

WPST 69 of 2025
Ekteswar Adhikary
Vs.
The State of West Bengal & Ors.

Mr. Ivan Roy,
Mr. Nirupam Dutta,
Mr. Kaustabh Banerjee,

...for the Petitioner.

Mr. Tapan Kumar Mukherjee, Ld. AGP,
Mr. Somnath Naskar,

...for the State Respondents.

1. Heard the learned advocate for the writ petitioner and the learned Additional Government Pleader.
2. The petitioner claims benefit of a Memorandum No. 9008-F(P), dated 16.09.2011 issued by the Audit Branch of the Finance Department. The same contemplates certain security of tenure to casual/daily rated/contractual workers who have remained attached to various establishments of the Government Departments/Directorates/Regional Office and other organizations for a period of not less than 10 years continuously as on 01.08.2011.
3. The continuation is required to be coupled with a service of at least 240 days in each year. The petitioner claiming the said benefit approached the authorities pursuant to an order passed on the petitioner's earlier original application no.728 of 2017, passed by the West Bengal Administrative Tribunal (for short Tribunal).

4. The petitioner's claim was rejected by an order dated 20.07.2022 issued by the Principal Secretary, Water Resources Investigation and Development Department, Government of West Bengal, the reason assigned for the petitioner to be ineligible, is that he was not appointed against a sanctioned post.
5. The learned advocate for the writ petitioner submits that the objection is untenable having regard to the casual nature of petitioner's appointment since 1998, and he fulfils the other requisites criteria, being requirement of having served for 10 years as on the cut off date 01.08.2011; and having at least 240 days work in each year.
6. The requirement of the initial engagement being against sanctioned post is not a condition precedent to grant of benefit under the Memorandum dated 16.09.2011 which stands decided by a Co-ordinate Bench decision in the case of ***Hemanta Das Bairagya Vs. State of West Bengal & Ors.*** in ***W.P.S.T 171 of 2023***, copy of the judgment is handed over to the Court after due service upon the learned Additional Government Pleader.
7. The learned AGP on the other hand submits that a perusal of Clauses (ix) and (x) of the Memorandum dated 16.09.2011 reveals that the

requirement of being engaged against the sanctioned post is a condition precedent to grant of benefit under the Memorandum dated 16.09.2011.

8. The petitioner has not shown that his initial engagement in 1998 was against any sanctioned post. Therefore, his claim for benefit of the Memorandum dated 16.09.2011 was rightly rejected.
9. We have considered the rival submissions, Memorandum dated 16.09.2011; and decision of the Co-ordinate Bench in the case of ***Hemanta Das Bairagya (supra)***.
10. We have also considered the rejection order dated 20.07.2022, impugned in the original application. The sole ground for rejecting the petitioner's claim for benefits under the Memorandum dated 16.09.2011 is that he was not engaged on casual basis against the sanctioned post. In the affidavit-in-opposition filed by the respondents the facts of petitioner initial engagement being in the year 1998 is not in dispute. We also find the statement in paragraph 5(b) of the affidavit-in-opposition that the erstwhile Executive Engineer(AM) found the petitioner entitled to the benefit of a Government Order No. 4011-F(P) dated 20.05.2013. The authorities, therefore, have not disputed continuance of the petitioner as a causal

employee for 10 years prior to the cut off date and have also not disputed the fact that he had served for at least 240 days during the ten years.

11. Therefore, on the ground of the petitioner's initial engagement being not against a sanctioned post, whether he can be deprived of the benefits of the Memorandum dated 16.09.2011, is the sole issue arising for consideration.
12. We find no force in such submissions advanced by the learned State Counsel as the issue sought to be raised is already decided by the Co-ordinate Bench in the case of ***Hemanta Das Bairagya (supra)*** where the same objection was raised by the State relying upon the Clauses (ix) and (x) of the Memorandum dated 16.09.2011. The Court rejected such objection by observing that from a plain reading of Clauses (ix) and (x) it is apparent that the Clauses are prospective in nature and was applicable to Causal/daily rated/contractual employment, to be made subsequent to the Memorandum dated 16.09.2011. The provisions, therefore, could not be made applicable in respect of the claimants who were engaged much earlier and otherwise covered under the Memorandum dated 16.09.2011; possessing the other two requisite criteria, as in the instant case.

13. The Court thereafter proceeded to direct for allowing the benefits of the Memorandum dated 16.09.2011 to the writ petitioner.
14. The facts regarding his continuance for 10 years prior to cut off date and discharge of at least 240 days in every year is not in dispute. Therefore, we find the petitioner's case to be covered by decision of the Co-ordinate Bench in the case of ***Hemanta Das Bairagya (supra)*** and allow the writ petition in the same term.
15. We direct the respondent authorities to forthwith issue necessary order extending the benefit of the Memorandum dated 16.09.2011 to the writ petitioner.
16. In the present case the first recommendation for grant of benefit of G.O. dated 20.05.2013, which was issued as a sequel to the Memorandum dated 16.09.2011, was made on 20.06.2018 by the erstwhile Executive Engineer as per averment made in the affidavit-in-opposition. Despite such recommendation having been made in 2018 the benefits have remained elusive to the petitioner for all these years.
17. We, therefore, direct the consequential monetary benefits under Memorandum dated 16.09.2011 be paid to the petitioner from the month of July, 2018.

18. Let the payments be made along with a chart showing detailed calculation of the amount being paid to the petitioner, for the sake of transparency.
19. The entire exercise is required to be completed by the Principal Secretary, the respondent no. 2 herein, within 90 days from the date of receipt/production of a copy of this order.
20. The writ petition is allowed in these terms.
21. The order of the Tribunal stands set aside and O.A 604 of 2022 stands disposed of in these terms.
22. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Madhuresh Prasad, J.)

(Prasenjit Biswas, J.)