

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

Present:

The Hon'ble Justice Madhuresh Prasad

AND

The Hon'ble Justice Supratim Bhattacharya

W.P.S.T 228 of 2024

Sri Bata Krishna Mandal

Vs.

State of West Bengal & Ors.

For the petitioner : Mr. Arka Maity
Ms. Ambiya Khatun,
Mr. Danish Abbasi

For the State : Mr. Tapan Kr. Mukherjee, Ld. AGP
Ms. Sangeeta Roy

Heard on : 22.01.2025

Judgment on : 22.01.2025

MADHURESH PRASAD, J.:

1. The instant application has been filed challenging the order dated 19th November, 2024 in O.A. 524 of 2019 whereby and wherein the Tribunal has been pleased to reject the application claiming benefit of Government Order dated 16th September, 2011.
2. Heard the learned counsel for the petitioner and the learned counsel for the State.

3. The present petitioner claims to be working as a Daily Rated Worker in the different offices of the Birbhum Collectorate. He is seeking the benefit of a consolidated remuneration in terms of G.O. No. 9008-F(P) dated 16th September, 2011. The same was rejected by the District Magistrate considering his claim in compliance of an order passed earlier by the West Bengal Administrative Tribunal (hereinafter referred to as the State Tribunal) in case number O.A. 629 of 2016. The District Magistrate upon hearing the present petitioner has held as follows:

“The applicant appeared for hearing today, the 15th day of February, 2019 and filed hazira. Heard the applicant. He claimed that he has been working as a daily rated worker at the Birbhum Collectorate since 2008, initially for more than 240 days a year till the year 2013, and later on for less than 240 days a year till 31-08-2018. As such, he claimed that he should have been given the benefit of consolidated remuneration in terms of the GO No. 9008-F (P) dated 16/09/2011. However, no corroborative document was submitted by the applicant to substantiate his claim during the course of hearing.

After hearing the applicant and going through relevant official documents, records and GOs produced by DOM.. & ..DC, Birbhum, the following facts are established:

- (1) That the Government of West Bengal in terms of GO No. 9008-F (P) dated 16.09.2011 allowed the benefit of consolidated remuneration @ Rs. 6600 per month and other benefits to such Casual/Daily Rated/Contractual Workers who were engaged at any establishment of Government Department/Directorate/Regional

Office/Other Organization on or before 01.04.2010 against sanctioned post of Group D and rendered 10 years of continuous service at the said Government Department/Directorate/Regional Office/Other Organization with at least 240 days of service each year. The said remuneration was enhanced subsequently vide Memo No. 4011-F (P) dated 20.05.2013 of the Finance Department, Government of West Bengal.

- (2) That the applicant does not come under the purview of the aforesaid GOs as he was neither engaged against a sanctioned post of Gr. D, nor did he render 10 years of continuous service with at least 240 days of service each year since his engagement w.e.f. 10.02.2009.
- (3) That the applicant was engaged on no work no pay basis till 31.08.2018 at the Minority Affairs and Madrasah Education of this office and thereafter he was discharged as his service were no longer required.

In the light of the above facts & circumstances of the case, it is concluded that the applicant is not entitled to the benefits of consolidated remuneration etc. as per provisions of Memorandum No. 9008-F (P) dated September, 16, 2011 and Memorandum No. 4011-F (P) dated May 20, 2013 & subsequent Memorandum issued in this regard by the Finance Department, Audit Branch, Government of West Bengal.”

4. This order was assailed by the petitioner by filing an O.A again before the State Tribunal. The O.A was numbered as O.A. 524 of 2019 and has been rejected by an order dated 19th November, 2024 which is the subject matter of the present proceedings.

5. The learned counsel for the petitioner submits that the decision of the authority has been upheld by the Tribunal on two grounds.
 - I. That the petitioner did not qualify the requirement of having 10 years or more continuous service without a break, a minimum of 240 days in a year,
 - II. That he was not appointed against a sanctioned post.
6. It is submitted that the requirement of being appointed on a sanctioned post cannot be enforced against the petitioner as the services were availed by the authorities on a daily rated basis. A daily rated employee is engaged for work on a daily rated/casual basis and, therefore, there is no question of the same being discharged against a sanctioned post. Therefore, the decision of the District Magistrate and the Tribunal that since petitioner is not working against a sanctioned post, he cannot be extended the benefit of a consolidated remuneration, is untenable.
7. The other submission is that the petitioner had relied upon a certificate issued by the Nezarat, Deputy Collector, Birbhum issued in July, 2008 certifying the petitioner's services for a period of 5 years prior to the date of the certificate. The certification is in the following words:

“This is to certify that Shri Bata Krishna Mondal, S/O – Late Haradhan Mondal of Meta Gram, Police Station – Suri, District – Birbhum is known to me. He has been working in this Birbhum Collectorate as daily rated worker as no work no pay basis since last

5(five) years as and when necessary. He is a young an energetic worker.

