November 23, 2023
Sl. No. 1
Court No.2
s.biswas

In the Calcutta High Court
Circuit Bench at Jalpaiguri
Appellate Side

WPA 302 of 2023

Sri Subrata Paul and others
vs.
The State of West Bengal and others

Mr. Amales Ray
Mr. Deborshi Dhar
... for the petitioners
Mr. Subir Kumar Saha, AGP
Mr. Momenur Rahman
... for the State
Mr. Subhasish Misra
... for the respondent no.5

The writ petition has been filed by some casual employees of the Cooch Behar Zilla Regulated Market Committee. Initially, the petitioners were engaged on contractual basis. The petitioners contend that each of them were appointed under the died in harness category as their fathers were employees of the erstwhile Dinhata Regulated Market Committee and had died in harness.

The petitioners were engaged provisionally as contractual workers at a consolidated monthly wage of Rs.10,000/- sometime in 2009. The letter of engagement categorically stated that the engagement was on temporary basis and was liable to be terminated at any time without assigning any notice of termination. The petitioners accepted the said appointment with such conditions and continued to work.

As the petitioners were working for a long time and the posts were falling vacant in the said market committee, The Secretary of the Cooch Behar Zilla Regulated Market Committee requested the Chief Executive Officer, West Bengal State Agricultural Marketing Board (hereinafter referred to as the Board) to absorb the petitioners against the vacant posts.

Pursuant to above request, the Executive Officer by a letter dated December 13, 2021 intimated the Secretary of the committee that there was no provision for regularization of contractual employees against any sanctioned vacant posts. The Board had adopted a resolution being the 92nd resolution to the effect that any appointment under the died in harness category would be contractual. In the 117th Board meeting, the Board adopted a further resolution that the committee would engage retired employees on contractual basis to meet the exigencies of work.

The petitioners contend that the appointment under the died in harness category could not be treated as contractual. The petitioners further contend that when the sanctioned posts are lying vacant, there was no reason as to why the petitioners should not be absorbed. Thirdly, it is contended that the petitioners cannot continue for an unlimited period on casual basis.

Learned advocate for the market committee submits that a proposal was sent to the Board, which the Board rejected. The committee did not have any other option but to engage retired employees if the need arose for execution of the work. There was no separate policy for compassionate appointment except the 92nd resolution and the communication of the Chief Executive Officer of the Board to all the secretaries of the regulated market committees to the effect that, persons engaged under the died in harness category should be appointed as casual employees. Thus, the petitioners are now treated as casual employees.

Mr. Rahman, learned advocate for the Board submits that the Board in its meeting had adopted resolutions which were to be followed by the market committee. Engagement under the died in harness category was to be casual in nature as per policy and if the committee faced any difficulty in execution of the work due to shorage of manpower, they were entitled to engage retired persons on contractual basis.

Having heard the learned advocates for the respective parties, it is not in doubt that the Board is the authority to decide the fate of the petitioners. The Board had adopted a resolution which is in the nature of a policy that all engagement in the died-in-harness category, would be contractual. Subsequently, the petitioners were converted to casual employees and are entitled to work up to 60 years with fixed remuneration. At present, the petitioners earn Rs.12,000/- per month. Further, a benefit of Rs.3 lakhs at the time of superannuation has also been made available to the petitioners. The petitioners have been given these benefits on the basis of their nature of work and their status as casual employees. The Board does not have any other scheme for one time regularization of such employees and thus, have given the petitioners the status of casual employees.

It is further stated that the committee had adopted the memorandum issued by the Additional Chief Secretary to the Government of West Bengal dated February 8, 2019. The remuneration of the casual employees were fixed on the basis of GO.1033 dated February 8, 2019, issued by the finance department. The instruction sent to the learned counsel for the respondents by the Secretary, Cooch Behar Zilla Regulatory Market Committee also confirms such fact that the petitioners were being treated as casual employees. The memorandum allowing certain benefits, protections and emoluments to such employees by the state government, was made available to the petitioners.

The written instruction is taken on record.

The law is well-settled. Regularization is not a matter of right. Casual/contractual employees cannot claim regularization. Neither can the court direct regularization in the absence of any policy of such establishment, permitting regularization.

