

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

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

**WPA 15840 of 2022
With
I.A. No. CAN 1 of 2020
Mandakini Kuiri And Ors.
Vs.
State of West Bengal And Anr.
With
WPA 23048 of 2022
Arpita Patra and Ors.
Vs.
State of West Bengal and Anr.**

For the Petitioners : Mr. Sabyasachi Chatterjee
Mr. Sayan Banerjee
Ms. Suparna Dutta
..... advocates

For the State (WPA 23048 of 2022) : Mr. T.M. Siddiqui,
Mr. K.M. Hossain
...advocates

For the State (WPA 15840 of 2022) : Mr. Sirsanya Bandopadhyay,
Sr. Standing Counsel

Reserved on : 10.02.2025

Judgment on : 06.05.2025

Hiranmay Bhattacharyya, J.:-

1. The petitioners have prayed for issuance of a writ in the nature of mandamus, commanding the respondents to give extension to all workers up to the age of 60 years; to cancel, quash and rescind the letter dated June 24, 2022 issued by the Additional Secretary to the Government of West

Bengal, Food and Supplies Department and to direct the respondent authorities to take necessary steps so that the petitioners can join in their post.

2. These writ petitions involve common question of law and fact for which the same were heard analogously and decided by this common judgment and order.
3. The Joint Secretary to the Government of West Bengal, Food and Supplies Department issued an order dated October 8, 2021 for engaging temporary additional Data Entry Operators for district level offices on contractual hiring basis for a period of six months with effect from November 1, 2021 against monthly consolidated remuneration of Rs. 13000/-. In modification of the aforesaid order dated October 8, 2021 a subsequent order dated October 10, 2021 was issued.
4. Petitioners claim to have been appointed as contractual Data Entry Operators directly under the Food and Supplies Department of the Government of West Bengal. The appointments of the petitioners were terminated by the District Controller of Food and Supplies Department of the Government of West Bengal on April 30, 2022. The employees association submitted a representation before the Secretary of the Food and Supplies Department, Government of West Bengal for extension of engagement of all the contractual employees. In the meantime the Additional Secretary of the Government of West Bengal, Food and Supplies Department vide letter dated June 24, 2022 requested the Chief Executive Officer, WTL to select and provide 342 Data Entry Operators in various offices under the Food and Supplies Department on temporary basis. Being aggrieved against the action of the respondent authorities by not extending the engagement of the petitioners and for taking steps for engagement of 342 Data Entry Operators through WTL, the petitioners have approached this Court.
5. Mr. Chatterjee, learned advocate appearing in support of the writ petition submitted that the petitioners were appointed as per the memorandum of the Finance Department bearing no. 5859-F(Y) dated July 22, 2013. By referring to Clause 5 of Memorandum dated July 22, 2013, Mr. Chatterjee contended that such contract for engagement of manpower done purely on temporary basis can be renewed on monthly or yearly basis as per the requirement of the project. Mr. Chatterjee further contended that the nature of the job for which the letter dated June 24, 2022 for providing 342 Data Entry Operators was issued, is identical to the nature of job which the petitioners were performing. He further contended that the issuance of the notification for engagement of 342 Data Entry Operators would clearly

suggest that there is requirement of the job in the post of Data Entry Operator and, therefore, in view of Clause 5 of the Memorandum Dated July 22, 2013, the petitioners have a right of renewal of their contract. Mr. Chatterjee further contended that the petitioners having worked as Data Entry Operators for quite a long time have gained sufficient experience in such work and, therefore, the contract of the petitioners ought to have been renewed instead of replacing them by a batch of fresh candidates who do not have any experience in the work of data entry.

