

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

WPA 8847 of 2009

With

CAN 3 of 2023

CAN 4 of 2023

Ganesh Kumbhakar & Ors.

-Vs.-

The West Bengal Power Development Corporation Ltd. & Ors.

For the Petitioners : Mr. Amitava Mukherjee,
Ms. Arpita Saha

For the Respondents : Mr. Ranjay De,
Mr. Basabjit Banerjee

Heard on : 10.01.2025

Judgment on : 19.05.2025

Ananya Bandyopadhyay, J.:-

1. The petitioners, all unemployed residents of villages surrounding Santaldih Thermal Power Station (STPS) in Purulia, filed a writ petition under Article 226 of the Constitution of India. They challenged the inaction and arbitrary conduct of the West Bengal Power Development Corporation Limited (WBPDC) and Santaldih Thermal Power Station authorities in not engaging them in the Operation & Maintenance (O&M) work of Unit No. 5 of Santaldih Thermal Power Station, despite prior assurances and policy decisions.

2. In 2004, the General Manager of Santaldih Thermal Power Station requested the District Employment Exchange to sponsor 300 unskilled labourers from nearby villages. The petitioners were duly sponsored and engaged under contractors for construction work of Unit No. 5 in 2005. However, in 2007, they were abruptly retrenched without explanation. Numerous representations and appeals followed, including the formation of an association, submission of memoranda, and protests.
3. A joint meeting on 2.7.2008 involving senior government officials and trade unions decided that future Operation & Maintenance jobs, including those of Units 5 and 6, should be conducted deputing Employment Exchange candidates. Despite this, Santaldih Thermal Power Station authorities failed to effectuate the decision, engaging only 20 exchange candidates and instead amalgamating existing Operation & Maintenance staff from Units 1–4 into Unit 5.
4. Petitioners contended that such actions violate the decisions of the meeting held in 2008, principles of natural justice, and Articles 14 and 16 of the Constitution. Repeated representations to both the Santaldih Thermal Power Station authorities and the Employment Exchange yielded no resolution, leaving the petitioners unemployed and without recognition of their earlier engagement through the Exchange system.
5. The petitioners claimed that the Santaldih Thermal Power Station and WBPDCCL authorities had acted illegally and arbitrarily in denying them employment as unskilled labourers for Operation & Maintenance jobs of Unit No. 5 of Santaldih Thermal Power Station. Despite being duly sponsored by

the Employment Exchange as per official requisition, and having previously worked on the construction of Unit No. 5, the petitioners were declined to be absorbed or engaged for O&M roles.

6. Key decisions from joint meetings held on 2.7.2008 and 9.2.2009 — which mandated hiring from the Employment Exchange list — were ignored. Instead, the authorities have opted to amalgamate workers from Units 1–4 into Unit 5, excluding the petitioners which had been unlawful, discriminatory, and contrary to principles of natural justice.
7. Such exclusion violated Articles 14, 16, and 19 of the Constitution of India, depriving the petitioners of an accrued right to employment, and foreclosing future employment opportunities unjustly. They asserted the respondent authority cannot renege on prior commitments without justification or process.
8. An application under Article 226 of the Constitution of India had been filed against the non-absorption in regular jobs of Unit No. 5 of STPS from the list of Exchange Candidates, in-action and/or failure on the part of the Respondent Authority in spite the decision taken in a joint meeting held on 02.07.2008 at the conference Hall of STPS in presence of D.M., Purulia, S.D.O., Raghunathpur, S.P., Purulia and other higher officials of W.B.P.D.C. L. and Trade union representatives to absorb/to engage the Exchange workers/Employees in the Operating and Maintenance jobs of 5th Unit of S.T.P.S. and in-of decision of 02.07.2008 to engage the Employment Exchange candidates i.e. these petitioners, and others in the Santaldih Thermal Power Station authority now are trying to engage the workers of

