

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPO 562 of 2019

Goutam Kumar Das

Vs.

The State of West Bengal & Ors.

For the Petitioners : Mr. Debdutta Basu.

For the Respondent Corporation : Mr. Niladri Bhattacharjee,
: Ms. Deblina Chattaraj,
: Ms. Priyanka Kundu,
: Ms. Angana Dutta.

Heard On : 19.12.2023

Judgment On : 19.12.2023

Rai Chattopadhyay, J.

1. The writ petitioner is aggrieved with the order of the respondent authority, dated 14.08.2019.
2. The impugned order apparently would appear to have granted benefit to the writ petitioner of regularization of service in a higher post, that is, of a 'welder'. Though the writ petitioner is aggrieved and dissatisfied with the same and hence this case.
3. The writ petitioner has claimed the benefit of regularisation from the date of implementation of a notification dated 14.10.2009. The same has notified for regularisation of 1010 employees of the Calcutta Tramways

Company. May the relevant portion of the notification dated 14.10.2009 be extracted, as herein below:-

*“Government of West Bengal
Transport Department
Writers’ Buildings
Kolkata-700 001*

No.4270-WT/TR/O/7T-03/09

Kolkata, the 14th October, 2009

NOTIFICATION

The Governor is pleased to modify the order no.4137-WT/TR/O/7T-03/09) dated 24.09.2009 partially and to regularize the services of 1010 (One thousand ten) nos. daily rated workers who have been working in the Calcutta Tramways Company (1978) Ltd. (CTC Ltd.) for more 10 (Ten) years as proposed by MD, CTC Ltd. against the vacant posts in relaxation of the usual norms in accordance with existing rules of CTC Ltd. subject to (i) taking necessary leave from the Hon’ble High Court Calcutta for the relevant Court cases and (ii) verification of antecedent and educational qualification etc.

The Order issues with concurrence of Finance Department Gr-‘R’ vide U.O. No. 217 dated 24.09.2009.

*By order of the Governor,
Sd/- Sumantra Choudhury
Additional Chief Secretary to the Govt. of W.B.”*

- 4.** Pursuant to the said notification dated 14.10.2009, the writ petitioner was regularised with the respondent with effect from 01.10.2010, though in a post of lower cadre, that is as ‘khalasi’ and at a corresponding lower scale of pay. For this the writ petitioner was aggrieved and submitted representations and also has moved this Court on earlier two occasions. He has been able to secure two orders from this Court earlier, that is, orders dated 22.11.2016 and 07.03.2017, by dint of which the Court has

directed the respondent authority to consider writ petitioner's grievance and prayer, in his representations.

- 5.** On both the occasions the respondent authority, upon consideration of the prayer of the writ petitioner, conceded and accepted as regards his right of regularisation in a post, at par of the post in which he was engaged initially before coming into force the notification dated 14.10.2009. At the same time, however, the respondent authority has also held in its orders dated 10.01.2017 and 05.05.2017 respectively, that, there would not be any requirement of a 'welder' at that point of time and also that the petitioner's case would be considered, as and when any such requirement would arise.
- 6.** Later on the writ petitioner was made to appear for a practical test. Upon successful completion of the same, he has been issued the impugned letter dated 14.08.2019, to allow his promotion to the post of a 'welder', with effect from the date of that letter. So far as the term 'promotion' as is occurring in the said order dated 14.08.2019, the respondent herein has conceded that the same may be read as 'regularisation', and that the respondent would not have any objection to the same. Hence, for the purpose of this order the term 'promotion' mentioned in the said letter dated 14.08.2019, is being read as 'regularisation'.
- 7.** Petitioner's further grievance is that, by dint of the said impugned letter, he has been dislodged from his original and parent establishment and his service has been unauthorisedly and illegally placed with some other organisation, to which he never belonged. However, according to the submissions made by the respondents, pursuant to the order of this Court dated 26.11.2019, such a grievance of the writ petitioner has already been mitigated, by reassigning him to the post of a 'welder' in the Calcutta Tramways Company, where he was appointed initially.

Therefore, there is no requirement for this Court to go into this point, any further.

