

20.02.2024
SI No.21
Court No.8
(gc)

**MAT 1720 of 2023
CAN 2 of 2023**

**Imran Mondal
Vs.
The State of West Bengal & Ors.**

Mr. Pradip Kumar Roy,
Mr. Tirthajit Roy Choudhury
.....for the Appellant.

Ms. Sutapa Sanyal,
Mr. Debrup Bhattacharjee,
Mr. Pradeep Kr. Tulsyan
...for the Respondent No.2.

1. The appeal is arising out of an order dated 27th June, 2023 in a writ petition in which the petitioner has challenged the decision of the Chief Executive Officer of the West Bengal State Agricultural Marketing Board (in short "Board") dated 6th March, 2019 by which said authority refused to grant the writ petitioner regular scale of pay, however, he was permitted to act as a casual employee and thus enabling him to get consolidated pay as per G.O. dated 25th February, 2016 issued by the Finance Department, Audit Branch, Government of West Bengal. This litigation has a chequered history as we find from the previous litigation engineered by the persons similarly placed as that of the writ petitioner seeking similar reliefs resulted in

an enquiry to be conducted with regard to the irregularity in a manner in which about 204 persons have been appointed in the respondent No.5. The genesis of this irregular appointment is captured in the order dated 8th April, 2015 in which the submission made on behalf of the State that it had come to the notice of the State that a number of appointments made in the department concerned and other Regulated Marketing Committees may have been totally illegal. The State was directed to make a comprehensive enquiry into the perceived illegalities in the matter of appointments by the District Market Committees which had resulted in an affidavit being filed by the State in WP 4077(W) of 2015 in which in paragraph 3(k), it is stated on behalf of the State:-

“3(k) – Now taking into consideration of the above facts, it is found that in the year 2010-11, 220 persons had been appointed by different Regulated Market Committees. Amongst which post facto approval or some sort of approval from the WBSMB for 204 number of appointments made under different districts’ RMCs. So the Government has taken a liberal view over those appointments. The petitioner is also

included within this ground of 204 appointees.”

2. The writ petitioner claimed that he was initially appointed on a temporary basis and thereafter absorption on the basis of the recommendation of the Chief Executive Officer and Secretary dated 15th February, 2011.
3. Mr. Pradip Kumar Roy, learned Counsel appearing on behalf of the appellant has referred to the communication of the Asansol Regulated Marketing Committee dated 9th February, 2011 to the Chief Executive Officer, West Bengal State Marketing Committee for sanction of pay scales for the existing employees of the Asansol RMC which, *inter alia*, include at serial no.12, the name of the appellant for engagement in the pay scale as mentioned in the said communication. However, curiously, in the communicated dated 15th February, 2011, the Chief Executive Officer and Secretary instead of approving the pay scale has, could be inadvertently, treated the said communication as for absorption of all casual employees in suitable post of Group-D and Group-C in the lowest scale subject to certain conditions. The proposal

as it seems was not for regularization or absorption but for a suitable pay scale and designation for about 26 employees who may be also part of the 2004 employees who were under scanner by virtue of the order passed in the earlier writ proceedings. The documents disclosed in this proceeding would show that they were engaged purely on a temporary and ad hoc basis against a consolidated monthly payment prior to 9th February, 2011 and it was renewable every year thereafter on 9th February, 2011, a request was made for fixing a pay scale and designation for those employees.

4. The writ petitioner has not disclosed any letter by which he had applied for the said post or for his engagement in the respondent No.5. It is trite law that in public employment it should be on the basis of an advertisement to be published by such committee. In fact, an advertisement has been disclosed at page 90 in the stay petition wherefrom it will appear that the respondent No.5 has invited applications for appointment of the casual worker on a temporary basis on or before 10th March, 2010. It is not stated in

the writ petition that the petitioner was appointed on the basis of an advertisement against any sanctioned post. In any event, after ***Secretary, State of Karnataka Vs. Uma Devi & Ors.*** reported at **2006 (4) SCC 1** and ***State of Bihar Vs. Upendra Narayan Singh*** reported at **2009 (4) SCALE 282**, it was no more open for the Government authority or Regulated Body to recruit and regularize any person *de hors* the recruitment rules and without any open advertisement thereby depriving eligible candidates. The Chief Executive Officer and Secretary in its communication dated 15th February, 2011 has overstepped his jurisdiction and has allowed certain benefits that were not even asked for by the Asansol Regulated Marketing Committee. The nature of employment of the appellant has remained casual and temporary in nature. However, having regard to the fact that he had worked for almost 10 years, by that time, the relevant circulars have been issued giving certain social securities to employees appointed temporarily. The Chief Executive Officer of the Board permitted the petitioner to act as casual employee with a consolidated pay in

terms of G.O. No.1107-F(P) dated 25th February, 2016 of the Finance Department (Audit Branch), Government of West Bengal.

5. We have carefully read the order passed by the Board in consideration of the representation filed by the parties in terms of the order passed by the learned Single Bench. It has taken into consideration the order passed in WP No.4077(W) of 2015 and the relevant provisions of the West Bengal Agricultural Produce Market (Regulation Act) of 1972 (in short “1972 Act”) in deciding the said issue. It seems that the State Government had taken a liberal view in the case of 204 appointments in exercise of power under Section 36B of the 1972 Act out of 220 appointments.
6. In view thereof, we do not find any reason to interfere with the order passed by the Chief Executive Officer of West Bengal State Agricultural Marketing Board on 6th March, 2019 and hence no interference with the order passed by the learned Single Judge.
7. The Marketing Board has filed a report in terms of the earlier direction and the said

report has been shared in Court today with Mr. Roy. Mr. Roy has submitted that the appellant may be permitted to take an exception to the said report. In view of the fact that the Board has filed few documents for consideration by this Bench with regard to the claim of the writ petitioner and Mr. Roy was allowed to argue on the documents that are being shown and placed along with report, we do not find any necessity to direct the appellant to file any affidavit taking exception to the report. We have not proceeded on the basis of any conclusion arrived at by the Board in the report but has formed a view and independent opinion based on the documents already disclosed in the said petition and the documents produced along with report.

8. Under such circumstances, the appeal and the application are 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.)