

OD 7

WPO 489 of 2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

AMAR GUHA ROY
VERSUS
THE STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE LAPITA BANERJI

Date : 11th August, 2023.

APPEARANCE:

Mr. Debnath Ganguly, Adv.
Mr. Aranya Saha, Adv.
Mr. Supriyo Dutta, Adv.
...for the petitioner.

Mr. Swapan Kr. Dutta, Adv.
Mr. Rajat Dutta, Adv.
...for respondent nos. 2 & 3.

The Court: - The petitioner was appointed in the post of Darwan, in the office of the Chief Judge, City Civil Court. Under the Bengal Civil Courts Clerical and Inferior Services (Recruitment, Discipline & Appeal) Rules, 1941, a person holding a clerical or inferior post was required to be confirmed after the completion of the initial probationary period of two years.

The petitioner's grievance is that despite having completed a period of two years in 2011, the petitioner's service was confirmed with effect from September 1, 2017 by an order dated September 15, 2017 issued

by the Chief Judge, City Civil Court, Calcutta. The petitioner was appointed to the post of Darwan vide order No. 159 dated May 18, 2009.

During the pendency of previous writ petition being WPA No. 25442 of 2010, the learned Chief Judge, City Civil Court, Calcutta directed the petitioner's confirmation to be kept in abeyance till the disposal of the writ petition before this Hon'ble High Court.

During the pendency of the writ petition, the writ petitioner made another representation for confirmation of his service. One Committee was constituted for the said purpose. The said Confirmation Committee passed an order in 2017 on September 15, 2017 confirming the service of the petitioner from September 1, 2017.

From the first Report-on-Affidavit affirmed on behalf of the Chief Judge, City Civil Court on April 19, 2023, it appears that due to pendency of the writ petition, the petitioner's confirmation was not done. By an order dated May 12, 2023, this Court *prima facie* refused to accept such submission since the petitioner's confirmation was, in fact, done during the pendency of the previous writ petition being WPA 25442 of 2010. The previous writ petition was dismissed for default after the order of confirmation passed by the Chief Judge. Therefore, the decision of not confirming the petitioner's service during the pendency of the previous writ petition was modified by the Chief Judge, himself.

From the additional Report-on-Affidavit filed on behalf of the learned Chief Judge, it appears that no explanation has been given as to why the Confirmation Committee did not confirm the petitioner's service from 2011. No reason has been given why the Confirmation Committee sought to confirm the service of the petitioner from September 1, 2017.

Now a point is urged on behalf of the State Respondents that since the petitioner has not agitated his grievance in respect of confirmation of his service for past six years, till such time he filed the present writ petition, the said petition should be dismissed on the ground of delay of latches and acquiescence. This Court finds no merit in such submission since the petitioner is still in service and the employer employee relationship is subsisting. The petitioner's grievance is due to the violation of his rights committed by the employer without any justifiable reason and contrary to the 1941 Rules.

It is submitted on behalf of the petitioner, that the petitioner prays for deletion of prayer (d) in the present writ petition. Such prayer is dismissed as withdrawn.

The respondent no. 2/learned Chief Judge, City Civil Court is directed to reconsider the petitioner's prayer for confirmation with effect from May, 2011 pursuant to the 1941 Rules stated hereinabove. Such prayer shall be considered upon giving a personal hearing to the

petitioner and a reasoned order shall be passed within six weeks thereof. Such reasoned order shall be communicated to the petitioner within two weeks thereof.

It is made clear that since this Court has clearly observed that pendency of the previous writ petition cannot be taken into consideration while considering the date of confirmation of the petitioner. The respondent no. 2 shall proceed without rejecting the petitioner's prayer on that ground, while considering the representation of the petitioner.

With the directions aforesaid, **WPO No. 489 of 2023** is **disposed of**.

All parties are to act on a server copy of this order.

An urgent certified copy of this order, if applied for, be made available to the parties subject to compliance with all requisite formalities.

(LAPITA BANERJI, J.)