Unit Nos. 1 to 4 to Unit No. 5 of Santaldih Thermal Power Station by amalgamated them with Unit No. 5 to deprived these petitioners for getting such employment for O&M jobs, inspite of engaged these petitioners and others for the construction work of Unit No. 5 after sponsoring their names from Employment Exchange, the said authority illegally now trying to deprived to continue the work of Operation & Maintenance Jobs of 5th Unit of Santaldih Thermal Power Station the Respondent Authority illegally retrench these petitioners and others from the work of Unit No. 5 of Santaldih Thermal Power Station without showing any reason thereof; Non-consideration of the representations of these petitioners; Non-implementation of the decision dated 02.07.2008 of joint meeting for engagement of these petitioners in Unit No. 5 of Santaldih Thermal Power Station.

9. The Learned Advocate for the petitioners argued as follows:-

- a. the STPS authority are illegally tried to deprive the petitioners from the employment in the post of unskilled labor for O & M & job of 5th unit of STPS on the other hand in spite of/joint meeting dated 2.7.2008 and 9.02.2009 the STPS authority did not engage/absorb these petitioners for the work of O & M jobs of Units No. 5 and illegally decided to continue the work of Unit No. 5 utilizing the workers of Unit No. 1 to 4 to Unit No. 5 of STPS.
- b. In spite of decision of joint meeting dated 2.7.2008, the unskilled labor for O & M jobs of Unit No. 5 of STPS were not deployed through their names had been referred by the Employment

Exchange as per their requisition for the post of unskilled labor for O & M jobs of Unit No. 5 of STPS and thereby deprived the petitioners of their employment, through such refusal the respondents violated the decision dated 2.7.2008 and 9.2.2009 engaging the workers of Unit 1-4 to work in Unit No. 5 preventing the petitioners to continue employment arbitrarily.

c. Depriving the petitioners from the right already accrued by the post of unskilled worker for o & jobs of Unit No. 5 was violative of Article 14 and 16 of the constitution.

d. The acts of the respondents are in violation of the provisions of Articles 19 of the Constitution of India.

10. The learned advocate representing the respondents submitted that the petitioners being unskilled workers were deployed through contractors. Santaldih Thermal Power Station had applied to the Employment Exchange Officer for provision of unskilled/skilled persons to be engaged by the independent contractors. The respondents did not directly depute the petitioners being the unskilled workers who were engaged through independent contractors where by the direct relationship of an employer and employee did not exist between the petitioners and the respondents West Bengal Power Development Corporation Limited/ Santaldih Thermal Power Station.

11. The Learned Advocate for the opposite party relied on the following judgement:-

- a. The Hon'ble Supreme Court held the following in **Sunil Kumar Biswas v. Ordnance Factory Board**¹:-

“8. In our opinion, the High Court was right in observing that the remedy of the appellant and Respondents 4 to 6 herein (writ petitioners) lies in applying to the Central Government to make an industrial reference to the Industrial Tribunal under Section 10 of the ID Act in relation to the dispute which has arisen between them but not to pursue their remedy for adjudication of their grievance by filing OA before the Tribunal or/and writ petition in the High Court.

9. Having regard to the nature of the controversy raised by the appellant and Respondents 4 to 6, we are also of the considered view that their remedy lies in getting their alleged dispute settled by the Industrial Tribunal in a reference under Section 10 of the ID Act. The reason is that such disputes once made are required to be adjudicated on facts and evidence. The factual controversy cannot be adjudicated in OA by the Tribunal or by the High Court in a writ petition. We, therefore, find no good ground to take any other view than the one taken by the High Court while declining to entertain the writ petition.”