I wish him every success in life.”

8. It is submitted that as per this document the petitioner has been serving as a daily rated worker since 2003, but the same has not been taken into consideration by the Tribunal. In the alternative it is submitted that even if his services are taken from 2008 till his discharge on 2018, then as per the order of the District Magistrate dated 15th February, 2019, he had qualified the 10 years of service on a daily rated/casual basis to become eligible for grant of benefits under the Government Order dated 16th September, 2011.
9. We have examined the certificate being relied upon by the petitioner. On a bare perusal of the certificate it is shocking to note that the date of issuance of the certificate purported to have been issued by the Nezarat, Deputy Collector, Birbhum is 7/2008. Though the certificate allegedly bears the month of its issuance there is no date. We further find that Clause (i) of the memorandum dated 16.09.2011 under which the petitioner is seeking a consolidated remuneration, contains a clause governing certification regarding continuity of service, in the following terms:

“(i) The casual/daily rated/contractual workers who have rendered 10 years of service continuously with at

least 240 days attendance each year may remain engaged in the same status and capacity till their attaining the age of 60 years.

The continuity of service shall have to be certified by a competent officer not below the rank of Assistant Secretary in the case of a Secretariat Department, Director in the case of a Directorate and Assistant Engineer/S.D.O/B.D.O in the case of Regional Offices. The concerned officer, who certifies may be advised to exercise extreme precautions and take assistance of an officer of WBA & AS, if necessary.”

10. It is thus apparent that the certification is required to be done by the heads of the offices, such as Assistant Secretary in the case of a Secretariat Department, Director in the case of a Directorate and Assistant Engineer/ S.D.O./ B.D.O. in the case of Regional Offices. The memorandum further advises extreme precaution in issuing such certificates, after taking assistance of an Officer of the WBA & AS, if necessary. The certificate being relied upon by the learned Counsel for the petitioner does not even contain the date on which it has been issued. The certification thus has been done in a way which leaves a lot to be desired in terms of Clause (i) of the memorandum dated 16th November, 2011.
11. The certificate, even if relied upon, at best certifies the petitioner to be in service as a daily rated worker on a “no work, no pay basis” for a period of 5 years prior to 2008. It is not in dispute that use of the expression “no work, no pay” means that the

worker is not in continuous service. Therefore, the certificate does not in any way indicate that the petitioner was in continuous service as a daily rated worker for 240 days in every year prior to July 2008, so that the same may be taken into consideration while computing the service, relevant for availing the benefit of office memorandum dated 16th November, 2011.

12. We also have gone through the records of the case and considered the submissions made by the petitioner counsel in this regard. There are two applications made by the petitioner before the authorities in the year 2014 (Annexure C and D of the Original Application). From reading of these two applications it is apparent that the petitioner did not assert any claim before the authorities to be working prior to 2008 as a daily rated worker continuously for 240 days in every year in the past 5 years (2003-2008).
13. We find that the reasoned order specifically records that the petitioner appeared before the District Magistrate and he claimed before the District Magistrate that he was working on a daily rated basis in the Collectorate since 2008. It was his claim that initially from 2008 to 2013 he was working more than 240 days in a year; and that thereafter he was not working for 240 days in a year continuously, till his discharge on 31st August, 2018. Thus, there is no basis for the petitioner to assert that he

qualifies the requirement of having served continuously for 10 years having 240 days of work in every year so as to fulfill the requisite qualification in terms of Clause (i) of the above quoted Government Order Dated 16th September, 2011.

14. Therefore, we find that in view of the fact that the petitioner was not fulfilling the requisite tenure of casual/daily rated/contractual work as per the Government Order dated 16th September, 2011, he was not entitled to the benefit thereunder.
15. The fact that his services was against a sanctioned post or not, therefore, may be relevant, only if the petitioner were to fulfill the requisite tenure, which he does not. Therefore, this issue is not relevant to the present proceedings.
16. We find no reason to interfere with the decision of the Tribunal.
17. Accordingly the writ application is dismissed.
18. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(MADHURESH PRASAD, J.)

(SUPRATIM BHATTACHARYA, J.)