on the Supreme Court decision in the case of ***Ajoy Debbarma & Others Vs State of Tripura & Others*** rendered in ***Civil Appeal No.2868 of 2020***.

Insofar as the case of *Gobinda Chandra Mondal* is concerned, a Division Bench of this Court in **WPST 109 of 2021 (The State of West Bengal & Others Vs Chandra Kanta Ray & Others)**, by a judgment and order dated November 28, 2022, has held that the judgment in *Gobinda Chandra Mondal's* case is per incuriam inasmuch as it did not take note of the decision of the Hon'ble Supreme Court in the case of ***State of Orissa & Another Vs Mamata Mohanty*** reported in **(2011)3 SCC 436**.

The Division Bench further observed that the order of the Hon'ble Supreme Court in Uma Devi's case reported in **(2006) 4 SCC 1** was under Article 142 of the Constitution of India and did not lay down any general law to the effect that contractual workers must be absorbed permanently, if they have been working for a long time.

The case of *Ajoy Debbarma* was relied upon by learned Counsel in support of his submission that the State is always at liberty to relax the age restriction. It

may be so, however, the Court cannot direct the State to relax age restriction particularly when there is no such provision in the relevant advertisement or the applicable Recruitment Rules. In our opinion, the decision in the case of Ajoy Debbarma is in no manner relevant in the facts of the present case.

Insofar as the case of *State of Rajasthan Vs Surendra Mohnot* (supra) is concerned, the same is an authority for the proposition that nothing in Article 226 of the Constitution precludes the High Court from exercising power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. However, the Hon'ble Supreme Court clarified that such power is to be exercised only when there is error apparent on face of the record or when there is discovery of new matter or evidence, which after exercise of due diligence, was not within the knowledge of the person seeking review or could not be produced by him at the time the order under review was made. In the present case, in the order under review, we do not find any such error. Nor is the case where new material has come to light after the order under review was passed which could not have been discovered by the review applicants at the relevant time.

The order under review was passed after hearing both sides and on merits. It may be, according to the

review applicants, a wrong order. However, in that event, the remedy of the applicants would be by way of appeal before a higher forum. A review application cannot be an appeal in disguise. The Coordinate Bench considered the order of the State Administrative Tribunal and was of the opinion that there was no infirmity in the Tribunal's order. Hence, the writ petitions were dismissed. We find no reason to review the judgment and order dated November 20, 2020.

The review applications being RVW 111 of 2020, RVW 13 of 2021 and RVW 14 of 2021 are, accordingly, dismissed.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)

