

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

IN THE MATTER OF

WPA 2302 of 2021

All India General Insurance SC/ST Employees Parishad (Jayamurthy) & Anr.

Vs.

General Insurance Public Sector Association & Ors

For the Petitioners : Mr. Subrata Mukhopadhyay, Adv.

**For the respondent : Mr. Ranjan De, Adv.,
Mr. A.A. Bose, Adv.**

Reserved on : 05.12.2024

Judgment on : 29.01.2025

Subhendu Samanta, J.

1. Challenging a reasoned order dated 08th March, 2019 in pursuance to the direction of Co-ordinate bench dated 05th December 2018 passed in writ petition No. 19507 (W) of 2018, the petitioner has approached this court.

2. Petitioner no. 1 is an association forms for welfare of Scheduled Caste/Scheduled Tribe employees in Insurance Sector.

3. Respondent No. 1 engaged the members of the petitioner for the post of cleaner as par time job. Initially they were engaged as part time sweepers (PTS) by placing requisitions to the employment exchange.

The members of petitioners were engaged for the office of respondents for cleaning, sweeping and dusting of the office.

4. Part time sweepers (in short PTS) were engaged for two hours to four hours deciding on the area of the office. The fixation of salary of PTS based on monthly gross salary, was passed on monthly emoluments of the minimum scale applicable to the full time subordinate staff cadre of the office. However in the year of 1995, the companies had taken decision to convert exceeding part time sweepers (PTS) as full time sweepers (FTS). In terms of such decision relevant portions of the decision of the respondents are set out as follows:

"10. Conversion of Part-Time Sweepers as Full-Timers at HOs/ROs:

During the visit of the National Commission for Safai Karmacharis in February, 1995, the above issue was taken up and the MPs are also pursuing this issue. Companies have been requested to make efforts to convert existing Part-Time Sweepers as Full-Timers whenever vacancy arises. Companies were requested to furnish data on conversion from Part-Time Sweepers to Full Time Sweepers. This is to be a continuing exercise. As far as possible no further appointments in the PTS cadre be made and existing PTS be considered for absorption on full-time basis over a period of time."

5. In compliance with the said decision PTS started applying and accordingly, they were appointed on full time basis. It was the procedure, that one PTS has to apply for appointment of full time basis. Thereafter, there would be an interview and after the

completion of interview, an appointment letters would be issued as full time sweeper. In the appointment letter it has been mentioned that--

"14. Your appointment will be effective from the date of joining at the place of posting as mentioned above and at the minimum of basic pay without any benefits whatsoever for the period of your past services as part-time Cleaner/Sweeper. You shall not be entitled to any back wages or difference of salary back wages or any other benefits and continuity of service etc. for the period of your past service in the company as part-time cleaner/sweeper. However, your P.F. Membership will continue and you will be allowed to credit of leave earned by your services as part-time employee. "Ref. A.O. Page 43 and 50)

6. The members of the petitioner approached this court challenging the decision of the respondent on the ground that they were promoted from the part time sweeper (PTS) to full time sweepers (FTS), so they are entitled to the back wages and other benefits. They also claimed the benefits for continuity of their service from their duty as part time sweepers (PTS).

7. This court in the 1st round of litigation has directed the respondent No. 3 to take a reasoned decision. In the impugned reasoned order the respondent No. 3 clarified the decision and indicated that the exercise of conversion from PTS to FTS was carried out in the year 1998 having co-relation with the pay scale at the prevalent point of time for all practical purposes. Respondent No. 3 is also of opinion that there was no anomaly in protecting the pay while recruiting FTS from PTS after observing the recruitment procedure. It is the opinion of the respondent No. 3 that while fixing the scale of pay

in FTS full protection of pay scale of pay prevalent at the point of time, was afforded, after considering such drawn salary visa-vis minimum of pay scale of the subordinate staff. Respondent No. 3 is also of opinion that the fixation of scale of pay was also practical purposes greater than 48% of the minimum of pay scale of the subordinate staff/cadre at the relevant point of time of recruitment in full time sweepers.

Challenging the reasoned order, the petitioner approaches this court.

8. Learned Counsel for the petitioner submits that no pre and post recruitment process was availed by the respondent. The only procedure valid for up-gradation of part time sweepers to full time sweepers was declaration of place wise vacancy as stated earlier. He further submits, therefore, the recruitment was made in the entry cadre from the beginning, is not at all true. It is the contention of the petitioner that management is trying to show it as a fresh recruitment, but it is not true. It is only process of conversion/up-gradation and not a new process of recruitment. He submits any interview or any selection process was conducted by the respondent authority to convert part time sweepers to full time sweepers. He submits that the so called reasoned decision is abnormal and illegal so it is liable to be set aside.

9. Learned Counsel appearing on behalf of the respondents submits that admittedly, there is not anomaly in placing the FTS after protecting the scale of pay while they worked as PTS. He submits that

the present writ application praying inter alia for pay fixation is helplessly a belated one. The entire exercise started from the year 1996 and after a period of more than two decades, there cannot be any reason to interfere with the executive decision of the answering respondents. Learned Counsel for the respondents further submits that while exercising power of judicial review of an administrative action/or the executive function, the courts are not required to act as an appellate authority.

10. Heard the Learned Counsels. Perused the impugned reasoned orders passed by the authority. It has been argued by the petitioner that at the time of appointment of full time sweepers from part time sweepers, there were no interview or any recruitment process was observed. It appears from the affidavits that part time sweepers were called on interview, and on the basis of the result of the interview, they were recruited.

11. At the time of selection of appointment letter it has been specifically mentioned that part time sweepers shall not be entitled to any back wages or difference salary back wages or any other benefits and continuity service etc. in the period of their past services in the company as part time sweeper. The members of petitioners while entering into the service as full time sweepers, having knowledge of the said condition of service. Now the petitioner has approached this court challenging the said earlier decision of the respondents. It appears to me that the impugned reasoned order passed by the

respondents no. 3 is on the basis of the correct facts and circumstances of this case. The reasoned decision is the replica of a decision of the authority concern which was taken more 20 years ago. The decision which was actually accepted by the present petitioner cannot be assailed at this later stage. At this juncture this court find no impropriety, arbitrariness in the impugned order passed by the respondent No. 3.

12. Accordingly, I find no justification to entertain the writ petition.

13. Hence this writ petition disposed of.

14. However information as of New India Assurance Company Limited regarding up gradation of the members of the petitioners from part time sweepers to full time sweeper, is out of ambit of this writ petition which cannot be determined at this stage. Such issue be kept open.

15. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)