

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Prasenjit Biswas

WP.ST 11 of 2023

Partha Chandra.

-Vs.-

The State of West Bengal &Ors.

For the Petitioner	: Mr. Nibedita Pal,
For the state respondents.	: Mr. Tapan Kr. Mukherjee, Ld. AGP., Mr. Dipankar Dasgupta.
Judgment on	: 09.03.2026

Madhuresh Prasad, J.:

1. Heard the learned advocate for the writ petitioner and the learned Additional Governor Pleader (AGP) representing the State.
2. The writ petitioner was an applicant before the West Bengal Administrative Tribunal (for short 'Tribunal') in OA No.184 of 2019. The petitioner was seeking benefit of memorandum dated 16th September, 2011 and consequential benefits of the said memorandum and the subsequent memorandum issued as a sequel to the memo dated 16th September, 2011. The memorandum dated

16th September, 2011 was issued by the State Government considering the fact that casual/daily rated/contractual workers had remained in various establishments for a considerable period/more than 10 years. In order to provide a sense, a security of continuous and better terms and conditions to such casual/daily rated/contractual workers, the memorandum was issued which required giving of a particular pay, and other benefits such as continuous work till the age of attaining superannuation, etc. The writ petitioner claimed to be working as a casual employee since decades and therefore aggrieved by the fact that benefit of the Memorandum dated 16.09.2011 was not extended to him.

3. The Tribunal did not agree with the petitioner's claim. The Tribunal held that the petitioner was discharging the duty as a "*part-time casual employee*" and not a casual employee. He was therefore, not entitled to get the enhanced remuneration or benefits of the memorandum dated 16th September, 2011. The Tribunal found petitioner entitled to the benefits under the memorandum dated 27th November, 2017 and other memorandums issued as a sequel to the memorandum dated 27th November, 2017. The Tribunal rejected the petitioner's claim by an order dated 24th June, 2019 passed in OA No.184 of 2019.
4. The writ petitioner preferred a review before the Tribunal. The review application (RA 06/2019) was also dismissed by the Tribunal by its order dated 6th January, 2020. The present writ petition, thus, came

to be filed, assailing the order of the West Bengal Administrative Tribunal in the original application as well as the review application.

5. The substance of the petitioner's claim in the OA was grant of benefits under a memo dated 16th September, 2011, which the learned advocate for the petitioner reiterates in the present proceeding.
6. The learned Additional Government Pleader (AGP) representing the State submits that an affidavit-in-opposition is filed. The respondents have denied the petitioner's claim for being a casual employee. The petitioner was at best a part-time casual employee. It is further submitted that the petitioner was not engaged as a part-time casual employee against a sanctioned post. On these two grounds, the petitioner's claim is opposed. The learned AGP, submitted that a writ petition has been filed in January 2023, whereas the review application was rejected in January 2020 and issue of delay and laches is also raised.
7. The learned advocate for the applicant/writ petitioner, however, submits that same objections were raised by the State Government in the case of **Hemanta Das Bairagya vs. State of West Bengal &Ors.** decided by a Co-ordinate Bench on 10th December 2024 in **WP.ST 171 of 2023**, wherein the same plea was rejected by a Co-ordinate Bench. The judgment in the case of **Hemanta Das Bairagya** (*Supra*) stands affirmed by the Hon'ble Apex Court. The SLP filed by the State Government against the judgment in the case of **Hemanta Das Bairagya** (*Supra*) was dismissed by an order dated

18.08.2025 passed in **SLP (Civil) No(s) 23136-23137 of 2025**.

Therefore, it does not lie in the mouth of the State to raise the same issue again in the present proceeding. Insofar as the plea regarding the delay is concerned, it is submitted that the petitioner, having regard to the limited resources keeping in view of the nature of his casual employment, pursued the matter with due diligence. It is further submitted that in between disposal of the original application and filing of the writ petition, a considerable period is covered by the period during which the national lockdown was imposed due to the Covid-19 pandemic; and during which period the Hon'ble Apex Court also kept the application of limitation and issues like delay and laches in abeyance realizing the limited court functioning and several restrictions imposed.

