**23.08.2024**
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WPST 78 of 2024

**Rabindranath Pramanik**

– *Versus* –

**The State of West Bengal & Others**

Mr. Saibal Acharyya,
Mr. Sankar Halder
... for the Petitioner.

Mr. Tapan Kumar Mukherjee, Ld. AGP
Ms. Debdooti Dutta
... for the State/Respondents.

The present writ petition has been preferred challenging an order dated 17th January, 2024 passed by the learned Tribunal in the original application (in short, OA), being OA 66 of 2023. By the said order the learned Tribunal refused to interfere with the order dated 21st December, 2022 passed by the respondent no.2 pursuant to the learned Tribunal's order dated 6th December, 2019 passed in an earlier OA 844 of 2019 preferred by the petitioner for grant of enhanced remuneration.

A perusal of the order dated 21st December, 2022 passed by the respondent no.2 reveals that the petitioner's prayer for enhancement of remuneration was rejected observing *inter alia* as follows:

*'7. It is a fact that the applicant had been appointed purely on casual basis temporarily as a Barbar on 05.02.1981 vide Krishnanagar District Correctional Home order No.20 dated 05.02.1981 and detailed for working on every Monday and Friday from 5.30 am. to 11 a.m. and from 4 p.m.to 5 p.m. and Sri Rabindranath Pramanik prayed for enhancement of remuneration as per service benefit order of 2019 which has been received by this office vide Memo No. 5135/SP-01/18 dated 05.08.2019 of the AIG(HQ) of*

*Correctional Services, West Bengal. It is a fact that as per para (x) of Finance Department's Memo No 9008-F(P) dated 16.09.2011, the provisions of the order dated 16.9.2011 will not be applicable where the engagement of the casual/ daily rated/contractual workers has been made without any sanctioned post.*

*8. Considering the above facts, I am of the opinion that the applicant Sri Rabindranath Pramanik, is not entitled to get the benefits of Finance Departments, Memo No. No 9008-F(P) dated 16.09.2011 as the applicant's engagement has not been made against any sanctioned post as required under para (x) of Finance Department's Memo. No 9008-F(P) dated 16.09.2011.*

*9. Since, the applicant Sri Rabindranth Pramnik is not covered under the Finance Department Memo No. No 9008-F(P) dated 16.09.2011, he is not entitled to get the benefits of the subsequent orders viz. Memo No.4011-F(P) dt.20.05.2013, Memo No.1107-F(P) dt. 25.02.2016 & Memo No. 1033-F(P2) dt.08.02.19'.*

The said order was not interfered with by the learned Tribunal observing *inter alia* as follows:

*'The Notification No.9008-F(P) dated 16.9.2011 makes it clear that the provisions of this Notification will not applicable in the case of casual/daily rated/contractual workers, who were appointed without any sanctioned post. Since the fact relating to him being a part-time contractual worker and not appointed against sanctioned post has not been controverted, this Tribunal find that the prayer in this application is devoid of any merit and therefore, not admissible. Accordingly, this application is disposed of without passing any order.'*

Mr. Acharyya, learned advocate appearing for the petitioner submits that on 5th February, 1981 the petitioner was appointed purely on casual basis in the temporary post of barber for hair-cutting and shaving of all the members of the staff of the Krishnagar Jail on a daily emolument of Rs.11.50p. Such contractual engagement was extended from time to time by the competent authority and it would be explicit from the memoranda dated 10th January, 2017 and 16th November 2022 and 10th January, 2017 that his remuneration was enhanced to Rs.6,600/- as per Finance Department memo no.1179-F(P) dated 22nd December, 2010. The petitioner's prayer for enhancement of remuneration as per government orders dated 20th May, 2013, 25th February, 2016 and 8th February, 2019 was forwarded to the respondent no.3 by the respondent no.4 *vide* memo dated 29th June, 2019.

Drawing our attention to a memo dated 6th December, 2022, Mr. Acharyya submits that it has been certified by the competent authority that the petitioner, who was initially engaged on 5th February, 1981 has been working for more than 240 days each year since 2010 and that *vide* memoranda dated 15th July, 2019 and dated 8th February, 2019 the remuneration of the casuals had been enhanced from time to time and that recently by a memo dated 1st March, 2024 the remuneration of casuals, who had been engaged for more than 20 years and above has been revised to Rs.37,000/- per month. As the petitioner comes within the purview of the memo dated 16th September, 2011, the respondents are under an obligation to suitably enhance the remuneration of the petitioner in the light of the memoranda detailed hereinabove. Such arguments, as advanced, were glossed over by the learned Tribunal and no finding was returned on the same and the petitioner's claim was rejected by a cryptic order only stating that the memo dated 16th September, 2011 would not be applicable to the petitioner. Such infirmity in the order warrants interference of this Court.

Mr. Mukherjee, learned Additional Government Pleader for the State respondents strenuously argues that the engagement letter of the petitioner would itself reveal that he was detailed for working on every Mondays and Fridays from 5.30 a.m. to 11.00 a.m. and from 4.00 p.m. to 5.00 p.m. In view of such nature of engagement it cannot be construed that the petitioner rendered service for more than 240 days in each calendar year.