12. The present writ petition under Article 226 of the Constitution of India had been filed by the petitioners seeking appropriate reliefs on account of the Respondent Authorities' failure to absorb or engage the petitioners, all of whom being Employment Exchange-sponsored candidates, in the Operation and Maintenance (O&M) jobs of Unit No. 5 of the Santaldih Thermal Power Station (STPS), despite a clear policy decision adopted in a joint meeting held on 02.07.2008. All the petitioners are unemployed residents of villages situated adjacent to the STPS, falling under Para Panchayat Samity and

¹ (2019) 15 SCC 617

Raghunathpur-II Panchayat Samity, District: Purulia. On 17.12.2004, the General Manager of STPS addressed a requisition letter to the Employment Exchange Officer, Raghunathpur, District: Purulia, requesting the sponsorship of 300 unskilled labourers, giving priority to residents of nearby villages for smooth execution of construction works at Unit No. 5 of STPS. In response, the Employment Exchange called the petitioners and other exchange cardholders on 05.01.2005 for verification of original documents. Thereafter, on 07.01.2005, the names of these petitioners were duly sponsored to the STPS authority for unskilled labour positions.

13. Pursuant to the sponsorship, the STPS authority engaged these petitioners, in batches, through recognised contractors for construction work of Unit No. 5. At the relevant time, the established policy was to engage workers only through the Employment Exchange. This practice was publicly affirmed by the Senior Personnel Manager of STPS in a statement published on 08.06.2006 in *Ananda Bazar Patrika*, confirming adherence to hire only Employment Exchange-sponsored candidates.
14. Despite their continued work on the construction of Unit No. 5, the petitioners were retrenched without any justification around mid-2007, even though construction activities were ongoing. The petitioners forwarded joint representations before the General Manager, STPS, on 01.11.2007 and again 31.03.2008, requesting redress of their grievances and seeking re-engagement, but in vain. The petitioners formed an association, *Exchange Candidates Organisation for STPS Unit*, and submitted memoranda to the B.D.O., Raghunathpur and Para, seeking intervention to secure employment.

Following hunger strikes and demonstrations at the STPS main gate, a joint meeting was convened on 02.07.2008 in the presence of the District Magistrate, S.P., S.D.O., representatives of WBPDCCL, contractors, and trade unions.

15. A unanimous decision was formulated that future engagement for O&M work in Units 5 and 6 would be constituted from amongst Exchange-sponsored candidates. Following this, on 15.07.2008, a list of such Exchange candidates was submitted by the petitioners' organisation to the District Magistrate, Purulia. Further representations by the petitioners to the General Manager, STPS on 03.11.2008, and to the District Magistrate on 06.11.2008, reiterated their demand for regular engagement.
16. A further meeting was held on 09.02.2009 in the S.D.O.'s chamber with the STPS General Manager and petitioners, where the STPS authority again assured to engage them in O&M work. However, no action was taken. Instead, vide Office Order No. 84/2009 dated 12.03.2009, the Director (FM & HR) of WBPDCCL ordered the amalgamation of Unit No. 5 with the existing O&M setup of Units 1 to 4, thereby facilitating the engagement of existing staff from earlier units and completely ignoring the Exchange-sponsored petitioners.
17. The petitioners condemned such act of the Respondent Authorities being a clear violation of the joint decision dated 02.07.2008 and was discriminatory, arbitrary, and violative of Articles 14 and 16 of the Constitution of India. Despite repeated letters and attempts by individual petitioners (including Ganesh Kumbhakar, Shankar Chandra Bouri, and

Swapam Kumar Sikder), the authorities did not grant them any audience or redressal. On 11.04.2009, a final representation was formulated to the Employment Exchange Officer, Raghunathpur, describing the unlawful prevention of the petitioners notwithstanding their names being validly sponsored.