8. On merits it is submitted that the Sub-Divisional Controller (F&S), Suri, Birbhum forwarded a statement to the Director on 3rd May, 2016 on the revised format. The statement shows that the petitioner was engaged in June 1988 as a casual employee. He was working on all working days during the years.
9. In view of the statement dated 3rd May, 2016, there is no scope for disputing the factual issue that the petitioner was a casual employee since June 1988 and entitled to benefits of the memo dated 16th September, 2011.
10. Having considered the rival submissions, the judgments/cases relied upon, we find that the issue of delay raised by the learned AGP is devoid of any substance.

11. The learned advocate for the petitioner is right in contending that a substantial part of nearly 3-year period between disposal of the original application and review, and filing of the writ petition was covered by the national lockdown during Covid-19 pandemic. Even otherwise we are guided in our consideration by a decision of the Hon'ble Apex Court in the case of ***Union of India and Ors. vs. Tarsem Singh*** reported in ***(2008) 8 SCC 648***, wherein the Hon'ble Apex Court took note of an exception to the normal application of delay and laches to the service related claims. The Hon'ble Apex Court took note of the exceptional circumstance when a service related claim is based on a continuing wrong, as in the instant case, wherein there is an issue of petitioner's alleged deprivation of due emoluments, every month. The issue falling for consideration involves a continuing wrong. We, therefore, are of the view that the petitioner's case is covered by the decision in the case of ***Tarsem Singh*** (*Supra*).

12. The other issue whether the petitioner was a casual employee or not, also in our opinion, is not in any way under controversy. The statement dated 3rd May, 2016 issued by the Sub-Divisional Controller (F&S) is in the following terms;

GOVERNMENT OF WEST BENGAL
OFFICE OF THE SUB-DIVISIONAL CONTROLLER (F & S)
SURI, BIRBHUM

Date: 03/05/2016

Memo No 1719 /Acs/SCFS/SURI/BIRB/2016,

To
The Director,
Dte. of DDP&S, F&S Deptt.
11/A, Mirza Ghalib Street, Kol 700 087.

Sub: Extension of terminal benefits to the Casual/Daily rated/Contractual workers working in the various Govt. Establishment under Dte. of DDP&S-

Ref: Your no. 1680(80) FA/3A-05/2012 Group D Cell, dt. 20/04/2016

Sir,

In connection with above reference, the Revised format report of the under noted two casual workers working in the office of the undersigned is annexed herewith in cancellation of this office Early Sent Memo No. 1479/Acs/Scfs/Suri/Birb/2016, dated 22/04/2016 for taking further course of action.

STATEMENT SHOWING DETAILS OF CASUAL EMPLOYEES WORKING UNDER THE DTE. OF DDP&S

Sl N o.	Name of the Employee	Dte./Of fice attache d	Date of Birth	Date of engagem ent	Engaged as casual/Daily rated/contractual	Num ber of days worke d in each year	Head of a/c from where remunera tion drawn	Present remunera tion per month(Rs .)	Designat ion of certifyin g officer.
1	BhuluH ajra	DDP&S	22/02/1 968	Feb' 1983	casual	All worki ng days durin g the years	'21-2408-01-001-NP-004-V-02-00'	Rs.2000/-	Sub-Division al Controll er (F&S), Suri, Birbh u m
2	Partha Chandra	DDP&S	17/02/1 972	June' 1988	casual	All worki ng days durin g the years	'21-2408-01-001-NP-004-V-02-00'	Rs.2000/-	Sub-Division al Controll er (F&S), Suri, Birbh u m

Yours faithfully,

SUB-DIVISIONAL CONTROLLER (F&S)

SURI, BIRGHUM

13. It is clear from a bare perusal from the statement that the petitioner was engaged in June 1988 as a casual employee and was working on all working days during the years.