- 8.** Mr. Debductta Basu for the petitioner has submitted that his client has been subjected to gross arbitrariness, illegality, unreasonable hustle and harassment and also discriminatory treatment by the respondent authorities. He says that petitioner's right to regularisation has accrued, pursuant to the notification dated 14.10.2009 and the same has also been accepted by the respondent authority, by dint of their orders dated 10.01.2017 and 05.05.2017 respectively. Even thereafter, denial by the respondent authority, to the writ petitioner, of the benefits, has immensely prejudiced the rights of the writ petitioner, he says. According to Mr. Basu the regularisation of the writ petitioner in a post with lower scale of pay, has violated the notification dated 14.10.2009 in one hand. On the other, the petitioner has been deprived of his rightful post and emoluments, which directly infringes his fundamental right to life.
- 9.** The writ petitioner has relied on to two other instances of two employees namely Robin Mondal and Nirmal Ghosal, who, he says, are similarly situated as himself. Pursuant to this Court's order, both of them have been granted regularisation in their substantive posts, though they were regularised initially, pursuant to the same notification dated 14.10.2009, at a post of lower pay scale, i.e, 'khalasi', similarly as the present writ petitioner. According to the writ petitioner, they have also been paid the arrear salary for the period during which they were placed as 'khalasi', after regularisation of service in a higher grade post. By citing these incidents the petitioner has pleaded discrimination having been exercised against him. He has said that Robin Mondal and Nirmal Ghosal were regularised as 'khalasi' like him, and thereby were down graded in the pay scale, similarly like him. However, pursuant to order of this Court, those persons have been reallocated to their present posts and cadre

with full arrear salary, which the writ petitioner has been deprived of. The petitioner has prayed for similar benefit to be extended to him, in this writ petition.

10. Ms. Deblina Chattaraj, who is representing the respondent no.2/West Bengal Transport Corporation Limited (formally known as Calcutta Tramways Company (1978) Limited), has however supported the action of the said respondent and disputed the contentions and prayers of the writ petitioner.

11. Firstly, she has submitted that as per direction of this Court, the writ petitioner has been given sufficient opportunity of hearing not once but twice, when he has duly represented his case before the authority. She says that the authority has never been negligent or ignorant about the rights of the writ petitioner. Ms. Chattaraj, has relied on the said two orders passed by the respondent no.2 dated 10.01.2017 and 05.05.2017 respectively. She has emphatically submitted that the respondent no. 2 has never denied the rights of the petitioner for regularisation, pursuant to the notification issued by the Government of West Bengal dated 14.10.2009. Nevertheless, according to her the said respondent could not have ignored the greater institutional interest by ignoring to acknowledge that there was actually no requirement for engagement of a 'welder' in the bus division of respondent no.2. She has emphasised that unnecessary engagement of a man power would render unnecessary financial burden upon the respondent and the public exchequer could not have been used in that manner. Ms. Chattaraj has categorically submitted that in the teeth of the order of the respondent no.2 dated 10.01.2017 the Hon'ble Court has passed its order dated 07.03.2017, directing the respondent to consider the representation of the writ petitioner only, without going into the merits of the case by determining whether the petitioner should be regularised or with effect from which

date if he be regularised at all. According to Ms. Chattaraj this implies that even the orders of the department dated 10.01.2017, or the subsequent order dated 05.05.2017 have not given rise to any substantive right of the writ petitioner, for regularisation in a post of higher pay scale like 'welder', since from the date of notification, that is, 14.10.2009.

12. Thereafter Ms. Chattaraj has submitted that the writ petitioner has been awarded with all the applicable emoluments from the date of his regularisation in the post of 'welder', i.e, 14.08.2019 (that is the date of the impugned later). According to her, the respondent no. 2 could not have provided the writ petitioner any benefit of higher pay scale for the period when the writ petitioner was not placed at the higher place of posting.

13. Ms. Chattaraj has controverted the allegation raised by the writ petitioner regarding exercise of discrimination against him, by paying arrear to the other two persons named above and not paying the same to him. According to Ms. Chattaraj, this is a factually incorrect statement for the writ petitioner to make in so far as the excess amount, as shown in the annexed document, to have been paid to the said persons, is on account of revision of pay (Pay Rev) and not as an arrear differential salary.

14. Filing up of a post is the discretion of the employer. Under normal circumstances an employee shall be debarred from insisting or compelling an employer to fill up a vacant post, if any at all. In this case the writ petitioner has alleged that in spite of there being vacant posts back in the year 2014, the respondent authority has purportedly issued its orders dated 10.01.2017 and 05.05.2017, ignoring candidature of the writ petitioner for the said vacant posts.