In Union of India & Ors. vs. Ilmo Devi & Ors. reported in 2021 SCC OnLine SC 899, it was held that even the regularization policy to <u>regularize the services of the employees working on temporary status and/or casual labourers is a policy decision and in judicial review the Court cannot issue Mandamus and/or issue mandatory directions to do so</u>.

In the case of Daya Lal (supra) in paragraph 12, it was observed and held as under:—

"12. We may at the outset refer to the following well-settled principles relating to regularisation and parity in pay, relevant in the context of these appeals:

(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised.

(ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right.

(iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off

> date or seek a direction for framing of fresh schemes providing for successive cut-off dates."

In Ganesh Digamber Jambhrunkar & Ors. vs. State of Maharashtra & Ors. reported in 2023 SCC OnLine SC 1417, the Hon'ble Apex Court held as follows:

> "3. The issue with which we are concerned in this petition is as to whether by working for a long period of time on contractual basis, the petitioners have acquired any vested legal right to be appointed in the respective posts on regular basis.
>
> 4. We appreciate the argument of the petitioners that they have given best part of their life for the said college but so far as law is concerned, we do not find their continuous working has created any legal right in their favour to be absorbed. In the event there was any scheme for such regularization, they could have availed of such scheme but in this case, there seems to be none. We are also apprised that some of the petitioners have applied for appointment through the current recruitment process. The High Court has rejected their claim mainly on the ground that they have no right to seek regularization of their service. We do not think any different view can be taken."

However, the employer can adopt a one time measure for absorption of such employees. Hence, the Board, which is a body corporate under the law had adopted their own policies vide the 92nd and the 117th resolutions. The Board had adopted a policy that engagement of a dependent of a deceased employee would be on a casual basis. The remuneration and other conditions have been fixed as per the memorandum issued by the State Government with regard to the service condition of the casual/daily rated and contractual workers.

Secondly, the Board also adopted a resolution that retired employees should be re-engaged on contractual basis, if the market committees found it difficult to execute the work due to shortage of manpower. Thus, the Board has not yet adopted any measure for filling up the sanctioned posts through any recruitment drive. Such being the condition, the prayer for absorption of the petitioners at this juncture, cannot be acceded to. The petitioners are treated as casual employees and they are being granted benefits and remuneration, allegedly akin to those employed in the regular establishments of the government on casual basis.

However, there appears to be one anomaly in the remuneration fixed as it appears that although the regulated market committee claims that the petitioners are being provided with the benefits and conditions of service as per the memorandum dated February 8, 2019, issued by the Government of West Bengal (Finance Department), yet, their pay has not been enhanced at the revised rate as per the said memorandum.

Under such circumstances, the writ petition is disposed of by granting liberty to the petitioners to approach the Chief Executive Officer, West Bengal State Marketing Committee with their prayer for payment of revised remuneration as per the memorandum dated February 8, 2019, issued by the Additional Chief Secretary to the Government of West Bengal. If the Board had accepted such memorandum, in that event, the revised remuneration in my, prima facie, view should also be paid to the petitioners as they are admittedly being treated as casual employees under the committee, which is a statutory body. They have been discharging their duties on and from 2009.

Secondly, the Board should also take an informed decision as to what would be the fate of the innumerable posts which are lying vacant. When the posts have been retained, but are lying vacant for years together, a decision should be taken by the Board, whether as a one time measure, a policy should be framed for absorption of casual employees, who have been rendering service since 2009.

The entire issue shall be decided by the Board upon taking into consideration the several decisions of the Hon'ble Apex Court. Article 43 of the Constitution provides that the State must secure living wages in order to ensure a decent standard of living for the workforce.

In my opinion, Rs.12,000/- as remuneration for persons who have been rendering service under the Regulatory Market Committee, Cooch Behar since 2009 as casual employees, deserve enhancement and revised wages in terms of government memorandum referred to hereinabove, should be made admissible, unless there is any other embargo prohibiting such enhanced rate.

The representation of the petitioners shall be made within a period of four weeks and the same shall be considered upon hearing a representative of the petitioners and a representative of the market committee. A reasoned order shall be passed and communicated. The entire exercise shall be completed within a period of three months from the receipt of the petitioners' application.

The writ petition is accordingly disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)