

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Present :- Hon'ble Justice Amrita Sinha

WPA 11733 of 2020

**Monindra Nath Mondal
Vs.
The Kolkata Municipal Corporation & Ors.**

For the writ petitioner	:-	Mr. Mrinal Kanti Ghosh, Adv.
For the KMC	:-	Mr. Alak Kumar Ghosh, Adv. Mr. Arijit Dey, Adv.
Hearing concluded on	:-	17.02.2023
Judgment on	:-	28.03.2023

Amrita Sinha, J.:-

The reasoned order dated 12th December, 2019 passed by the Chief Manager (Personnel), Kolkata Municipal Corporation ('KMC' for short) is under challenge in the present writ petition.

By the said order the respondent authority was of the opinion that the petitioner, being a casual field worker under the health department KMC, cannot be given regular appointment in the post of field worker due to the embargo imposed in Clause (i) of Memorandum no. 9008-F(P) dated 16th September, 2011.

The facts of the case submitted by the petitioner are as follows:

The petitioner was sponsored by the employment exchange to participate in a recruitment process for appointment in the post of Vector Control Mazdoor under KMC. Being successful in the selection, the petitioner along with 66 others was appointed as field worker on casual basis in the health department of the KMC on 'no work no pay' basis.

On and from 1st July, 2008 the service of the petitioner was discontinued as he was involved in a criminal case leading to the suicide of a permanent field worker of Borough-IX of KMC.

The Mayor in Council of KMC took a resolution in 2010 for engaging the other 65 field workers against permanent vacancies in the post of field workers on regular basis. As the petitioner was discontinued from service at that relevant point of time, he was left out from the scope of selection for being engaged on permanent basis.

The petitioner was acquitted from the criminal case by the order of the Chief Judicial Magistrate at Alipore on 16th December, 2010. He applied before the employer seeking permission to rejoin service. By order dated 21st March, 2011 the Special Officer (Health) KMC permitted the petitioner to join as contractual field worker and the petitioner rejoined service on 24th March, 2011.

Since thereafter the petitioner made repeated requests before the authority to engage him on regular basis. As the prayer of the petitioner fell on deaf ears, he approached this Court by filing writ petition being WP No. 28992 (W) of 2013 which stood disposed of directing the respondent authority to consider the representation of the petitioner.

In compliance of the direction passed by the Court, a reasoned order was passed rejecting the prayer of the petitioner. The said order was assailed by filing a further writ petition being WP No. 13604 (W) of 2014 which was disposed of by setting aside the impugned order and directing the Chief Manager (Personnel) to pass fresh order after considering all facts and circumstances. The Court specifically observed that the fact that the petitioner was acquitted from all criminal charges had not been taken into account. The note sheet dated 7th November, 2013 was also not considered. The fact that similarly situated persons have been regularized was also not considered.

In compliance of the said direction a further opportunity of hearing was given to the petitioner and the present impugned order has been passed rejecting the prayer of the petitioner yet again.

It is the specific contention of the petitioner that he stands on the same footing as that of the other 65 field workers who were engaged on regular basis in the year 2010. The criminal case which was pending against him at the relevant point of time stood dismissed and he had been acquitted from all charges. On acquittal he was permitted to rejoin service and, as such, there is no reason as to why he cannot be engaged on permanent basis.

The ground for rejection of his prayer in the earlier rejection dated 4th March, 2014 is similar to the ground for rejection impugned in the instant petition. The petitioner contends that the aforesaid ground for rejection cannot be made applicable in his case as the said memorandum was not applied in case of the other 65 employees appointed on permanent basis.

The fact that the petitioner was on duty for 240 days per year will be evident from the records maintained by the employer.

It has been submitted that there is no specific denial of the allegation made by the petitioner in the affidavit-in-opposition filed by the authority. The petitioner alleges discrimination and submits that he has a right to be treated equally as the other employees who were appointed on regular basis.

Prayer has been made for setting aside the impugned order and consequently directing the employer to appoint the petitioner on regular basis.

The prayer of the petitioner has been opposed by the respondents. Affidavit-in-opposition has been filed by the Deputy Personnel Officer attached to the personnel department of KMC wherein it has been mentioned that, the petitioner was appointed as field worker on casual/temporary (no work no pay) basis on 11th November, 1997 along with some other workers. In the year 2001 all the workers were discontinued from service. Thereafter the petitioner was reengaged

in the year 2006 to 2008 when he was discontinued from service upon initiation of a criminal case against him. He was later allowed to rejoin as contractual field worker on 24th March, 2011.

As there was a break in the service of the petitioner for nearly three years, accordingly, his service cannot be regularized as a one-time measure. There is no provision to regularize the service of an employee bypassing the constitutional provision and the settled law.

The petitioner failed to comply the stipulations laid down in the memorandum no. 2566-F(P) dated 23rd April, 2010 which mentions that casual/daily rated workers who remain attached to various government establishments for not less than ten years on 1st April, 2010 and rendered service for at least 240 days each year may be considered for allowing benefits under the said memorandum.

The petitioner also does not fall within the stipulations laid down in memorandum no. 9008-F(P) dated 16th September, 2011.

The services of the other employees were regularized vide resolution dated 12th March, 2010 as they performed duties for 240 days each year for a continuous period of five years prior to their engagement on regular basis.

The allegation of discrimination has been denied. It has been argued that the petitioners and the other employees who were engaged on regular basis do not fall in the same category and the benefit extended to the other employees cannot be made available to the petitioner.

