

W.P.S.T. 244 of 2014

**Kalyan Kumar Bandyopadhyay
Vs.
The State of West Bengal & Ors.**

Mr. Pulak Ranjan Mondal,
Ms. Bandana Mondal,
Mr. S. Chaudhuri

...for the Petitioner

Mr. Tapan Kumar Mukherjee, ld. AGP,
Mr. Arjun Roy Mukherjee,
Ms. Tuli Sinha

...for the State Respondents

1. Heard the learned counsel for the petitioner as well as the learned counsel for the State respondents.
2. The brief facts which are not in dispute in the present case is that the present petitioner before attaining the age of 55 years was released from the defence Service (Indian Navy). At that time he had completed 18 years of service as the Chief Petty Officer (Writer) in the Clerical Trade Secretariat Bench, Logistic Department under Group "B". He was serving in the pay scale of ₹4650/- to ₹6900/-.
3. The State Government had a policy of creating a new township in Rajarhat. Land was to be acquired and for this purpose sanction was accorded for creation of 42 (forty two) posts belonging to different categories as a special case

for setting up an office of Special Land Acquisition Officer, North 24 Parganas. The office was set up for completing the land acquisition works pertaining to the Rajarhat, Satellite New Township Project by the Housing Department for a period of 04 (four) years with effect from 09.07.1997. The creation of the 42 (forty two) posts was by an order issued by the Deputy Secretary to the Government of West Bengal in the Land & Land Reforms Department on 09.07.1997. The creation was with a clear stipulation that the posts will be abolished after a period of 04 (four) years **OR** completion of the acquisition of land for the project, whichever is earlier. Amongst the 42 (forty two) posts created for this project, there were 03 (three) posts of Head Clerk (UDC).

4. The petitioner who was an ex-serviceman was appointed to one of these posts created for the project as UDC on contract basis in the office of the Special Land Acquisition Officer, North 24 Parganas, Barasat. The petitioner's appointment order is dated 25.10.1998. The petitioner upon his appointment to this temporary post on contract basis was allowed to draw a monthly honorarium equal to the last pay drawn by him, less the pensionary benefits allowed to him by virtue of his earlier services. The grant was accompanied by a

condition that if any overdrawl is discovered the same will be adjusted against the final statement of pensionary claim which was being disbursed by the Office of the Accountant General, West Bengal.

5. Insofar as the entitlement of leave, the appointment order contained a clear stipulation that it was to be regulated by Rule 213 of the West Bengal Services Rules-I. The petitioner thereafter made a representation to the respondent authorities on 03.05.2002 requesting the Collector, North 24 Parganas for fixing his pay at the minimum of the scale of pay for UDC, without deducting or adjusting the pensionary benefits being paid to him. Based on his representation, the Collector, North 24 Parganas issued an order on 20.08.2003 allowing the minimum of the scale for UDC i.e. ₹ 4,000/- as the post of UDC was carrying a pay scale of ₹ 4,000/- to ₹ 8,850/-. The grant of the minimum scale of UDC was in supersession of the previous order dated 25.10.1998 (appointment order). The petitioner continued on this remuneration till 27.04.2012 when his services has been released along with 23 (twenty three) other persons by an order dated 27.04.2012 issued by the Additional District Magistrate (Land Acquisition), North 24 Parganas,

Barasat. The services were discontinued since the land acquisition works pertaining to the various projects for which the post was created, was discontinued on and from 02.05.2012.

