

25.08.2025
(D/L-05)
Ct. No.4
(B.K.N.)

W.P.S.T. 158 of 2025

Tapan Kumar Roy
Vs.
The State of West Bengal & Others

Mr. Sobhan Majumder,
Ms. Kalpita Paul

...for the Petitioner

Mr. Amal Kr. Sen, Ld. AAG,
Mr. Saikat Chatterjee

...for the Respondent No. 1

1. Supplementary affidavit filed on behalf of the petitioner is taken on record.
2. Heard learned advocate for the writ petitioner and the learned Additional Advocate General, Mr. Amal Kr. Sen.
3. The petitioner's claim for benefit of absorption has been raised before the Tribunal. The benefit of absorption is sought under a memo dated 15.11.1996 issued by the State Government. The petitioner/applicant before the Tribunal sought quashing of an order dated 22.05.2013 which according to him is an order rejecting his claim for absorption/regularization. The Tribunal has refused to interfere with the alleged order of rejection dated 22.05.2013 by placing reliance on the decision of the Apex Court in the case of **Secretary, State of Karnataka -Vs.- Uma Devi** reported in **2006 (4) SCC 1**. The West Bengal Administrative Tribunal has thus

rejected the petitioner's Original Application bearing O.A. No. 1221 of 2015 which was disposed of by an order dated 19.06.2025.

4. At the very outset we have asked the learned advocate for the petitioner as to where is the impugned order of rejection. He invites our attention to Annexure-P/27. A bare perusal of the document shows that it is a part of a file noting. The petitioner's advocate, however, strenuously urges that this is an order of rejection without assigning any reasons which has been communicated to the petitioner along with the letter dated 19.11.2015 bearing Memo No. 1543/WC issued by the Superintending Engineer, Western Circle, PHE DTE.
5. He submits that from the correspondence available on record it is apparent that the authorities have failed to take into consideration the petitioner's claim, while granting benefit of the Memo dated 15.11.1996 to other similarly situated as the writ petitioner. In this connection he has drawn our attention to the correspondence issued by the Superintending Engineer from time to time.
6. The learned AAG on the other hand submits that the benefit of absorption claimed in the regular establishment under the Memo dated 15.11.1996 is unsustainable. He draws attention of the Court

towards the first paragraph of Memo dated 15.11.1996,
relevant extract of the Memorandum reads:

“M e m o .

The undersigned is directed to say that in the Public Health Engineering Directorate under the administrative control of this Department 660 (Six hundred sixty) MR/Casual workers were engaged in a perennial type of work between the period from 04.08.79 to 31.12.91 under different water supply scheme under different Divisions and Sub Divisions as shown in detail in the Statement ‘A’ attached herewith and they are continuing as such till date. They also fulfil the conditions as laid down in para 3 of the Labour Deptt’s Memo No. 1700-EMP dated 28.8.80. The question o absorption of these workers into the regular establishment of the same Directorate is under consideration of the Government for sometime past.”

7. It is his submission that bare reading of the Memo reveals that there are two conditions to be satisfied by any person claiming an absorption in the regular establishment under this Memo. The first condition is that the person must have been engaged as an MR/Casual worker in a perennial type of work between 04.08.1979 to 31.12.1991 under different water supply schemes in different Divisions and sub-Divisions specified therein. The second requirement was that such engagement in perennial nature of work should have been continuous till 15.11.1996 that is the date of issuance of the Memo.
8. The respondents before the Tribunal have specifically stated in their reply that the petitioner did not work continuously till 15.11.1996 and that there is no record of service rendered by the petitioner in the office

of the Superintending Engineer, Western Circle, PHE Directorate regarding the continuous engagement of the writ petitioner/applicant with effect from 01.05.1995. Such specific assertion of the respondents has been responded to in the rejoinder filed by the applicant by a bald denial. There is no specific denial to such assertion nor reliance is placed on any document whatsoever to show that the petitioner fulfils the conditions as per the Memo dated 15.11.1996. The communication from the office of the Superintending Engineer relied upon by the writ petitioner are of a much latter date. Though it does mention that the petitioner's claim could not be considered, but the letters do not state that the petitioner fulfilled the requisite criteria in terms of the Memo dated 15.11.1996, taken note of above.

9. We are, therefore, in agreement with the submissions advanced on behalf of the State by the learned AAG which is apparent from the records which are referred to in the course of his submissions, taken note of above.
10. The learned advocate for the petitioner has placed very strong emphasis on an alleged copy of register or list (Annexure-P/1) to submit that from bare reading of the same it is obvious that the petitioner was engaged since November, 1989. We are not impressed by such submission based on such document as the same

cannot be read to infer engagement of the petitioner since November, 1989. This alleged list/extract of register firstly does not contain a specific date as it does not contain the year in which it was issued or maintained. Secondly it contains a list showing intermittent engagement of persons therein and cannot be made the basis to conclude that it is by any stretch of imagination showing continuous engagement of the writ petitioner since November, 1989.

11. Insofar as the submission of the learned advocate that his claim has been rejected by an order dated 22.05.2013 without assigning any reasons whatsoever we find such submission also to be unacceptable. The document dated 22.05.2013 (Annexure-P/27) is not a part of the letter dated 19.11.2015 as claimed by the writ petitioner. The letter dated 19.11.2015 does not contain any reference to an order dated 22.05.2013, nor has such document been stated to be an enclosure to the said letter. The alleged order dated 22.05.2013, in fact appears to be the last page (11) of a file noting.

12. It is trite law that such file noting which forms the basis of intra/inter departmental communications are nothing more than notes prepared in the process of consideration in the regular course of official business. It is only when such office notes manifests in the issuance of an order that the same can be referred to or relied upon so as to agitate any rights thereupon.

The law in this regard is very well settled as is evident from recent decision of the Apex Court in the case of **State of Orissa and Another vs. Laxmi Narayan Das (dead) through legal representatives and Others** reported in **(2023) 15 SCC 273**, wherein the Apex Court observed :

“51. The aforesaid legal issue was considered by this Court in *Mahadeo v. Sovan Devi*. It was pointed out therein, that inter-departmental communications are merely in the process of consideration for an appropriate decision. These cannot be relied upon as a basis to claim any right. Mere notings in the file do not amount to an order unless an order is communicated to a party, thus, no right accrues. Relevant paras 15 to 18 are extracted hereinbelow : (SCC pp.813-16)

“15. It is well settled that inter-departmental communications are in the process of consideration for appropriate decision and cannot be relied upon as a basis to claim any right. This Court examined the said question in a judgment reported as *Omkar Sinha v. Sahadat Khan*. Reliance was placed on *Bachhittar Singh v. State of Punjab* to hold that *merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government, two things are necessary. First, the order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and*

second, it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up, the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. The said judgment was followed in K.S.B. Ali v. State of A.P. and Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd...”

13. We, therefore, not inclined to accept that the document dated 22.05.2013 relied upon by the petitioner to be an order/rejection/decision taken by the authorities in respect of his claim for absorption/regularization.
14. Since we have found that the petitioner does not fulfil the requisites for absorption in terms of the Memo dated 15.11.1996, we find no infirmity in the decision dated 19.06.2025 in O.A. 1221 of 2015 of the Tribunal rejecting the petitioner’s claim.
15. The writ petition is dismissed.
16. Urgent Photostat Certified copy of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)