

28.11.2023
Sl. No.48
srm

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

W.P.A. No. 2537 of 2023

Debaprasad Karmakar

Vs.

The State of West Bengal & Ors.

Mr. Nabankur Paul,
Mr. Satyaki Basu

....for the Petitioner.

Mr. Subir Kumar Saha,
Mr. Momenur Rahman

.....for State-respondents.

The writ petition has been filed by an erstwhile Data Entry Operator (DEO) who had been allegedly made to continue as a Data Entry Operator in the office of the Project Officer-cum-District Welfare Officer, Backward Classes Welfare and Tribal Development, Jalpaiguri, even after termination.

According to the petitioner, the concerned employer continued to use the services of the petitioner as a Data Entry Operator even after the alleged termination, but refused to pay the salary of Rs.11,000/- per month, as was originally paid to him before such alleged termination.

The petitioner contends that the contract of the petitioner with the authority under whom he was engaged, was renewed from year to year. The contention of the authorities, that subsequently the services of the petitioner who was engaged on a contractual basis through an agency had been terminated, was false and not proved by any documentary evidence. Rather, it is contended that his service was used continuously by the said office where he had been engaged, without paying the petitioner remuneration of Rs.11,000/- per month.

Challenging such inaction, the petitioner had moved this Court by filing an application under Article 226 of the Constitution of India. The said application was disposed of with a direction upon the concerned authority to take a decision. The authority, upon coming to a finding that the petitioner had been given sporadic work even after the termination of the contract with the agency, decided to pay daily wages at the rate of Rs.382/- per day and consequently a total sum of Rs.1,32,936/- from the period November 2017 to May 2019 had been paid to the petitioner. The petitioner contends that during such period from November 2017 to May 2019, the petitioner continued to work as a DEO and was entitled to

Rs.11,000/- per month, as was originally paid to him, when he was working as a DEO on contractual basis.

The authority contends that after a fresh selection process had been initiated and the DEOs were recruited by open competition, the services of the DEOs who were supplied by the agency, namely, Diligent I-Tech Pvt. Ltd. was discontinued and necessary intimation was also given to the said service provider. The petitioner, being an employee of the erstwhile service provider, did not have any direct link with the authority concerned. It is further stated that the service provider was informed about the discontinuation of the contract, when the department of Backward Classes had issued a notification directing selection of the DEOs to be engaged in the office in which the petitioner and two others were engaged, through open competition.

The petitioner has relied on some documents which indicate that the petitioner had been engaged by the Project Officer, Backward Classes Welfare and Tribal Development, Jalpaiguri as a room-in-charge in an examination conducted for selection of candidates for free WBCS coaching.

It is also on record that some sporadic works were being done by the petitioner, for which, the authorities

have already paid the petitioner daily wages at the rate of Rs.382/- per day for 348 days, without counting the hours of work or the nature of work done by the petitioner, upon accepting the fact that petitioner used to visit the office and periodically discharged assigned functions. However, there is nothing on record to show that the petitioner continued to do the data entry work after the three DEOs were selected by open competition or that the petitioner was engaged on a regular basis for perennial work.

Secondly, the petitioner has not been able to produce any document which would indicate that the contract either with the petitioner or with the agency, had been renewed after November 2017.

In the report in the form of an affidavit, affirmed by the Project Officer-cum-District Welfare Officer, Backward Classes Welfare, Jalpaiguri, it has been contended that the petitioner was engaged through an agency named Diligent I-Tech in terms of the Backward Classes Welfare Department's Notification No.276 BCW/SE-04/2014. He was a hired staff, nominated by the agency. No written examination process or interview process had taken place, at the time of engagement of the petitioner. Two other DEOs, namely Smt. Sangita Sarkar and Sri Prithwiraj

Dutta, were also engaged through the same agency in the office of the Sub-Divisional Officer, Mal and Sub-Divisional Officer, Jalpaiguri Sadar, respectively. The Project Officer-cum-District Welfare Officer used to pay a consolidated amount of Rs.33,000/- (Rs.11,000/- X 3) to the agency, for supply of three DEOs. There was no direct contract between the DEOs with the Project Officer. Sometime in 2017, the Backward Classes Welfare Department, issued a memorandum directing the authority to discontinue hiring DEOs from the agencies and resolved to recruit DEOs directly through open examination, strictly on the basis of a merit list prepared on the marks allotted in the written test (50 marks), Trade Test (30 marks) and interview (20 marks). Accordingly, a recruitment process for engagement of three DEOs, was taken up by the district level selection committee. The petitioner did not participate in the examination although, the other two persons, who were initially engaged through the agency, had participated in the recruitment process. Accordingly, three DEOs were recruited after the process was completed in October 2017. After completion of the recruitment process, the Project Officer-cum-District Welfare Officer, Jalpaiguri sent a letter to the Manager, Diligent I-Tech Pvt. Ltd. for discontinuation of the services

of the three DEOs with effect from November 1, 2017. The services of Sangita and Prithwiraj were also discontinued. However, the petitioner used to attend the office from November 1, 2017 despite severance of the contract with the agency.

It appears that the petitioner was engaged in some sporadic works. It also appears that the petitioner, on one occasion, was deployed between October 15, 2018, for data entry work in view of scarcity of staff during the puja vacation.

Thus, this Court is of the view that the petitioner, who was engaged through an agency, could not continue to claim to be a regular Data Entry Operator after termination of the contract with the agency. The authority was within its legal right to decide to do away with the process of hiring DEOs through agencies and engage its own Data Entry Operators, through direct recruitment and by open competition. Open competition, for engagement in public offices, is the settled norm and the authority had rightly decided to do so. Secondly, the petitioner, knowing fully well about the recruitment process which was advertised, did not participate at the recruitment process. As he continued to do some work, on a sporadic basis, as appears from the record, the authority

decided to pay him daily wages at the rate Rs.382/- per day for the entire 348 days, during which the petitioner claimed to have worked, without asking for any further verification.

The petitioner also has not been able to show that on and from November 2017, the contract had been renewed with him directly. Rather, the engagement of the petitioner, through the agency, is not in dispute.

Under such circumstances, this Court does not find that the petitioner has any right to claim Rs.11,000/- per month as was paid to the, Data Entry Operators. It is also evident that the money used to be paid by the project officer, directly to the agency and not to the petitioner.

Under such circumstances, the order impugned does not call for any interference. The action of the authority is justified. Even assuming that the petitioner was allowed by the office to continue to attend office and perform certain duties, such action of the authority is contrary to law and no vested right had been conferred on the petitioner. Such continuation was not based on any office order or decision of the authority, but may have been a private arrangement with the petitioner, for which the petitioner was paid daily wages.

Accordingly, the writ petition is disposed of, without granting any reliefs as prayed for.

However, there shall be no order as to costs.

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

(Shampa Sarkar, J.)