6. There is one relevant aspect which is required to be taken note of. In between his appointment on contractual basis and discontinuance of the temporary appointment, the petitioner was granted dearness allowance for a brief period of 10 (ten) months which was subsequently recovered/recalled by the authorities on discovering that the petitioner and other staff/officers in the temporary establishment of land acquisition were not entitled to such grant of dearness relief or any other allowances.
7. The petitioner was claiming the grant of dearness relief to him relying upon decisions of the Central Government in this regard with respect to the ex-serviceman. He continued to make representation in this regard ever since 2006 onwards. After the contractual engagement of the petitioner was discontinued, he has moved the State Administrative Tribunal (hereinafter referred to as 'the S.A.T.') for the following relief:

“a) Direction upon the respondents to pay the arrears of the pay and allowances effective from 25.1.1998

fixing the salary of the applicant at Rs. 4,650/- being the last pay drawn from the defence service.

b) Direction upon the respondents to withdraw/rescind and/or cancel the impugned order being No.C/1952/1(27)/LA(N)BST dt. 27.04.2012 discontinuing the service of the applicant who has been working for last 14 years after reemployment as ex-serviceman and regularize his service considering the representation dated 6th June, 2012 addressed to the Principal Secretary, Land & Land Reforms Dept. Govt. of West Bengal.

c) Issuance of any other order or orders and/or directions as this Hon'ble Tribunal deem fit and proper."

8. By considering the claim of the petitioners and upon submission of the respondents, the S.A.T. has rejected the claim in respect of grant of dearness relief as well as increment for the services rendered by him as a contractual employee. The petitioner had also prayed for a direction to the respondent authorities for regularising his service, which also has been rejected by the S.A.T. The petitioner's claim has been rejected by the S.A.T. by its Judgement delivered on 01.07.2014 in O.A. No. 855 of 2012.

The petitioner has assailed the same in the present proceedings.

9. The learned counsel for the petitioner has submitted that the petitioner's appointment on contractual basis was after a sanction of the post by an order of the Government. He has worked on the post continuously for 14 (fourteen) years. While he was in service, the authorities themselves have granted benefit of dearness allowance to the petitioner. The same, however, has been illegally withdrawn only after 10 (ten) months of grant of such benefit, abruptly. To assert his claim for grant of dearness allowance and other allowances, he has relied upon the office memorandum dated 02.07.1999 issued by the Director in the Department of Pension and Pensioners Welfare under the Ministry of Personnel Public Grievances and Pensions, Government of India.
10. The learned counsel for the petitioner has also submitted that the petitioner was granted the minimum of scale of the post of UDC (₹ 4,000/-) which is less than what the petitioner was entitled to. The petitioner was entitled to be granted the same scale of pay on which he had served in the military, prior to his release. He has thus prayed for fixing his salary with effect from the date of his

appointment on contractual basis (25.01.1998) at ₹ 4,650/- being the last pay drawn from the defence service.

11. The learned counsel for the petitioner has also vehemently submitted that the authorities were obliged to consider the petitioner for regularisation and grant regularisation to the petitioner on the post of UDC attached to the office of the Special Land Acquisition Officer, 24 Parganas (N) since he had discharged duties of the said post for 14 (fourteen) years. His claim for regularisation had been recommended by the Assistant Secretary to the Government of West Bengal to the Land & Land Reforms Department by letter dated 20.10.2010. In spite of such recommendation, the Collector, 24 Parganas (N) has not taken any steps for his regularisation. In support of his claim for regularisation he has also relied upon the memorandum dated 26.09.2005 issued by the Special Secretary to the Government of West Bengal in the Finance Department.
12. The learned State counsel on the other hand submits that it is apparent from the pleadings in the O.A. that the posts against which the petitioner, being an ex-serviceman was appointed, was a post of temporary nature, created only to be abolished with completion of the work of land

acquisition. The petitioner's appointment was thus contractual. There is no averment in the O.A. that such appointment was preceded by any recruitment process based on an open advertisement or observing such norms as are requisite for an appointment. The petitioner was appointed against a temporary post. He was never a regular employee and therefore, he cannot be considered for grant of the allowances attached to a pay scale, available to a regular government employee. The fixation of his pay on the contractual appointment was in accordance with the extant policy in the State of West Bengal for appointment of ex-serviceman. He has thus been granted the minimum of the pay scale for the post of UDC, to which he has been appointed without deducting the pensionary benefits allowed to him for his services rendered in the defence. The petitioner has accepted the emoluments and continued to serve as such. In fact the initial pay fixed, was subsequently modified on petitioner's representation dated 03.05.2002 and was modified and fixed at ₹ 4,000/-, ignoring the pensionary benefits being availed by him.