It has been submitted that as the petitioner accepted contractual service after acquittal from the criminal case in the year 2011 without raising any objection, accordingly, the petitioner, at this stage, cannot turn around and seek regularization of service.

Prayer has been made for dismissal of the writ petition.

I have heard and considered the submissions made on behalf of both the parties and have perused the materials on record. The petitioner and 66 other employees were appointed in the year 1997 in KMC on the same date, under similar terms and conditions. All the employees performed duty till 2001. Thereafter their service stood discontinued *en masse*.

All the said employees were again permitted to rejoin service in the year 2006 and all the employees, but for the petitioner, were engaged on regular basis vide resolution adopted by the competent authority of KMC in March, 2010. As the petitioner got involved in a criminal proceeding in the year 2008 his service stood discontinued and, accordingly, his case could not be taken up for consideration at the time of regular engagement of the other employees.

After his acquittal in the criminal case in December, 2010 the petitioner was permitted to rejoin on 24th March, 2011. Apart from discontinuing the service of the petitioner, the employer did not initiate any in-house disciplinary proceeding against him. The employer readily accepted the verdict by the learned Court below and permitted him to rejoin service.

The employer contends that as the petitioner did not fulfil the terms and conditions of the memoranda dated 23rd April, 2010 and 16th September, 2011, accordingly, his service cannot be regularized.

Admittedly, the day the resolution was adopted by the Corporation for absorbing the other employees on regular basis, the petitioner was out of service. It is also admitted that the petitioner was acquitted from all the criminal charges levelled against him. The employer has accepted the decision of the learned Court below acquitting the petitioner from all charges and permitted him to rejoin service.

The only contention of the employer is that the petitioner failed to fulfil the conditions as laid down in the above memoranda. But for the fact that the petitioner was out of service from 2008 till December, 2010, all other facts in

respect to the other employees and the petitioner, are similar. Had the petitioner been in service on the date of the resolution, his service would also have been regularized by now.

From the documents annexed to the writ petition it does not appear that the petitioner and the other 65 employees stand in a different footing but for the fact that the petitioner remained out of service from 1st July, 2008 till 22nd March, 2011. If the other 65 employees qualified the conditions as mentioned in the above memoranda, then there is no reason why the petitioner will be held ineligible to qualify the said conditions.

It would have been different had the employer initiated separate disciplinary proceeding against the petitioner as the charges against the petitioner were in connection with a separate employee of the same employer. The employer did not assail the order of acquittal of the petitioner and on the contrary accepted the same.

It is true that the service conditions of casual/temporary employees are substantially different from the service conditions of regular permanent employees. The employer may have thought it fit to simply discontinue the service of the casual employee as there is no hard and fast requirement of conducting disciplinary proceeding against a casual employee prior to discontinuing his service either by way of termination or removal or otherwise. The moment the employer accepted the decision of the Court and permitted the petitioner to rejoin service, the right of the petitioner to be considered for regular engagement cannot be denied.

The Court in the earlier writ petition filed by the petitioner clearly observed that, the fact of acquittal of the petitioner from the criminal charges has not been taken into account. In the order impugned in the present writ petition there is no reflection about consideration of the fact of acquittal of the petitioner from the criminal charges. The consequence of the petitioner being acquitted from the criminal proceeding has not been considered at all. The respondent authority

merely proceeded on the basis of two memoranda and concluded that the petitioner failed to fulfil the conditions mentioned therein.

It was the duty of the respondent to take into consideration the reason as to why the petitioner failed to fulfil the conditions of the aforesaid memoranda. On the acquittal from the charges and in the absence of any disciplinary proceeding by the employer, it has to be taken that the charges levelled against the petitioner stood erased and the petitioner be reverted to the position prior to imputation of the charges. It is not that the petitioner voluntarily refrained from joining duties. It is because of the order of discontinuation, on account of the pending criminal charge, that the petitioner was restrained from performing his duties. That being the position, there is no reason, why similar benefit as provided to the other 65 employees cannot be extended in case of the petitioner. Not extending the same benefit will certainly amount to discrimination, which the employer ought not to be permitted to do.

The authority failed to take into consideration the after effect of acquittal of the petitioner from the criminal proceeding. There is no reason to deprive service benefit to the petitioner on charges, from which he was later acquitted. Denying the relief to the petitioner will amount to punishing him for no fault at all. The learned court cleared the petitioner of all charges, but the act of the employer by not engaging him on regular basis, is to penalize him.

Two opportunities were given to the respondent authority to consider the prayer of the petitioner for being engaged on regular basis but the prayer of the petitioner has been rejected on both occasions on identical lines. The same implies that, the employer does not have any other ground to reject his prayer. The ground for rejection impugned in the present writ petition being similar to the ground already set aside by the Court, the said ground cannot be reiterated again to reject the case of the petitioner.

The respondent authority mechanically rejected the prayer of the petitioner completely ignoring the facts and circumstances of the present case. Remanding

the matter to the authority for consideration afresh, will be an empty formality prolonging the litigation. It cannot be denied that by this time the petitioner has already rendered considerable years of service to KMC.

In view of the above, the impugned order of the Chief Manager (Personnel) dated 12th December, 2019 is liable to be set aside and is, accordingly, set aside. The instant writ petition is disposed of by directing the Chief Manager (Personnel) to take steps for engaging the petitioner on regular basis as has been done in case of the other 65 employees who were engaged along with the petitioner. The petitioner will, however, not be entitled to claim any financial benefit for his past years in service but will be entitled to the notional benefit for the said period.

Steps shall be taken in the matter at the earliest but positively within a period of four months from the date of communication of this order.

Writ petition stands disposed of.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)