18. The Learned Advocate for the petitioners has contended that the STPS authorities have acted illegally and arbitrarily in denying employment to the petitioners for the post of unskilled labourers in the Operation and Maintenance (O&M) jobs of Unit No. 5 at STPS. It is submitted that despite joint meetings held on 02.07.2008 and 09.02.2009, where a decision was purportedly taken regarding the engagement of these petitioners, the respondents have failed to absorb them and instead have chosen to amalgamate workers from Units No. 1 to 4 into Unit No. 5.
19. Such action, it is argued, is not only in derogation of the said decisions but also in breach of the petitioners' legitimate expectation and right to employment, particularly as they have been sponsored by the Employment Exchange in accordance with the requisition made by the STPS authority. The learned advocate further submits that the petitioners have already rendered services during the construction phase of Unit No. 5, and as such, have acquired a valuable right to be considered for O&M employment in the said unit.
20. The conduct of the respondents, in depriving the petitioners without reasonable justification and in preferring similarly circumstanced employees from earlier units, is stated to be discriminatory and violative of Articles 14

and 16 of the Constitution of India. It is also urged that such refusal amounts to an infringement of the petitioners' rights under Article 19 of the Constitution. The amalgamation of workers from Units No. 1 to 4 to Unit No. 5, to the exclusion of the petitioners, has been assailed as illegal, unsustainable in law, and in violation of the decisions taken earlier by the authorities themselves.

21. The communication dated 28.04.2008 from Secretary, Exchange Candidates Organisation, Santaldih addressed to the B.D.O. Chelyama, Raghunathpur-II, Purulia is replicated as follows:-

"To
The B.D.O.
Chelyama, Raghunathpur-II
Purulia (W.B).

Date: 28.4.2008

*Sub: Memorandum regarding engagement of enlisted
exchange candidates in the regular jobs of 5th unit.*

Dear Sir,

We on behalf of Exchange candidates organisation, STPS unit, P.O.- Santaldih, Dist.- Purulia (W.B) do hereby like to attract your very attention towards our genuine demand noted below in order to get a favourable decision at an earliest.

- 1) That we were engaged as un-skilled worked through Employment Exchange of Raghunathpur in the year 2005.*
- 2) That although there was sufficient jobs for our engagements but even than we were being completed to be retrenched w.e.f. Sept. 2007 without any specific reasons for expulsion.*
- 3) That reference could be cited towards the opinion of Sr.PM/WBPDCL/STPS in Ananda Bazar Patrika on 08.06.2006 regarding recruitment policy to be adopted by the management of W.B.P.D.C.L. in regular jobs of 5th unit.*

Under such circumstances we would sincerely urge the management of WBPDCCL to consider our case sympathetically so that we can make ourselves free from the menace of any such intentional retrenchment in future.

Thanking you,

*Yours faithfully,
Ganesh Kumbhakar
Secretary
E.C.O. Santaldih”*

22. Admittedly, the petitioners were referred by the Employment Exchange for performing as unskilled workers to be deputed through independent contractors. The direct relationship with the respondent thermal power plants from the inception in the capacity of an employer and employee was non-existent and ineffective.

23. The policies regarding engagement of workers and engagement for O&M job by the Contractor in Unit No. 5 and 6 construction job are replicated as follows:-

*“Policy regarding engagement of Workers by the Contractor
in Unit No. 6 construction job.*

- 1) The concerned Contractors are at liberty to bring their own skilled workers for deployment of their workers.*
- 2) Unskilled workers will be deployed/engaged as per requirement of the contractor from the list of Employment Exchange, which is available at STPS.*
- 3) However, the concerned contractors will try to find out skilled workers from the local area, who may be selected, if found suitable to be determined by a Committee consisting of the representative of BHEL and his Sub-Vendor as well as representative from WBPDCCL.*

*Policy regarding engagement O&M job by the Contractors
for Unit No.5 and in future for Unit No.6.*

- 1) *After completion of construction job the workers to be retrenched by the concerned contractor and when O&M job will be taken over by any contractors, the skilled workers area for O&M job, if available they will be selected through job test and interview by a Committee consisting of representative of concerned contractor and of WBPDCCL.*
- 2) *The unskilled workers for the O&M job will be engaged from the list of the candidates of Employment Exchange, if required through selection.*

(Sd/)
District Magistrate
Purulia

24. The communication dated 15.7.2008 from Secretary, Exchange Candidates Organisation, Santaldih addressed to the District Magistrate, Purulia is replicated as follows:-

“To
The District Magistrate,
Purulia District,
P.O. & Dist. Purulia (WB).