6. In support of such contention Mr. Chatterjee placed reliance upon a judgment of the Hon'ble Supreme Court in the case of **Chaudhary Charan Singh Haryana Agricultural University, Hisar & Anr. vs. Monika and ors.** reported at **2024 INSC 911**. He contended that it is well settled that one set of contractual employees cannot be replaced by another set of such employees and in support of such contention he placed reliance upon the decisions of the Hon'ble Supreme Court in the case of **Rattan Lal and others vs. State of Haryana and Others** reported at **(1985) 4 SCC 43**; **Hargurpratap Singh v. State of Punjab**, reported at **(2007) 13 SCC 292** and **Manish Gupta v. Jan Bhagidari Samiti**, reported at **(2022) 15 SCC 540**.
7. Mr. Bandopadhyay, learned Senior Standing Counsel appearing for the State of West Bengal seriously disputed the submissions made by Mr. Chatterjee. He contended that the Food and Supplies Department issued the notification dated October 8, 2021 which was modified vide notification dated October 10, 2021 inviting applications for engagement of 597 temporary additional Data Entry Operators for district level offices. He submitted that in the appointment letters issued to the petitioners it was specifically stated that such appointment would be for a period of six months with effect from November 1, 2021 till April 30, 2022. He further contended that the petitioners joined their respective posts after accepting the terms of their appointment and after expiry of the period they do not have any right of extension of such engagement. He further submitted that the services of the petitioners as temporary Additional Data Entry Operators, was not extended and a discontinuation letter dated 02.05.2022 was issued. He further contended that around 542 sanctioned posts of Lower Division Clerks and Upper Division Clerks and Inspection Staff were reported vacant by the Department of Food and Supplies and various Directorates and the proposal to fill up such vacancies in a regular manner has already been sent to the West Bengal Public Service Commission. He further submitted that completion of the process of recruitment for filling up the said vacant posts will take some time and in order to meet the exigencies the Finance Department issued an order dated 23rd March 2022 thereby

approving the proposal for engagement of 342 Data Entry Operators in the Department of Food and Supplies and its various directorates for a period of one year or till the filling up of the sanctioned post, on an outsourcing basis. He submitted that accordingly the Department of Food and Supplies placed a requisition upon WTL to provide 342 Data Entry Operators in various post in Food and Supplies Department on a temporary basis vide Memo dated June 24, 2022. He further contended that the Memo dated June 24, 2022 specified certain additional eligibility criteria which are absent in the Notification dated October 8, 2021. He further contended that the nature of the services for which requisition was placed upon WTL to provide 342 Data Entry Operators were different from that of the services rendered by the erstwhile 597 temporary Additional Data Entry Operators. He further contended that the Memo dated July 22, 2013 makes the appointment as well as renewal of software personnel subject to the requirement of the project and the project for which the petitioners have been engaged was extinguished within six months of their engagement. Thus, according to Mr. Bandyopadhyay the petitioners do not have any right of renewal of their engagement after the expiry of the contract period of six months. Mr. Bandyopadhyay contended that in the matter of employment, equal opportunity should be made available to all eligible candidates and in support of such contention such he placed reliance upon the decision of the Hon'ble Supreme Court in the case of **Excise Superintendent Malkapatnam, Krishna District, A.P. vs. K.B.N. Visweshwara Rao and Ors.** reported at **(1996) 6 SCC 216**. He contended that if the petitioners claim for extension of their engagement is to be accepted, the same would amount to denial of opportunity to other eligible candidates. He further contended that the petitioners were appointed to meet certain exigencies and such engagement does not confer any right upon the petitioners to be appointed against a regular vacancy. In support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **M.P. State Agro Industries Development Corpn. Ltd. and Another vs. S.C. Pandey** reported at **(2006) 2 SCC 716**. He further contended that since the petitioners were employed for a particular purpose/project, they did not acquire any vested right to continue after the completion of the project and in support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Mahendra L. Jain v. Indore Development Authority**, reported at **(2005) 1 SCC 639**. Mr. Bandyopadhyay further contended that a temporary employee cannot claim to continue till the age of superannuation and in support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Indian Drugs & Pharmaceuticals Ltd. v. Workmen**, reported at **(2007) 1 SCC 408**. He further contended that a temporary employee appointed for a

fixed period cannot claim continuity of service and in support of such contention he placed reliance upon a decision of the Hon'ble Supreme Court in the case of **Regional Manager, SBI v. Raja Ram**, reported at **(2004) 8 SCC 164**.

