

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA 1068 of 2021

Rekha Dhar
Vs.
The State of West Bengal and Ors.

Mr. Biblab Kumar Sengupta
Mr. Kumar Shantanu
Mr. Alok Bhowmick
Ms. Kausturi Hazari
...for the petitioner

Mr. Bikramaditya Ghosh
..for the respondent Nos. 3, 4 and 5.

Mr. Subir Kumar Saha, AGP
Mr. Momenur Rahman
..for the State

Item No. 04

Judgment on: 06.02.2023

BIBEK CHAUDHURI, J. : –

By an order dated 17th August, 2021 in the instant writ petition
a Co-ordinate Bench observed as follows:-

“Prima facie, this Court finds that the confusion with regard to the
period of service when the petitioner was not treated to be in regular

appointment has been created by the department concerned and a retired employee of the Parishad should not be put through such harassment because of inter-departmental confusions and discrepancies. In the affidavit the Joint Secretary to the Government of West Bengal shall also indicate the fate of the matter which is pending for approval of the Cabinet. In the meantime, as the respondents are willing to release the provisional pension, let the same be disbursed to the petitioner upon compliance of all formalities by the petitioner. All payment and acceptance will be without prejudice to the rights and contentions of the parties in the writ petition. The disbursement of the provisional pension shall be made on and from the month following the compliance by the petitioner. Pendency of this writ petition shall not debar the Government from taking appropriate decisions with regard to the regularization of the petitioner by creation of a supernumerary post, if required.

Prima facie opinion of the Court is that the petitioner is not responsible for such confusions or discrepancies, which may have occurred in her service for a particular period. The court reposes faith and trust in the Government that the matter will be resolved with sympathy and sensitivity.”

However, experience of this Court in the instant case like other matters too that the State Government has failed to discharge their role in achieving faith and trust of the highest seat of judiciary in the State.

Let me state in a nutshell the factual circumstances. In or about 1992 a Government notification was issued for recruitment of candidates for the post of Accounts Clerk (Typist). The petitioner was sponsored by the employment exchange to appear in the said recruitment process by a letter dated 26th June, 1992. On 15th July, 1992, the Secretary, Siliguri Mahakuma Parishad directed the petitioner to appear for writing, typing and oral test to be held on 19th July, 1992. The petitioner being successful in the recruitment test joined the service as Accounts Clerk on 13th August, 1992. Subsequently, she was permitted to the post of Upper Division Assistant by a memo issued by the Executive Officer, Siliguri Mahakuma Parishad. Subsequently, she retired from service on superannuation on 30th September, 2019 on completion of 27 years uninterrupted and unblemished service.

The trouble began when the pensionary benefits of the petitioner was required to be issued by the employer.

It appears from the affidavit-in-opposition filed by the respondent no. 5, Executive Officer, Siliguri Mahakuma Parishad that at the time of her joining in the year 1992 there was no vacant post in the post of Accounts Clerk (Typist). In spite of no vacancy the Department appointed the petitioner in such post and she continued to work as Accounts Clerk (Typist) to the satisfaction of the authority. It is also submitted by the respondent no. 5 that subsequently one person was permitted in the year 1997. Therefore, it is the contention of the

respondent no. 5 that the appointment of the petitioner during the period between 1992 and 1997 was irregular and during such period it is not possible for Siliguri Mahakuma Parishad to disburse any pension for an irregular appointee.

It is ascertained from the submission made by the learned Advocate for the State that the matter is still pending before the Cabinet for taking appropriate decision so that the petitioner may get her pension and other benefits on superannuation.

It is the duty of the employer to calculate vacancy before initiation of recruitment process. On the basis of vacancy and after ascertaining roster point etc., the vacancy is calculated by the authority and notice is issued. The petitioner acted upon such vacancy notice. It is also required to mention that the petitioner did not act on her own, she was sponsored by the employment exchange to appear in the recruitment process for the post of accounts clerk. She appeared in the examination and being successful was appointed by the concerned authority. During her service period she never issued any notice that her appointment was irregular. After her superannuation the respondents cannot take any such plea and she is to be recruited as a permanent employee in the establishment of Siliguri Mahakuma Parishad.

It is the experience of this Court that the State Government is sitting tight over the matter by placing the matter in Cabinet for

creation of supernumerary post to regularize the service of the petitioner for the period between 13th August, 1992 to 20th March, 1997.

In view of such circumstances, the State Government is specifically directed to take a firm decision with regard to creation of supernumerary post within a period of six weeks. It is made clear that pension of the petitioner cannot be denied accepting her service from 13th August, 1992 to 30th September, 2019. The Principal Secretary, Department of Panchayat and Rural Development, State of West Bengal and the Joint Secretary, Department of Panchayat and Rural Development, State of West Bengal is directed to move the State Government for taking such decision within the timeframe as stated above. The final decision of the State Government shall be communicated to the petitioner and respondent nos. 4 and 5 within two weeks from the date of Cabinet decision. The pension payment order shall be issued in favour of the petitioner within two weeks thereafter. It is made clear that the time limit fixed by this Court hereinabove is peremptory, mandatory and must be complied failing which the petitioner is at liberty to take necessary action in accordance with law against the respondents and also against the Principal Secretary, Department of Panchayat and Rural Development, Government of West Bengal.

Parties are at liberty to act on the server copy of this order.

(Bibek Chaudhuri, J.)

Suman/Srimanta, A.R.(Ct.)
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