

28.11.2023
Sl. No.1
srm

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

W.P.A. No. 2500 of 2023

Subhajit Das & Ors.

Vs.

The State of West Bengal & Ors.

Mr. Ekramul Bari,
Sk. Imtiaj Uddin

....for the Petitioners.

Mr. Hirak Barman,
Mr. Momenur Rahman

.....for State-respondents.

Affidavit-of-service is taken on record.

The writ petition has been filed challenging an order May 25, 2023 passed by the Chairperson, West Bengal State Health & Family Welfare Samiti, Department of Health & Family Welfare, Government West Bengal. Such order was passed pursuant to a direction of a learned coordinate Bench of this Court dated February 7, 2023 in WPA No.3296 of 2022. By the said order, the Chairperson, West Bengal State Health & Family Welfare Samiti was directed to consider the case of the petitioners

sympathetically, within a period of three weeks upon taking a firm decision with regard to the enhancement of scale of pay of the petitioner. The Court had considered that contractual employees under the government establishments, various departments and local authorities were given pay protection, emoluments service benefits even if they continued as contractual employees, namely, service up to 60 years, onetime retirement benefit and a continuous opportunity of pay revision on the basis of various memoranda, issued from time to time.

From the order impugned, it is reflected that the benefit of the pay parity scheme dated December 22, 2011, was not given to the petitioners as the petitioners did not possess the requisite qualification of higher secondary along with a DMLT certificate from a government recognized institute. However, the remunerations given to the petitioners were enhanced by Rs.400/- by the Executive Director, State Health & Family Welfare Samiti and was fixed at Rs.8,900/- with effect from April 1, 2020. Considering the matter sympathetically, the authority granted an annual increment of 3% and fixed the remunerations of the petitioners at Rs.10,763/- with effect from June, 2023. Such fixation was done only on the ground that the petitioners had been discharging their

duties continuously and to the satisfaction of the authority. The authority held that no benefit of annual increment could be allowed to the petitioners in line with the facilities given to other contractual employees of National Health Mission/State Health & Family Welfare Samiti and further, the circular of the government dated July 15, 2019 was not applicable to the petitioners.

The records reveal that the District Magistrate, Jalpaiguri had recommended enhancement of the remuneration of 36 contractually engaged laboratory technicians (petitioners) who were recruited in 2002 under the Malaria Control Programme at a monthly remuneration of Rs.3,800/-. In the year 2010, the remuneration was increased to Rs.8,500/-. Thereafter, the 36 laboratory technicians were placed under various primary health centres. The Executive Director, West Bengal State Health & Family Welfare Samiti issued a memorandum to the Financial Adviser, The Programme Officer, The Secretary of the Samitis and Chief Medical Officer of Health with regard to parity in monthly consolidated remuneration to be paid to persons engaged on contract, in different programmes under the West Bengal State Health & Family Welfare Samiti.

The order impugned indicates that in order to come within the purview of the said memorandum, the petitioners should have had the qualification of higher secondary along with a DMLT certificate from a government recognized institution.

This Court does not find that such eligibility criteria has been mentioned in the memorandum which is relied upon by the petitioners and on the basis of which the District Magistrate, Jalpaiguri had recommended that the revised scale of pay of Rs.17,220/- given to the employees classified under Group-IV of the said memorandum, should be given to the petitioners. The memorandum indicates that based on the recommendations of a committee, the samiti had decided to revisit the pattern of consolidated remuneration allowed to contractual employees engaged in different health centres under the said samiti as set out in Annexure 2 of the said memorandum. Annexure 2 would be effective, only after submission of the relevant information in Annexure 1.

It also appears that the said memorandum was issued only to bring a parity amongst all contractual employees of the same group, considering the years of service they had rendered as on April 1, 2009 and their remuneration was to be fixed with effect from January 1,

2012. The petitioners were engaged by the samiti on contractual basis and they continue to render service at the primary health centres.

Having considered the order impugned and the reasons given for allowing an annual increment of 3%, this Court is of the view that the said order deserves to be set aside on the following grounds:

- (a) The scheme/memo dated December 22, 2011 with regard to the pay parity of all contractual employees under the samiti, in the same group, has not been taken into consideration in its true spirit.
- (b) Although, the authority was of the opinion that the pay parity could not be given to the petitioners as the petitioners did not have adequate qualification, the memorandum as annexed to the writ petition does not indicate that in order to come within the pay parity scheme, the petitioners required to have higher qualification. The memorandum was meant for all contractual employees engaged under any programme of the Welfare Samiti. The petitioners were also engaged in the Malaria Control Programme.

- (c) The petitioners were employed under the samiti sometime in 2002 as laboratory technicians under the Malaria Control Programme. Thereafter, they were absorbed by the samiti in different primary health centres as contractual employees. Their remuneration was enhanced to Rs.8,900/- per month with effect from April 1, 2020. There does not appear to be any reason in the order which indicates what was the basis for fixation of the remuneration at Rs.8,900/- per month. The Executing Director had enhanced the remuneration by Rs.400/- from what was given in 2010. Such enhancement ought to have also been based on some policy or office order or decision of the authorities and could not have been an arbitrary exercise.
- (d) There are various notifications of the state government by which protection of service conditions with revised emoluments, onetime retirement benefit and service upto 60 years have been prescribed. Such notifications have been made applicable to not only contractual, daily wages and casual employees in government offices alone, but also under

various local authorities and other establishments. This aspect was also not considered, although another learned coordinate Bench had directed by an order dated February 23, 2021, that the case of the petitioners should be considered in the light of those memoranda.

- (e) Finally, the Court also does not find any basis for allowing 3% annual increment with effect June 23, 2022 by recording that such annual increment has been given, keeping parity with the other staff of the National Health Mission (NHM). If such was the case, that other staff of the NHM were getting emolument which was equal to the sum arrived at upon grant of 3% annual increment to the petitioners, the detail of such calculation and the remuneration of such staff mentioned in the said order, ought to have been provided. It was also mentioned that the petitioners be treated as semi-skilled employees in terms of the labour department's memorandum. The Court finds that the authority was struggling hard to fit the petitioners into a group and fix the

remuneration accordingly, without any rational basis. The authority was also conscious of the fact that some increment should be given to the petitioners.

- (f) Why the petitioners were supposed to be treated as semi-skilled employees as per the labour department's memorandum and not as contractual employees under the samiti, although they were engaged under the said scheme by the samiti since 2002 and were rendering their services in primary health centres, is also not clear to the Court.

This Court is of the view that the authority was rather confused in deciding the matter as he had not come to a proper and concrete finding as to how to treat the petitioners and how to decide the remuneration of the petitioners, although the District Magistrate had categorically stated that the petitioners should be allowed the pay under Group-IV of the parity scheme dated December 22, 2011.

Under such circumstances, the order impugned is set aside.

The said authority, i.e., the Chairperson West Bengal State Health and Family Welfare Samiti, shall once

again decide the issue upon taking into consideration the questions which have been raised by this Court in the foregoing paragraphs of this order.

The entire exercise shall be completed by the authority, within a period of two months from the date of communication of this order upon giving an opportunity of hearing to any representative of the petitioners to place their cases.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)