

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA 3269 of 2022

**Subhajit Das and Ors.
Vs.
The State of West Bengal and Ors.**

Mr. Ekramul Bari
Mr. Debajit Kundu
...for the petitioners

Mr. Bikramaditya Ghosh
Mr. Momenur Rahman
...for the State

Item No. 07

Judgment on: 07.02.2023

BIBEK CHAUDHURI, J. : –

The writ petitioners, 23 in number are aggrieved. The repeated and perceived inaction on the part of the West Bengal State Health and Family Welfare and its functionaries, respondents herein in considering their representation for enhancement of remuneration with other reliefs as per Notification No.3998-F (P2) dated 15th July, 2019.

It is the case of the petitioner that in the year 2002-2003 on the basis of an advertisement published by the respondent No.1 for

appointment of contractual workers under the West Bengal Health Systems Development Project the petitioners were appointed as the contractual laboratory technicians in malaria eradication project in the district of Jalpaiguri at a consolidated remuneration of Rs.8,500/-. Subsequently, the Joint Secretary of the Health and Family Welfare Department issued a notification dated 28th September, 2007 for retention of paramedical staff including nursing staff in the different districts engaged under S.H.S.D.P-II. The petitioners have been working in the above mentioned post without any break from their date of appointment in the year 2002-2003 and they have taken active part in malaria eradication programme. The case of the petitioners is emboldened by a letter written by the District Magistrate, Jalpaiguri to the Principal Secretary, Health and Family Welfare Department where she opined that Jalpaiguri is an 'SIC' endemic malaria District and non-detection may lead to deterioration of the health scenario in the district. Thus, he recommended enhancement of remuneration of 36 contractually engaged Laboratory Technicians. As the petitioners' grievance was not looked into by the department, they were compelled to file a writ petition being WPA No.573 of 2021 dated 23rd February, 2021 which was disposed of by a Co-ordinate Bench directing the respondent authority to take a decision for enhancement of remuneration of the petitioners at par with other employees as made under Memo No.3998-F(P2) dated 15th July, 2019. The Secretary,

Department of Health and Family Welfare passed a reasoned order after disposal of the aforesaid writ petition on the following issue:-

“To grant protection of service till age of 60 years and to enhance the monthly remuneration at par with the other employees as made under Memo No. 3998-F(P2) dated 15th July, 2019. The decision taken by the Secretary, Department of Health and Family Welfare, Government of West Bengal is reproduced below:-

In the order dated 23.02.2021, the Hon’ble Justice directed to take a decision for enhancement of the remuneration at par with the other employees as made under Memo No. 3998-F(P2) dated 15.07.2019. On going through the said memo it appears that the said memo is applicable only to such employees who are redeployed from any Govt. entity which was winding up or rendered some manpower excess due to restructuring. The petitioners’ remuneration cannot be enhanced at par with other such contractual employees of the Govt. as the terms and condition of the service are totally different than those contractual employees who are covered under the above order. Petitioners also do not possess same qualification and recognized Diploma Certificate from Govt. affiliated institute.

However, considering the direction of Hon’ble Justice Sekhar B. Saraf and the long association of the petitioners with the West Bengal State Health & Family Welfare Samiti, it is decided that the proposal for

enhancement of their remuneration allowing them a fixed percentage of increment per annum as given to the staff of NHM and State Samiti will be placed before the next executive meeting of Staff Samiti for consideration. In the meantime they will be drawing remuneration of Rs.10,000/- till further decision towards enhancement is taken by Executive Committee, West Bengal State Health & Family Welfare Samiti.”

The petitioners have annexed Memorandum dated 3998-F(P2) dated 15th July, 2019 issued by the Finance Department, Audit Branch. On careful perusal of the said Memorandum it is ascertained that the said Memorandum was issued with a view to ensuring the optimal use of public funds and to use the available manpower in the most productive and effective way in the event of restructuring or winding up of several entities namely – Companies, Corporations, Undertakings, Statutory Bodies etc. wholly or partially owned or controlled by the Government of West Bengal or by any Body, which is funded wholly or partially by the Government of West Bengal, it was decided in terms of memo No.3967-F(P) dated 01.08.2014 to redeploy the excess contractual /casual/piece-rated/daily rated workers engaged by those entities /organizations to other entities/organizations and in Government Offices under any project/scheme wherever necessary on the same rate of remuneration as they received the parent entities/organizations/offices.

Thus, the memorandum states about the employees working in companies, corporations, undertakings, statutory bodies etc. who are redeployed to other entities, organizations and in Government offices under any project and scheme.

The petitioners are not redeployed under the CMOH, Jalpaiguri. They were freshly employed in the year 2002-2003 as contractual employees in a consolidated amount of pay. Therefore, I do not find any substantial error in the finding of the Secretary, Health and Family Welfare Department, Government of West Bengal in his written order with regard to non-application of Memo No. 3998-F(P2) dated 15th July, 2019. However, the Secretary himself in his order enhanced the pay of the petitioner from Rs.8,500/- to Rs.10,000/-. He also opined that the West Bengal State Health and Family Welfare Samiti is the authority to take decision with regard to enhancement of pay of the petitioners. The West Bengal State Health and Family Welfare Samiti has not taken any decision as yet.

This Court is not unmindful to note that in Government establishments under the control of various Secretariats there are contractual employees having higher scale of pay with other emoluments like 60 years job, health insurance and consolidated retirement benefit as per the decision of the State Government.

In view of such circumstances the Chairperson, West Bengal State Health and Family Welfare Samiti is directed to consider the case

of the petitioners sympathetically within a period of three weeks and take a firm decision about enhancement of scale of pay of the petitioners considering the fact that they are discharging their duties continuously and with the satisfaction of the authority as revealed in page 68 of the instant writ petition and communicate the order within one week thereafter to the petitioners after giving an opportunity to the petitioners or their authorized representative of hearing.

The instant writ petition is accordingly disposed of on contest.

(Bibek Chaudhuri, J.)

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