13. It therefore does not lie in the mouth of the petitioner to now contend that he ought to have

been placed in the same pay scale which he was serving in the defence service.

14. The petitioner also cannot claim parity with a regular Government servant for the purposes of grant of D.A. or increment. The fact that D.A. has been availed by the staff and officers of the temporary office where he was working for a period of 10 (ten) months out of a total of 14 (fourteen) years of contractual service, cannot inure to the benefit of the petitioner to claim the said benefit. It was recalled immediately within 10 (ten) months when the authorities realised their mistake that the benefit was not admissible to the contractual employees; and therefore, the same was recovered.
15. Insofar as the claim for regularisation is concerned, it is submitted by the learned counsel for the respondent that the nature of appointment was temporary from its inception. The appointment was against posts which were created only to be abolished with completion of the land acquisition work being undertaken for the New Satellite Township. Such terms of contractual appointment have been accepted by the petitioner with open eyes. Even otherwise the appointment was not against any sanctioned regular post or after following a procedure for

recruitment observing the norms of regular recruitment.

16. Such being the circumstances, merely because the Assistant Secretary has sent a recommendation to consider his (petitioner) claim for regularisation on 20.10.2010 would not create any right in favour of the petitioner for such regularisation.
17. We have considered the rival submissions. From bare perusal of the order dated 09.07.1997 issued by the Land & Land Reforms Department, it is obvious that the post against which the petitioner was appointed was a temporary post only for completing the project of land acquisition pertaining to Rajarhat, Satellite New Township Project. The creation was temporary for a period of 04 (four) years, or for completion of the acquisition, whichever is earlier. In the instant case, the acquisition has taken around 14 (fourteen) years and concluded in May 2012. Accordingly, the petitioner along with 23 (twenty three) other persons who were appointed against this temporary posts have been discontinued by the order dated 27.04.2012. The discontinuance was a foregone conclusion right from the time the petitioner was appointed and therefore, there is no scope for the petitioner to claim any right to

regularisation after completion of the project for which he was contractually appointed against temporary vacancies, which cannot be said to be in existence after the land acquisition work which has been discontinued by the respondents.

18. We also deem it appropriate to take into consideration at this point the fact that the petitioner's appointment against the temporary post on contractual basis, was not preceded by any advertisement or recruitment process. There is no averment in this regard.
19. Insofar as the relief with relation to the grant of the pay scale on which the petitioner was serving in the defence, prior to his temporary appointment in the State Government and for allowances attached thereto, we also do not find that the petitioner entitled to grant of such benefits.
20. The policy of the Government of West Bengal is clear in this regard which has been placed by the learned State counsel. As per the State policy the pay of the petitioner has been fixed at the minimum of the scale for the post of UDC i.e. ₹ 4,000/- without interfering with or making any adjustment whatsoever for the pensionary benefit being received by the petitioner for his services rendered under the defence establishment. The petitioner was never a regular employee and

therefore, the petitioner's claim for grant of dearness allowance or increments admissible to a regular employee have no foundation to stand on.

21. Insofar as the reference made to the policies by the petitioner for claiming the benefit of dearness allowance etc., we find that the office memorandum dated 2nd July, 1999 contemplates grant of such benefits to those who are re-employed/employed under the Central or State Government. The petitioner was never re-employed or employed in any permanent establishment.
22. The nature of his existence in the Government set up was against a temporary post created for a specific purpose, which was destined to perish along with the cessation of the work. The office memorandum of 2nd July, 1999 therefore, would not be applicable to the petitioner and cannot sustain his claim for grant of D.A. or increment.
23. In our opinion, rejection of the petitioner's claim by the S.A.T. is after due consideration of the petitioner's claim. The same has not occasioned any injustice warranting any interference by this Court.
24. Having considered the issue as above, we find no infirmity in the Judgement of the S.A.T. dated 01.07.2014 in O.A. No. 855 of 2012.

25. The Writ Petition is dismissed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)