

19.02.2024
SI No.13
Court No.8
(gc)

**MAT 1013 of 2023
CAN 1 of 2023**

**Abhik Chandra
Vs.
The State of West Bengal & Ors.**

Mr. Debdutta Basu,
Ms. Eshita Dutta
.....for the Appellant.
Mr. Abhijit Sarkar,
Ms. Anima Das Chakraborty
...for the State.

1. The appeal is arising out of an order dated 15th March, 2023 in a writ petition filed by the petitioner/appellant. The appellant was working as a contractual employee with the West Bengal Transgender Persons Development Board ("WBTPDB"), Department of Social Welfare, Government of West Bengal. The petitioner was appointed by a letter of appointment dated 16th October, 2020 for a period of three years as a support staff of WBTPDB.
2. In terms of the West Bengal Transgender Persons Development Board Regulation, 2020, Clause 10 (xi), a support staff is to be recruited on contract basis initially for a period of three years with the monthly consolidated salary of Rs.8,000/-. Based on his performance, the remuneration

would be hiked at the rate of 5% per year. The grievance of the petitioner is that prior to his appointment on 16th October, 2020, there were two Government Circulars dated 25th February, 2016 and 8th February, 2019 which prescribed the rate on which monthly remuneration shall be paid to the Group-D and Group-C staff. The appellant contends that he is Group-C staff and by reason of the memorandum dated 8th February, 2019 he is entitled to receive the revised remuneration of Rs.13,500/-.

3. During hearing of the appeal, a Coordinate Bench directed the State to file an affidavit as to why the remuneration of consolidated pay of Rs.8,000/- is fixed for the appellant when there is existing Rule for granting Rs.13,500/-. Affidavits have been exchanged by the parties. The State has filed an affidavit in which the State has reiterated that the writ petitioner has received remuneration payable under the said Regulation and accepted all the benefits under the said Regulation without any demur and after a gap of two years and two months filed the writ petition. It is urged on behalf of the State that the

appellant cannot go beyond the Regulation that governs his service conditions and cannot rely upon any other memoranda for revised remuneration. In reply, the appellant/writ petitioner has relied upon a Government of West Bengal Circular issued by the District Magistrate, Kalimpong dated 24th December, 2020 whereby application was invited from the eligible candidate for filling up contractual posts in the Juvenile Justice Board, Kalimpong to show that the salary per month for the LDC has been fixed at Rs.13,500/-.

4. We have heard the learned Counsel for the parties. Unlike the advertisement issued by the District Magistrate, Kalimpong on 24th December, 2020, the advertisement for recruitment of the petitioner as a support staff clearly mentions a consolidated pay of Rs.8,000/- with certain increments. The writ petitioner has accepted the said conditions of service and has been receiving his remuneration as a contractual employee. The reliance on the Clause 12 of the Regulation, 2020 does not support the petitioner as other terms and conditions of service of the contractual

staff cannot mean alteration of the consolidated salary mentioned in subparagraph (xi) of clause 10. In fact, it leaves no room to have a second look at the salary stipulated in paragraph (xi) of Clause 10. In fact, Regulation, 2020 is subsequent to the memoranda of 2016 and 2019. Regulation 2020 prescribing a consolidated pay of Rs.8,000/- for the support staff is not under challenge.

5. The learned Counsel for the appellant has relied upon a decision of the Hon'ble Supreme Court in **Somesh Thapliyal & Anr. Vs. Vice Chancellor, H.N.B. Garhwal University & Anr.** reported at **AIR 2021 SC 4158, paragraphs 12 and 37** to argue that the appellant is not in a equal bargaining position with the respondent authorities and accepted the said terms without having knowledge of the earlier two memoranda and in any event he was in need for a job and cannot at the stage of entry raise any dispute with regard to the remuneration to be received in terms of the aforesaid two memoranda. In the said decision, it could be seen that the appointment was on substantive basis and the fact that when the appellants were

allowed to continue by extending their services, they remained under the *bona fide* belief that as their appointment is being substantive in character, they would be made permanent/confirmed immediately after the permanent posts are sanctioned in the Department of Pharmaceutical Sciences but to their dismay, after an advertisement dated 29th August, 2011 published by the Central University they were not considered. The Hon'ble Supreme Court found that after the recommendations were finally approved by the Executive Council, arbitrary conditions were incorporated in the letter of appointment, thereby making appointment to be contractual for a period of three years in the first instance which came to be extended at the later stage. In the instant case, it was not to a substantive post and it was purely contractual for a period of three years with consolidated pay. Moreover, there was no assurance that he would be made permanent as and when the post is permanently sanctioned. Hence, the said judgment has no application in the instant case.

6. Under such circumstances, we do not find any reason to interfere with the order passed by the learned Single Judge.
7. The appeal fails.
8. Accordingly, the appeal and the application stand dismissed.
9. However, there shall be no order as to costs.
10. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)