Date: 15.7.2008

*Sub: Submission of list of Exchange candidates
to be engaged for the 5th Unit of STPS.*

Dear Sir,

Further to the joint meeting held in your presence along with S.D.O., S.P. and others before the management of WBPDCCL, BHEL, Contractors' Organization and representatives of different Trade Union organizations on 2.7.08 at the Conference room of WBPDCCL, we would like to submit the probable list of Exchange Candidates who actually worked during the constructional jobs of 5th unit to you in order to avoid any outside influence which might be a factor for proper selection for the 5th unit maintenance jobs of WBPDCCL on a regular basis.

The said list is enclosed herewith for ready reference in a separate sheet.

Thanking you,

Yours faithfully,

*Ganesh Kumbhakar
Secretary
Exchange Candidates Organisation
Santaldih*

25. The communication dated 3.11.2008 from Secretary, Exchange Candidates Organisation, Santaldih addressed to the General Manager, West Bengal Power Development Corporation Ltd., STPS Unit, P.O.-Purulia, Dist.- Purulia is replicated as follows:-

*“To
The General Manager,
West Bengal Power Development Corporation Ltd.,
STPS Unit,
P.O. Santaldih
Dist. Purulia (WB).*

Date: 3.11.2008

*Sub: Absorption in regular jobs of 5 Unit of STPS
from the list of Exchange Candidate duly
submitted to the management on 29.19.07*

Dear Sir,

We, on behalf of Exchange Candidates Organisation do hereby like to bring to your knowledge some of our queries to know the latest decisions of the management in respect to the following matters as mentioned below:

- i) That on the basis of the decision taken in the joint meeting held at the conference Hall, STPC on 02.07.09 in presence of the D.M./Purulia, the S.D.O./Raghunathpur Sub-Division, the S.P./Purulia and others including higher officials of WBPDCCL, Trade - Union representatives of different Organizations it was*

agreed to absorb/to engage the Exchange Workers/ employees in the (O&M) jobs of 5th Unit immediately.

- ii) That accordingly upto now only 20 such Exchange Candidates have been absorbed by the management whereas the rest ones are neither being interviewed nor any decision regarding absorption of others have been displayed in the Notice Board.*
- iii) That we are passing our days in a most uncertain manner as to whether our cases for absorption will be considered or rejected depending upon the discretion of the management likely to go against the very decision of the joint meeting dated 02.07.2008.*

Under such circumstances we would sincerely urge upon you to consider our cases for absorption sympathetically in view of our present economic hardships we are confronting at the moment.

Thanking you,

Yours faithfully,

Date: 23.10.2008

*(Ganesh Kumbhakar)
Secretary,
Exchange Candidates Organisation
Santaldih."*

26. The communication dated 11.04.09 from the Secretary, Exchange Candidates Organisation, S.T.P.S., Santaldih, Purulia addressing to the Employment Officer-in-Charge, District Employment Exchange, P.O. – Raghunathpur, Purulia stated as follows:-

"Reference No. nil

Date: 11.04.09

*To
The Employment Officer-in-Charge,
District Employment Exchange,
P.O. Raghunathpur,
Dist. Purulia (WB).*

Sub: Sponsoring of Candidates for the post of completely casual un-skilled jobs against Memo No.RM/V.L-25/2004/12 dated 07.01.2005 to STPS, Santaldih under WBPDCCL.

Dear Sir,

As per aforesaid letter we were interviewed by the management of WBPDCCL, STPS unit and accordingly were absorbed in the Constructional jobs of 5th Unit from the month of July, 2005.

But as per Clause-4 of your letter our Exchange Card was neither asked to surrender at the time of joining nor was given any such advices regarding the fate of our Exchange Cards.