- 15.** It is seen that the State has decided to regularise the service of 1010 daily rated workers working with the respondent no. 2, on fulfillment of certain conditions. The present writ petitioner is one of such 1010 daily rated workers. Therefore the right of the writ petitioner for regularisation with respondent no. 2 emanates from the said notification itself. The submissions made on behalf of the respondent regarding this that the regularisation may not be considered as a matter of right of the writ petitioner is thus not acceptable.
- 16.** The notification dated 14.10.2019 has mandated regularisation of the workers, against the vacant posts, in relaxation of the usual norms. Therefore, excepting availability of vacancy, there could not have been any other sufficient ground on which the respondent could have denied regularisation in post at par with the one, in which the worker has been engaged as a daily rated. However, the orders of the respondent, dated 10.01.2017 and 05.05.2017 respectively, does not disclose any such reason, but only that there was no requirement of a welder in bus division. It is well conceivable that requirement of welder in the bus division, may depend upon number of buses in operation and not on the number of vacant posts.
- 17.** According to the notification as above, the authority was only required to consider, if vacancy was available for the same post and not if any requirement was there or not. In not allowing petitioner's prayer, the authority has travelled beyond the scope of the said notification for which it was not authorised at all.
- 18.** Interesting also, is to note the language used in the said notification. The Governor decides that workers have to be regularised "against the vacant posts" and not in the vacant posts, if there would be any

available. In this regard, the notification speaks the final words, leaving no scope for the respondent authority for its consideration of anything beyond what is stated therein, not even the aspect of requirement of the manpower, as has been put forth by the respondent authority. The language employed in the said notification, has virtually rendered the respondent, as implementing authority only, without any power having been bestowed upon it for application of mind.

19. The next question arises if since after the issuance of the said notification dated 14.10.2009, the writ petitioner has been illegally and unjustifiably denied to be posted, at a place commensurate to the pay he has been drawing, prior to his such regularisation. The petitioner had to move twice before this Court, due to inaction of the respondent authority to consider his prayer as above. On both occasions as described earlier, this Court directed the respondent authority for due consideration of his prayer. The reasons for not affecting regularisation of the writ petitioner in a post of higher pay scale, i.e, 'welder' has been recorded by the respondent authority to be a 'welder' not being required for the time being to be placed with respondent no.2. However to the opinion of this Court, the discretion of the respondent authority to be exercised if a requirement of the post would be there or not, is over powered by the decision of the Government, in notification dated 14.10.2009, as mentioned above. The respondent authority was to act in accordance with the policy decision of the Government and there would be hardly any scope for them to exercise any discretion as to the matter of regularisation of those 1010 employees regarding their requirement in the respective posts.

20. The respondent authority also could not lawfully curtail the benefit which has once been extended to the writ petitioner, by placing him, at a subsequent date, in an inferior cadre against the lower grade of pay. The

existing benefit could not have been curtailed. In the case of ***Nyader Singh & Anr. vs. Union of India & Ors.***, reported in ***(1988) 4 SCC 170***, the Supreme Court has held that a person appointed to a higher post or pay grade/scale, cannot be later on reduced to a lower post or pay grade/scale. Though the factual background of the case would be found different from the present one, the principle held is squarely applicable in this case too.

- 21.** So far as the submissions made on behalf of the respondent no. 2 that the other two similarly placed persons namely, Robin Mondal and Nirmal Ghosal were granted benefit of the higher pay scale with effect from the date from when they have been regularised in a higher cadre post, the same is not found to be substantiated, in view of the copy of pay slip of the concerned two persons. What has been referred to as the benefit for 'revision of pay' (Pay revision) allowed to the said two persons, appear under the heading arrear and implying thereby that the revision of pay has been on account of arrear salary paid to the said persons.
- 22.** Considering all above there would be no hesitation in the mind of this Court to hold that not allowing immediate benefit of regularisation to a higher cadre of post, commensurate to the same, which was occupied by the writ petitioner prior to his regularisation, pursuant to notification dated 14.10.2009, is an act of violation of the rights of the petitioner by the respondent authority. It is also an act, not commensurate with the notification dated 14.10.2009. Such an act of the respondent authority is not sustainable in the eye of law. Instead the writ petitioner is entitled to the benefit of higher scale of pay, for the post of a 'welder', with effect from the date of his actual regularisation (in the post of 'khalasi'), i.e, 01.10.2010.

23. This writ petition being WPO No. 562 of 2019 is disposed of by directing the respondent no. 2 to immediately release the entire arrear differential salary to the writ petitioner, within the period of three months from the date of this order.

24. Urgent photostat certified copy of this judgment, if applied for, be given to its parties on usual undertaking.

(Rai Chattopadhyay, J.)

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