

10.12.2024

TUESDAY

Court : 04
Item : 01
Transcriber : AD

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

W.P.S.T. 171 of 2023

**Hemanta Das Bairagya
Versus
State of West Bengal & Ors.**

Ms. Nibedita Pal
Ms. N. Khatoon

.....for the Petitioner

Mr. Tapan Kr. Mukherjee
Ms. Sangeeta Roy
Mr. Somnath Naskar

.....for the State

1. The petitioner has challenged the order of the West Bengal Administrative, Tribunal dated 04.07.2023 passed in O.A. No. 508 of 2022. The petitioner's claim for benefits stipulated in memorandum No. 9008-F(P) dated 16.09.2011 has been rejected for the reason that the memorandum is not applicable to the petitioner. The Tribunal has found the petitioner to be entitled to the benefits under memorandum No. 7284-F (P2)/FA/0/2M-1 dated 27.11.2017.
2. The petitioner was engaged as a casual employee in the establishment of the office of state Controller for Food and Supplies at Rampurhat in the District of Birbhum. He was engaged as such in the month of March 1998. He has been paid fixed remuneration at the rate of rupees

1000 per month.

3. The petitioner is claiming benefit under the memorandum dated 16.09.2011, which was issued in supersession of all earlier orders issued by the department in the matter of grant of security of tenure, appropriate emoluments and certain terminal benefits subject to fulfilment of certain conditions for casual/ daily rated/ contractual workers. The memorandum required such worker to be engaged for a considerable period of more than 10 years, as on 01.08.2011, having rendered service for at least 240 days in each year. The relevant paragraph showing eligibility reads as follows:

“After careful consideration of the matter and in supersession of the aforesaid orders and all other orders issued by other Departments in the matter, the undersigned is directed by order of the Governor to say that the Governor, has now been pleased to order that the casual/daily rated/contractual workers, who are remaining attached to various establishments of the Government Departments/ Directorates/ Regional Offices/other Organizations for not less than 10 years continuously as on 01-08-2011 and have rendered service for at least 240 days each year will be allowed the following Benefits:”

4. It is the petitioner claims that petitioner fulfils the requisites in terms of the memorandum and as such the respondents were under a legal obligation to extend benefits under the said

memorandum to the petitioner. The petitioner was legally entitled to benefits under the memorandum dated 16.09.2011. On behalf of the respondents, a plea has been taken that the petitioner was not engaged against a sanctioned post, and on this ground his claim for benefits cannot be entertained under the memorandum dated 16.09.2011 and also for the reason that he was engaged on a purely casual basis without any contractual obligation upon the respondent authorities. The Tribunal has accepted the reasons assigned by the Director, in the Directorate of District Distribution Procurement and Supplies in the department of Food and Supplies, Government of West Bengal as contained in his order dated 03.02.2022. The Tribunal has further proceeded to hold the petitioner's case liable to be considered for grant or benefits under memorandum dated 27.11.2017 (Supra) which provides as follows:

“In terms of Finance Department Memo No.3727-F dated 20.05.2009 part-time Sweepers (nomenclature subsequently changed as Karmabandhu) were allowed to draw fixed remuneration not exceeding Rs.2,000/- per month. The matter of enhancement of their remuneration had been under active consideration of the Government for some time past.

Now, the Governor has been pleased to decide that remuneration of part time Karmabandhus, paid out of contingency would be enhanced to Rs 3,000/- per month.

No other allowance would be admissible to

them.

This order shall take effect from 01.01.2018.”

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.

