

Item-
9. 11-03-2024

FMA 571 of 2023
CAN 1 of 2020

sg Ct. 8

Rabiul Islam Molla & Ors.
Versus
State of West Bengal & Ors.

Mr. Subrata Mukhopadhyay, Adv.
Ms. Basabi Raichaudhury, Adv.
...for the appellants/petitioners
Mr. Jaharlal De, Ld. AGP
Mr. Shamim ul Bari, Adv.
...for the State

1. The appellants are aggrieved by this order dated 3rd March, 2020 by which their prayer for enhancement of remuneration in terms of Memo No. 9008-F(P) dated September 16, 2011 issued by the Finance Department, Audit Branch, Government of West Bengal was turned down.
2. The writ petitioners claimed that they were engaged and/or still working in the post of Block Facilitator under Positive Deviance Programme in the assigned office of the Child Development Project Officer (ICDS), South 24 Parganas on contractual basis since May 2010. The writ petitioners prayed that they should be paid in accordance with pay structure as mentioned in Memorandum No.1091-F(P2) dated 1st March, 2024 issued by the Finance (Audit) Department, Government of West Bengal. The grievance of the writ petitioners before the learned Single Judge was that they were engaged in the post of Block Facilitator from 2010 onwards. They are not receiving their pay/remuneration in terms of the aforesaid Government Circular.
3. The learned Advocate representing the State before the

learned Single Judge contended that the writ petitioners were engaged on contract for a particular scheme. The said scheme has been discontinued in the year 2013. The State Mission Director and the Secretary to the Government of West Bengal vide a communication dated May 22, 2013 intimated the District Magistrates of the concerned Districts with regard to the discontinuation of the Positive Deviance Programme.

4. The writ petition was dismissed primarily on the ground that the writ petitioners were unable to show that they were in continuous service for at least ten years with 240 days attendance in each year. The primary requirement of the memorandum in question was that a casual/daily rated/contractual worker should remain engaged in various establishments for a considerable period of more than ten years in connection with implementation of various schemes/projects of the various departments of the Government.
5. In the appeal a Coordinate Bench, in view of the submission made on behalf of the writ petitioners that the appellants are still continuing and are receiving remuneration in respect of the programme i.e. the Positive Deviance Programme where they were engaged as Block Facilitators and Certificates from the Chief Development Project Officers of Canning-II, Magrahat-II, Falta and Maturapur were produced the authorities were directed to file their affidavits. In the affidavits, it has been stated that the engagement of the appellants were on contractual basis in the Positive Deviance

Programme and they were terminated with effect from 1st April, 2014. However, subsequently they were re-engaged to the post mentioned against each in the ICDS Projects under the same terms and conditions as mentioned in the engagement letters issued earlier in favour of them. It was made clear that the payment of remuneration will be made subject to availability of funds under flexi fund/some other fund of the concerned project. The said order became enforceable on and from 1st January, 2015. The said order is still in force.

6. The issue arises whether by reason of this re-engagement, they would be entitled to the Government Memorandum no. 9008-F(P) dated 16th September, 2011 issued by the Finance (Audit) Department, Government of West Bengal and as revised from time to time.
7. Mr. Subrata Mukhopadhyay, learned Counsel appearing for the appellants has referred to pages 103 onwards to show that they were all engaged in 2010.
8. There seems to be no dispute that they were engaged on contractual basis from the date mentioned in the said chart, but the communication dated 5th January, 2015 has clearly stated that their contractual service was terminated with effect from 1st April, 2014 and thereafter they were all re-engaged to the post on and from 1st January, 2015 as mentioned in the said document which shows that first nine persons have been engaged as Block Facilitator and the Serial No.10, Mrinmoy Das was engaged as MIS Co-ordinator. The remuneration to be received by each of them has been stipulated in their letter of appointment. All other terms appear to be governed by the

earlier engagement letter, all of which were executed in the year 2010 and the appointment was purely temporary.

9. The State has made it clear that their remuneration would be dependent upon the availability of fund under Flexi fund/some other funds of the concerned project. The impression the State has given is that their engagement is inextricably connected with the project and the service is coterminous with the closure of the project. However, the fact remains that during the continuation of the project, whether they can expect basic minimum wages on the basis of the Finance Department circular of 16th September, 2011 or the latest circular which seems to have taken care of the basic minimum wages that an employee is entitled to receive whether contractual or daily rated.
10. The affidavits filed on behalf of the authorities have disclosed a communication dated 7th September, 2015 where some of the District Magistrates, all over West Bengal, were directed to frame a policy for absorbing Positive Deviance Personnel under ICDS Mission Directorate and to utilize them in District Programme Offices and ICDS Project Offices as per requirement. It is due to lack of a uniform policy being adopted by the State that the present petitioners are in jeopardy with regard to their status and remuneration.
11. It is submitted on behalf of the writ petitioners that all the writ petitioners are still working but some of them are not receiving their remuneration since September, 2023 and few of them from December, 2023.
12. If they have worked under the project, it is needless to mention that they are entitled to such remuneration.

13. On such consideration, we dispose of the appeal by directing the Chief Secretary, Government of West Bengal to take a decision with regard to the grievance of the petitioners in consultation with the Principal Secretary, Finance Department and Secretary of Women, Child and Social Welfare Department, Government of West Bengal as we feel that there should be a policy decision in this regard the necessity of which was raised earlier by the Joint-Secretary to the Government of West Bengal in its communication to the District Magistrates on 7th September, 2015.
14. The Chief Secretary shall also take into consideration that, by reason of re-engagement of the petitioners on the basis of the terms and conditions in their engagement letters issued earlier in their favour, the circular of Government of West Bengal, Finance (Audit) Department with regard to the remuneration could be extended to the said persons from future date.
15. We request the Chief Secretary, Government of West Bengal to take a final decision in this regard within a period of twelve weeks from the date of a comprehensive representation made by the appellants along with a copy of this order.
16. The Chief Secretary is requested to dispose of the representation by a reasoned order which shall be communicated to the writ petitioners within one week from the date of passing the final order.
17. In the event the remunerations have not been paid for the period they have worked, as submitted by Mr. Mukhopadhyay, we direct the authorities concerned to release the arrears upon verification of the records at the earliest preferably within a period of two weeks from date of final order.

18. With the aforesaid directions, the appeal and the application are, accordingly, disposed of. The impugned order is set aside.

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

(Uday Kumar, J.)

(Soumen Sen, J.)