8. Heard the learned advocates for the parties and perused the materials placed.
9. The State Government felt the necessity to engage different categories of software personnel on contractual basis for development and implementation of different types of E-Governance projects in the Departments/Directorates/Offices of the State Government. The Government of West Bengal noticed that some software personnel are being engaged through some agencies and others are being appointed directly by the departments. It also came to the notice of the government that the agencies are sometimes charging higher rates whereas the software personnel are getting lower rates of remuneration and for maintenance of uniform and transparency in the matter, a Memorandum dated July 22, 2013 was issued containing the guidelines for direct engagement of software personnel.
10. Clause 1 of the said Memorandum states that the engagement shall be purely on temporary and contractual basis and may be terminated at the completion of the job or at the end of the project whichever is earlier or in the circumstances mentioned in paragraph 12 of the said guidelines. Paragraph 12 states that if performance of any software personnel in the project is found to be not necessary, the department/ directorate may terminate service of the software personnel based on the recommendation of IT Department/NIC project leader or the project-in-charge. Clause 5 of the said Memorandum states that contract for engagement of manpower can be done by the Department/Directorate purely on temporary basis for a period of one year or less for development and implementation of e-governance project which can be renewed on monthly or yearly basis by the Head of Department/ Directorate as per requirement of the project.
11. The order dated October 8, 2021 states that the candidates shall be selected as per the eligibility criteria as laid down in the memorandum of Finance Department no. 5859-F(Y) dated July 22, 2013. The order dated October 8, 2021 states that total 497 temporary additional Data Entry Operators shall be engaged. However, the said order was modified by subsequent order dated October 10, 2021 wherein it was decided to engage 597 Data Entry Operators.

12. The learned advocate appearing for the petitioner would contend that since there is a requirement of the Data Entry Operators in the Food and Supplies Department their contract should be renewed and they shall be allowed to continue till the age of 60 years. The learned Senior Standing Counsel would contend that since the petitioners were engaged for a particular project which has been discontinued after contractual period of six months the petitioners do not have any right of renewal of the period of engagement.
13. The issue that falls for consideration in this writ petition is whether the petitioners have a right to continue up to the age of 60 years.
14. The Government of West Bengal, Department of Personnel and Administrative Reforms (E-governance Cell) issued the notification dated October 16, 2020. The government after noticing that the terms and conditions of service of the contractually engaged IT Personnel (particularly Data Entry Operators / Computer Operators) vary widely across various departments and among different categories and also that a number of benefits like security of tenure, leave, terminal benefits etc. which have been allowed to other contractual employees at large has often not been extended to these IT personnel leading to sub-optimal utilization of their services, issued the notification dated October 16, 2020. For the purpose of deciding the aforesaid issue it would be relevant to take note of the changes made by the State Government in the terms and conditions of the engagement of IT Personnel engaged under regular establishment and in different programs and projects, for which the said notification is extracted hereinafter.

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Government of West Bengal

Department of Personnel & Administrative Reforms

(e-Governance Cell)

5, Council House Street (3rd Floor)

KOLKATA-700001

No. 192-IT/06/2020/P&AR-e-Gov

Date: 16.10.2020

NOTIFICATION

Whereas the Government of West Bengal has in last few years initiated a large number of e-Governance reforms including computerisation of different services to improve the ease of doing business in the state as well to ensure seamless transfer of welfare benefits to people. In order to achieve this, different departments have engaged IT personnel (particularly Data Entry Operators/Computer Operators). This engagement of IT personnel in different categories has been done either through WEBEL or WTL or similar agencies, even while some engagements have been made directly departmentally

and

Whereas the terms and conditions of services of these contractually engaged personnel in this regard vary widely across various different departments and among different categories

and

Whereas a number of benefits like security of tenure, leave, terminal benefits etc. which have been allowed to other contractual employees at large has often not been extended to these IT personnel leading to sub-optimal utilization of their services.

Now therefore, in view of the critical role played by these contractually engaged IT personnel in the continuing success of e-Governance reforms, their service conditions have been reviewed. It has been felt that the present terms and conditions of their engagement need to be improved upon to retain the best talent in the Government and get best services out of them. With this end in view, the State Government has decided to make the following changes in the terms and conditions of the engagement of IT Personnel engaged under regular establishments and in different programmes/projects whether engaged through WEBEL/WTL or departmentally or through any other agency:-

1. Direct engagement under Government-- Contractual IT personnel working in regular establishments under the State Government and/or under any project but engaged through WTL/WEBEL or any other similar agency will come under the direct control of Government as contractual workers.