He argues that a close perusal of the memo dated 16th September, 2011 would reveal that the petitioner does not come within the purview of the same because he was not engaged in connection with implementation of any scheme / project of any department of the Government and that such engagement was not against any sanctioned post. According to him, by the said memo dated 16th September, 2011 the earlier memoranda of Finance Department dated 23rd April, 2010 and 22nd December, 2010 were superseded and fresh conditions were incorporated and para – x of the same specifically states that the provisions of the said memo would not be applicable where contractual engagement has been made without any sanctioned post. In view thereof, there is no infirmity in the order passed by the respondent no.2 on 21st December, 2022 as well as the order of the learned Tribunal impugned in the present writ petition.

He contends that the memo dated 21st December, 2022 has not even been appropriately challenged in the OA. Save and except incorporation of a prayer to set aside the said memo, no ground has been pleaded assailing the same. Relief not founded on the pleadings should not be granted. Deficiencies in drafting pleadings is sufficient to non-suit a party. The petitioner cannot succeed on the basis of the weaknesses in the pleadings.

We have heard the learned advocates appearing for the parties at length and we have given our anxious consideration to the facts and circumstances of the case.

Indisputably, the petitioner is rendering service for more than 20 years having been engaged on 5th February, 1981. Such engagement of the petitioner has been extended from time to time by the competent authority. In the memo dated 6th December, 2022 the respondent no.3 has categorically observed replying to a clarification sought for by the respondent no.2 that the petitioner *'has been working more than 240 days each year since 2010'*. Such certification leaves no iota of doubt that the petitioner's services had been extracted by the authorities continuously and the need towards such engagement still exists. Thus, to provide security of tenure appropriate emolument and certain terminal benefits in view of the service rendered, government has taken a conscious decision to enhance remuneration from time to time. The petitioner is not seeking regularization in service. It is not a case that in the event the direction for enhanced remuneration is passed it would reinvigorate a class of claims which has been shut out permanently.

It is well-settled that either giving any restrictive meaning or reading of a clause in isolation would hamper and frustrate the meaningful definition of the clause itself. The conditions, as incorporated in the memo, need to be considered together and not in isolation. A particular clause cannot be taken up and highlighted.

A perusal of the memo dated 16th September, 2011 reveals that the Government took a conscious decision to grant benefits to casuals/daily rated/contractual workers, who had been engaged for more than ten years and to allow them to continue till the age of 60 years. In the first paragraph of the memo, an earlier Finance Department memo dated 22nd December, 2010 had been referred to. Applying the provisions of the said memo dated 22nd December, 2010, the remuneration of the petitioner was enhanced, as would be explicit from the memoranda dated 10th January, 2017 and 21st November, 2022 and that as such we are unable to accept the contention of Mr.

Mukherjee that the petitioner does not come within the purview of the memo dated 16th September, 2011.

In view of the condition in para – x that the provisions of the said memo dated 16th September, 2011 *'will not be applicable where contractual engagement has been made without any sanctioned post'*, is also not acceptable to us since the term *'contractual engagement'* as referred to in para – x needs to be read with the attributes of the said term, as detailed in the earlier para – ix of the said memo pertaining to engagement made for a very limited period not exceeding one year, over and above the casuals already engaged. Such engagement in para – ix is required to be made *'on strict observance of recruitment rules and against sanctioned vacancies'*.

In application of the prior Finance Department memoranda, the petitioner's remuneration was enhanced to Rs.6,600/-. A composite reading of the memoranda dated 16th September, 2011, 8th February, 2019, 15th July, 2019 and 1st March, 2024 would reveal that the object and purpose of the said memoranda are inextricably bound and the beneficent scheme would be thrown out of gear in the event, a restrictive meaning is applied and benefits of enhancement of remuneration are not extended to petitioner, who had worked continuously since the year 1981. Had the petitioner's continuation been barred in terms of the memo dated 16th September, 2011, his service could not have been extended on the strength of the latter memoranda.

Judiciary has a very strong sense of justice and it works to maintain social justice and fairness. Equity regards as done, which should have been done. It would be the bounden duty of this Court to put an end to the protracted long agony of the petitioner, who had been involved in a purgatorial litigation for a substantial period of time. The benefits under the memo dated 16th November, 2011 is available only up to the age of 60 years and the petitioner is at present aged about 58 years. In the said conspectus, we are of the opinion that the petitioner should be granted the benefits of enhanced remuneration in terms of the memoranda dated 8th February, 2019, 15th July, 2019, and 1st March, 2024.

Accordingly, this Court directs the respondents to grant the benefits of enhanced remuneration in terms of the memoranda dated 8th February, 2019, 15th July, 2019, and 1st March, 2024 with effect from the date of his representation dated 29th June, 2019 for enhancement. The arrears shall be calculated upon adjustment of the remuneration already paid to the petitioner till date. The respondents are directed to disburse such arrears within four weeks from the date of communication of this order and to continue payment of such enhanced remuneration on and from 1st October, 2024.

The order dated 21st December, 2022 passed by the respondent no.2 and the order of the learned Tribunal dated 17th January, 2024 are, accordingly, set aside and the writ petition, being WPST 78 of 2024 is disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

**(Partha Sarathi Chatterjee, J.)** **(Tapabrata Chakraborty, J.)**