14. The affidavit-in-opposition also does not support the case of the respondents, that the petitioner never worked as a full-time casual

worker; rather he worked as a part-time water carrier against non-sanctioned post. In paragraph 8 of the opposition, they have stated;

“.....It is denied that any document annexed to the writ petition would show that the petitioner was a full time casual worker and not a part time casual worker, as alleged or at all. It is denied that any act of the respondents is bad in law or violative of any Government Orders, as alleged.....”.

15. The stand regarding the petitioner being a casual/part-time worker was not substantiated with reference to any document whatsoever. In fact, such stand is contrary to the record. The respondents have stated that the petitioner was a part time water carrier, whereas the statement dated 03.05.2016, extracted above clearly records that he is a casual worker since June 1988 working on all days during the years.

16. The denial in paragraph 8 of the opposition, also does not dispute or deny the correctness of the statement dated 03.05.2016, but denies that the statement can show that the petitioner was a full-time casual worker. Such statement is, contrary to the statement dated 03.05.2016, and is *ex facie*, untenable.

17. The above extracted statement leaves no room for doubt and clearly shows that the petitioner was engaged since June 1988 as a casual worker working on all days during the years. Such stand of the respondents regarding the petitioner being a part-time casual worker is, therefore, without any basis and unsustainable.

18. Insofar as the other stand taken regarding the petitioner not being engaged against any sanctioned post, we find that there is no scope for making such an argument as benefits of the memo dated 16th

September, 2011 does not hinge on such a requirement, issue having been decided in the case of **Hemanta Das Bairagya** (Supra) in the following;

“5. We have considered the rival submissions and the material on record. Bare perusal of the memorandum dated 16.09.2011, relevant portion of which has been extracted above makes it clear that casual/ daily rated/ contractual workers who remained attached to various establishments of the Government department, whether it be in any Directorate Regional Office or other organization for not less than 10 years, as on 01.08.2011 were covered by this memorandum. Another requirement was that during this 10-year period they have rendered services for at least 240 days each year. The scheme, therefore, is not restricted in its application, only to contractual workers rather, the memorandum includes casual/ daily rated workers. It is not in dispute that the petitioner is a casual employee. Facts being so, the objection raised by the Director in the order dated 03.02.2022, impugned before the Tribunal, therefore, was clearly unsustainable.

6. In so far as the other objection regarding petitioner’s engagement not being against a sanctioned post, we find the same to be equally devoid of any substance whatsoever. The memorandum dated 16.09.2011 does not envisage the extending of benefits under the memorandum to be limited to persons appointed against sanctioned posts in all cases. In this connection, reliance placed by the learned Counsel for the State on Clauses (ix) and (x) of the memorandum dated 16.09.2011 also appears to be untenable.”

19. We, therefore, see no force in the arguments and stand taken by the State/respondent authorities in the present writ proceeding. The petitioner was duly certified by the statement dated 03.05.2016, extracted above, of being a casual employee since June 1988 and

performing part-time work on all working days throughout the years. The petitioner, therefore, fulfills the requirements contemplated in Memorandum dated 16.09.2011, and is entitled to the benefits under the memo dated 16th September, 2011.

20. We, therefore, find that the order of the Tribunal in the OA 184 of 2019 rejecting the petitioner's claim is unsustainable. The order passed in RA 6 of 2019 is therefore also unsustainable. The two orders passed by the Tribunal are hereby set aside.

21. The petitioner is entitled to the benefits as a consequence of the findings recorded hereinabove. Let the emoluments be paid to the petitioner in terms of the memo dated 16th September, 2011.

22. Let the competent respondent authority calculate the petitioner's dues in terms of Memorandum dated 16.09.2011 and subsequent Memoranda issued by the State Government, as a sequel to the Memorandum dated 16.09.2011; from the date of filing of the original application, O.A No.184 of 2019 and pay the monetary benefits to him within 8 weeks from the date of receipt/production of a copy of this order along with a statement on affidavit regarding the date of filing of the OA No.184 of 2019.

23. The present writ petition is, accordingly allowed.

24. Urgent Photostat certificate copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Madhuresh Prasad, J.)

I agree.

(Prasenjit Biswas, J.)