2. Benefits to be extended--

2.1 Security of tenure-- These contractually engaged IT personnel shall be given security of engagement upto the age of 60 years. They

shall not be terminated except on the grounds as prescribed in No. 9008-F(P) dated 16- 09-2011.

2.2 Leave:-

- a) 30 days leave in a calendar year,
- b) 10 days leave on medical ground,
- c) Maternity leave (in case of female employee) 180 days and 42 days in case of abortion/miscarriage.

2.3 Terminal benefit on attaining the age of 60 years - Rs. 3.00 Lakhs.

2.4 Medical benefit-They will come under Swasthya Sathi Scheme if he/she is not covered under WBHS being a spouse of an employee of State Government.

3. Nodal Department- P & AR Department will be the Nodal Department in respect of such IT personnel.

4. This order will take effect from 01.11.2020.

This is issued in concurrence of the Finance Department vide U.O. No. 540 Group -P2 dated 16th October, 2020.

Additional Chief Secretary

Copy forwarded for kind information and necessary action to:

- 1. Chief Secretary to the Government of West Bengal
- 2. Additional Chief Secretary to the Government of West Bengal, Home Department.
- 3. Principal Secretary to Hon'ble Chief Minister
- 4. Additional Chief Secretary/ Principal Secretary/ Secretary.....(All) With the request to kindly submit your proposal in this regard to the P&AR Department for approval as per the following format:-

i) Name:

- ii) Father's/Husband's Name:
- iii) Address:
- iv) Date of Birth:
- v) Gender: Male / Female
- vi) Caste: General/SC/ST/OBC
- vii) Qualification:
- viii) Mobile No.:
- ix) Category/Designation:
- x) Date of engagement:
- xi) Monthly remuneration:
- xii) Present place of posting:
- xiii) Engaging Authority:
- xiv) Scheme/Project under which engaged:
- xv) Remarks

Additional Chief Secretary”

15. After going through the said notification this Court finds that it has been decided by the State Government that the contractual IT personnel working in regular establishments under the State Government and/or under any project but engaged through WTL/Webel or any other similar agencies will come under the direct control of Government as contractual workers and those contractually engaged IT personnel shall be given security of engagement up to the age of 60 years. It was further stated in the said notification that the Personnel and Administrative Reforms department will be the Nodal Department in respect of the said IT personnel.
16. The aforesaid order dated October 16, 2020 took effect from November 1, 2020 and the same was issued in concurrence of the Finance Department vide U.O. No. 540 Group - P2 dated October 16, 2020.

17. From a bare reading of the notification dated October 16, 2020 it is evident that all contractual IT personnel working in regular establishments under the State Government or under any project shall come under the direct control of the Government as contractual workers having a security of tenure of engagement up to the age of 60 years.
18. It is further evident from the Notification dated 16.10.2020 that the Principal Secretary/ Secretary of all departments were requested to submit their proposal to the Personnel and Administrative Reforms Department for approval.
19. If the Additional Secretary or other competent authority of the Food and Supplies Department felt the necessity of the services of the Data Entry Operators in various offices under the Food and Supplies Department, they ought to have submitted their proposal in that regard to the P&AR Department for approval in the manner as stipulated in the Notification dated 16.10.2020.
20. The stand of the State that the petitioners do not have any right to continue up to the age of 60 years by way of extension of the contract as, according to the State, they were appointed under a project for a fixed tenure basis, loses its significance in view of the notification dated October 16, 2020 which brings all contractual IT personnel working in regular establishments of the Government and/or under any project under the direct control of the Government as contractual workers.
21. The petitioners were engaged in district level offices under the Food and Supplies Department by virtue of the order dated October 8, 2021 as modified by order dated October 10, 2021. Therefore, the petitioners would automatically come under the direct control of the Government as contractual workers by virtue of the Notification dated October 16, 2020 and they shall have the security of engagement up to the age of 60 years as per the said notification.
22. The reference of the Memorandum of Finance Department dated July 22, 2013 in the order dated October 8, 2021 was only with regard to the eligibility criteria for selection of the Data Entry Operators and the same cannot in any way take away the right of the petitioners to claim continuity of their engagement up to the age of 60 years as per the notification dated October 16, 2020 which took effect from November 1, 2020.
23. The petitioners placed reliance upon the said notification dated October 16, 2020 in support of their case for continuity of engagement up to the age of 60 years. However, the said respondents in their affidavit in opposition only

stated that the temporary contractual Data Entry Operators may not be covered under the said notification.