7. Clauses (ix) and (x) of the memorandum relied upon by the learned State Counsel reads as follows:

“(ix) It is reiterated that Officer/Officers responsible for any further engagement of such casual/daily rated/contractual worker will be personally liable for violation of this Order. However, having regard to the exigencies of situation and in order to facilitate smooth running of any project/administration or for serving academic interest where it is absolutely necessary contractual engagement may be made for a very limited period not exceeding 1 (one) year. This engagement shall be made on strict observance of recruitment rules and against sanctioned vacancies. Advertisement shall be published in newspaper and applications shall be invited from eligible candidates to fill up u ose temporary vacancies. Simultaneously steps should be taken to fill up the vacancies on regular basis following recruitment rules. Such contractual engagement may be renewed from time to time, but not exceeding a total period of 6 (slx) years. No claim to regularization of this contractual service in terms of G.O. No. 8305-F dt. 26-09-2005 read with G.O. No. 642-F dt. 24-01-06 shall lie.

(x) The provisions of this Order will not be applicable where contractual engagement has been made without any sanctioned post and for any specific project for a very temporary period upto a maximum 6 (six) years or winding up of the project whichever is earlier. Thus in such cases steps will not be required to be initiated for filling up the posts through regular appointments as per the Recruitment Rules, since the posts are temporary by

nature.”

8. In so far as the Clauses (ix) and (x) are concerned, the same from a plain reading of the clauses are prospective in nature. As per the said clauses the Officer/ Officers who are responsible for “any further engagement” of such workers as the petitioner are to be held personally liable for violation of the memorandum. The memorandum thereafter permits contractual engagement for a limited period not exceeding 1 year that also after observing the recruitment rules and against sanctioned vacancies. Clause (x) is concerned with a situation where the contractual engagement has been made without any sanctioned posts and for any specific project for a very temporary period up to maximum six years. Thus, the petitioner being a casual employee would not come within the scope of either Clause (ix) or Clause (x) of the memorandum. We further find that the memorandum dated 16.09.2011 required continuity of service to be certified by a competent officer not below the rank of a Director in the case of a Directorate to specify this requirement. Pursuant to this clause in the memorandum, the Sub-divisional Controller, Food and Supplies of the office where the

petitioner was working has forwarded the statement showing details of casual workers working in the said office. The communication was sent on 08.06.2011, wherein the petitioner's name figures at Serial No. 2 showing his date of engagement as casual employee before March 1998. He has also been shown to be working 240 days (approximately) in each year as per the statement submitted by the Controlling Officer in the petitioner's office at the Director of the Directorate. There is nothing on record to show that the said statement has ever been denied, disputed or rejected by the Director. Even in the impugned order passed by the Director on 03.02.2022 there is no denial or dispute in so far as the petitioner's claim of having served as a casual employee of more than 10 years and having 240 working days (approximately) in each year. We, therefore, have no hesitation in holding that there was no basis to deny the petitioner's claim of benefits under the memorandum dated 16.09.2011.

9. In so far as the direction of the Tribunal to extend the benefits of the memorandum dated 27.11.2017 to the petitioner, we find the same to be equally unsustainable. It is not the respondent's case that the petitioner was

working as a part-time sweeper (“Karmabandhu”). The memorandum dated 27.11.2017 is apparently applicable to part-time sweepers. The order of the Tribunal, therefore, directing the petitioner to be given the benefits therein is also unsustainable. In the circumstances, we quash the order passed by the Director on 03.02.2022 and set aside the order passed by the Tribunal in O.A. No. 508 of 2022, on 04.07.2023. We direct the Director in the Directorate of District Distribution Procurement and Supplies in the department of Food and Supplies, Government of West Bengal to forthwith issue the necessary order extending the benefits of the memorandum dated 16.09.2011 to the petitioner. The petitioner’s claim for this benefit was recommended by the Sub-Divisional Officer as noted above by his communication dated 08.07.2016. In spite of such recommendation, having been made as far back as on 08.06.2016, the benefits have remained illusive to the petitioner for all these years. We, therefore, direct that the consequential monetary benefits under the memorandum dated 16.09.2011 to be paid to the petitioner from the month of July 2016. Let the payment be made with a chart showing detail calculation of the amount being paid to

the petitioner. The entire exercise is required to be completed by the Director within 90 days from the date of receipt/ production of the copy of this order.

10. The writ petition stands allowed in the above terms.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J)