But sorry to mention that we faced intentional retrenchment by the WBPDCCL authority on and from 30.07.07. However, on the basis of an agreement reached in presence of D.M./Purulia, S.D.O./Raghunathpur, S.P./Purulia, officials of WBPDCCL, different Contractors, Trade Union representatives on 02.07.2008 at the Conference Room of WBPDCCL it was agreed to absorb/to engage the exchange workers in the O&M jobs of 5th unit immediately but still we are yet being engaged by the WBPDCCL authority except 20 such exchange candidates which had already been engaged by the WBPDCCL in the (O&M) jobs of 5th unit.

Under such circumstances we would request you sincerely to take up our issue with WBPDCCL authority as to why we could not absorbed on the basis of aforesaid agreement as mentioned above and do the needful at an earliest.

Thanking you,

Yours faithfully,

(Ganesh Kumbhakar)

Secretary, Exchange Candidates Organisation

S.T.P.S. Unit Santaldih

Dist. – Purulia (WB)”

27. The office Order No.84/2009 dated 12.03.09 of the West Bengal Power Development Corporation Limited, replicated as follows:-

“Office Order No.84/2009

Dated: March 12, 2009

In view of regular operation of Unit No.5 of Santaldih Thermal Power Station, the existing O&M set-up of Units Nos. 1 to 4 of STPS is hereby amalgamated with unit no.5.

As such it is hereby notified that all O&M personnel attached with Unit No.1 to 4 will also work in Unit No.5 both in technical and non-technical areas. All the present contracts/outsourcing jobs of Unit nos.1 to 4 are also hereby extended to Unit No.5.

The order takes immediate effect.

(P.K. Chakraborty)

Director (FM & HR)

Memo No.WBPDCL/P&A(HRD)/ 1/854

dated, March 12, 2009

Copy forwarded for information to:-

- 1. The Managing Director, WBPDCL*
- 2. The Director (O&m - Proj)/(F&A&RA), WBPDCL*
- 3. The Executive Director (FM & HR)/(O&m - Proj)/ WBPDCL*
- 4. The Advisor (Project), WBPDCL*
- 5. The Chief General Manager (P&A), WBPDCL*
- 6. The General Manager, STPS*
- 7. The Dy. General Manager (P&A), STPS*
- 8. The Sr. P.A. to Director (FM&HR), Corporate Office, WBPDCL”*

28. It is absolutely the discretion of the respondent thermal power plants to seek the requisite number of man power to accomplish individual project irrespectively. The petitioners cannot direct the respondent thermal power plants to utilize the manpower in a specific manner, being nowhere connected with the respondent thermal power plants either in management or in organization. The cessation of their employment, definitely

disheartening and unfortunate, should be addressed to the Employment Exchange for contemplating avenues for alternative engagement suitably. The petitioner's deployment through contractors does not accrue any legal right violative of the provisions of the Constitution, since the terms and conditions of functioning are restricted to the agreement between the contractors and the respondent thermal power plants with definite clause of expiration at the end of its period of validity which cannot continue till eternity being time bound and project specific.

29. The petitioners were not providing the job of permanent or perennial nature.

There were basically hired by the independent contractor and were not essentially performing the work of permanent employees to be considered for regularization or to claim any vested right against retrenchment. The deployment of the petitioners had been restricted to the duration of the contract between the contractor, through whom the petitioners had been engaged and the principal employer, being the respondent thermal power plants. The respondent thermal power plants did not directly employ the petitioners who are therefore debarred from claiming any legal or vested rights against the respondent thermal power plants for violation of constitutional provisions as well as principles of natural justice.

30. However, the petitioners are at liberty to approach Respondent 5,6,7 to reconsider their status of retrenchment giving them an opportunity of hearing and if legally permissible and practicable to provide alternative engagement through contractors at different sites if at all their work power as unskilled person is required for the interest of public administration.

31. In view of the above discussions, the instant writ petition being WPA 8847 of 2009 is dismissed. The connected applications being, CAN 3 of 2023 and CAN 4 of 2023 are disposed by impleading the applicants therein as petitioners.

32. There is no order as to costs.

33. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)