24. The reasons as to why the temporary contractual Data Entry Operators would not be covered under the said Notification has not been clearly set out in the Affidavit-in-Opposition filed by the state respondents. It is also not the case of the State that the said Notification has been superseded by a subsequent notification.
25. There is no quarrel to the proposition of law laid down in **Mahendra L. Jain** (supra) that once the employees are employed for the purpose of scheme, they do not acquire any vested right to continue after the project is over. There is also no quarrel to the proposition of law laid down in **SC Pandey** (supra) that if an appointment has been made only to meet the exigencies of service and not in terms of the service regulations such an appointment could not have been made for filling up regular vacancies.
26. No material has been produced before this Court by the State in support of their case that for filling up the sanctioned posts of Data Entry Operators under the Food and Supplies Department of the Government of West Bengal, the letter dated 24th June 2022 was issued.
27. The petitioners herein were appointed as temporary Data Entry Operators on contractual basis against a monthly consolidated remuneration and they have not claimed absorption against sanctioned vacant posts or to be treated as employees appointed permanently against sanctioned vacancies. The claim of the petitioners is only to continue their engagement up to the age of 60 years.
28. The right of the petitioners to claim continuity in engagement up to the age of 60 years flows from the Notification dated 16.10.2020 issued by the Government of West Bengal, Department of Personnel and Administrative Reforms with the concurrence of the Finance Department. Thus, the petitioners have demonstrated a legal and enforceable right for continuing in engagement up to the age of 60 years and the respondent authorities have failed to act in terms of its own policy.
29. For the reasons as aforesaid this Court holds that a writ of mandamus should be issued as prayed for by the petitioners.
30. The issuance of the letter dated June 24, 2022 by the Additional Secretary to the Government of West Bengal, Food and Supplies Department addressed to the Chief Executive Officer, WTL proves that there is requirement of services of Data Entry Operators in various offices under the Food and Supply Department. It is for the concerned department to take a

decision as to the number of Data Entry Operators that may be necessary for such department but the decision to engage 342 Data Entry Operators in various offices under the Food and Supplies Department on temporary basis as reflected from the letter dated 24th June 2022 should not be made by way of replacing the Data Entry Operators who were engaged pursuant to the Office Order dated 8th October 2021 as modified by the order dated 10th October 2021 as this Court has already held that they have acquired a right to continue to remain engaged up to the age of 60 years.

31. Though, Mr. Bandyopadhyay argued that the decision was taken to engage 342 Data Entry Operators as a stop gap arrangement till the regular vacancies in the sanctioned post of Lower Division Clerk, Upper Division Clerk and Inspectors are filled up but the letter dated 24th June 2022 states that such engagement of Data Entry Operators will be for the purpose of assisting the office staff and/or perform duties in the office for data entry, scanning documents, processing the initial works related with ration card and other online services in the portal.
32. The engagement of the petitioners were not continued after April 30, 2022 and, therefore, the decision to engage 342 Data Entry Operators in various offices under the Food and Supplies Department on temporary basis appears to have been made without considering the fact that the petitioners are entitled to continue up to the age of 60 years as Data Entry Operators.
33. Since this Court has already held that the petitioners are entitled to continue up to the age of 60 years, the letter dated 24th June 2022 directing the Chief Executive Officer, WTL to select and provide 342 members of DEOs for the offices of Food and Supplies Department calls for interference.
34. The issue that fell for consideration in the case of **Excise Superintendent Malkapatnam, Krishna District, A.P.** (supra) was whether the choice of selection should be restricted to only such of the candidates whose names are sponsored by the Employment Exchange. While deciding such issue the Hon'ble Supreme Court held that equal opportunity in the matter of employment should be made only to all eligible candidates. The said issue is not germane for consideration in this writ petition and, therefore, the same cannot be applied to the case on hand.
35. The issue that fell for consideration in **Monika** (supra) was whether a person would be eligible to be awarded half a mark (0.5) under the category of "experience" vis-à-vis her engagement as an outsourced manpower. The Hon'ble Supreme Court after noticing the terms relating to "experience" in the Advertisement observed that neither the Recruitment Rules nor the Advertisement specifically bar(s) aspirants from securing marks for

experience gained from contractual/outsourced employment. In such a factual scenario, it was held that the benefit of marks for experience cannot be denied merely because an aspirant, at the time of appointment as outsourced manpower, was not appointed on a sanctioned post. Such an issue does not arise for consideration in the case on hand and for such reason the decision in **Monika** (supra) has no manner of application to the case on hand.

36. There is no quarrel to the proposition of law laid down in **Indian Drug and Pharmaceuticals** (supra) that only a permanent employee has a right to continue in service till the age of superannuation and a temporary employee cannot claim to continue to remain engaged till the age of superannuation. However, in the case on hand the Government has framed a policy allowing the contractual employees including IT Personnel mainly Data Entry Operators to remain engaged up to the age of 60 years. For such reason, the decision in **Indian Drugs and Pharmaceuticals** (supra) cannot come to the aid of the State.
37. The decision in the case **Raja Ram** (supra) is distinguishable on facts as the issue that fell for consideration in the said reported decision was whether repeated short term appointments to a particular post amounts to unfair labour practices and as to whether such an appointee was entitled to reinstatement with full back wages.
38. In **Ratan Lal** (supra) adhoc appointments were made for a period of six months only and they were renewed after a break of a few days without making any attempt to fill up the existing vacancies. On such facts the Hon'ble Supreme Court directed the State Government to take immediate steps to fill up the vacancies in accordance with the relevant rules and to allow all those teachers who were holding those posts on adhoc basis to remain in those posts till the vacancies are duly filled up.
39. In **Manish Gupta** (supra) the Hon'ble Supreme Court reiterated the well settled proposition of law that an adhoc employee cannot be replaced by another adhoc employee and he can be replaced only by another candidate who is regularly appointed by following a regular procedure prescribed.
40. In **Hargurpratap Singh** (supra), the Hon'ble Supreme Court held that displacing one adhoc arrangement by another adhoc arrangement is not at all appropriate as those persons who have gained experience will be more beneficial and useful for the Institution concerned rather than to appoint persons afresh on adhoc basis.

41. It is now well settled that an adhoc arrangement cannot be displaced by another adhoc arrangement.
42. In the case on hand the petitioners herein who were working as Data Entry Operators gained sufficient experience while working as Data Entry Operators and their experience will be more beneficial and useful for the Food and Supplies Department in respect of which the respondents are seeking to engage persons afresh on temporary basis. The petitioners herein stand on a much better footing than the appellant in **Hargurpratap Singh** (supra) as the petitioners have also acquired a right to continue in engagement up to the age of 60 years apart from the experience which they have acquired.
43. For all the reasons as aforesaid the writ petitions stand allowed. The respondent authorities are directed to continue the engagement of the petitioners as Data Entry Operators under the Food and Supplies Department by treating the petitioners to have been appointed as Data Entry Operators on contractual basis with effect from their initial date of engagement and they shall be extended all the benefits as provided under the Notification dated October 16, 2020 including the security of tenure upon the age of 60 years. However, the petitioner shall not be entitled to any financial and other benefits for the period during which the petitioners have not rendered any service as Data Entry Operators. The letter issued by the Additional Secretary to the Government of West Bengal, Food and Supplies Department dated June 24, 2022 is set aside. It will be open to the respondent authorities to engage additional Data Entry Operators under Food and Supplies Department upon making an assessment of the requirement afresh after the petitioners are allowed to continue in service as Data Entry Operators under the Food and Supplies Department.
44. There shall be no order as to costs.
45. Accordingly, CAN 1 of 2020 is disposed of.
46. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

(HIRANMAY BHATTACHARYYA, J.)