

Form No. J.(2)
Item Nos. 8 to 11
Court No. 1
PG

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

HEARD ON: 10.03.2026

DELIVERED ON: 10.03.2026

CORAM:

**THE HON'BLE CHIEF JUSTICE SUJOY PAUL
AND**

THE HON'BLE JUSTICE PARTHA SARATHI SEN

WP.CT. 221 of 2025

The Union of India & Ors.

Versus

Tarak Nath Datta

With

WP.CT. 222 of 2025

The Union of India & Ors.

Versus

Pradip Majumder @ Mazumder

With

WP.CT. 223 of 2025

The Union of India & Ors.

Versus

Niranjan Naskar

With

WP.CT. 224 of 2025

The Union of India & Ors.

Versus

Madhusudhan Purkait

Appearance:-

Mr. Swapan Kr. Nandi

Ms. Banani Bhattacharyfor the Petitioners

Mr. Barun Chatterjee

.....for the respondent in

WP.CT. 222 of 2025

WP.CT. 223 of 2025

JUDGEMENT (ORAL):

PER, SUJOY PAUL, CJ.:-

1. Regard being had to the similitude of the questions involved, on the joint request of the parties, the matters were analogously heard and decided by common judgment. This judgment will decide the fate of WP.CT. 221 of 2025, WP.CT. 222 of 2025, WP.CT. 223 of 2025 and WP.CT. 224 of 2025. The facts are taken from WP.CT. 221 of 2025.

FACTUAL MATRIX

2. The respondent/applicant was engaged as 'substitute' under Station Master (South) Sealdah with effect from 18.10.1985. The respondent/applicant claimed that he attained 'temporary status' on 10.05.1993 but this aspect was denied by the department. The respondent, in the year 2002 was transferred to Electric Department and was uninterruptedly working in AC (Coaching) Wing under SSE/ACC/Sealdah. He was not conferred the status of regular Khalasi. He preferred several representations for granting of status but none could fetch any result. Resultantly, he filed O.A. 1104 of 2022, which was disposed of by order dated 29.10.2023 directing the department to complete the process of screening.

3. Of late, by order dated 12.04.2022, the respondent/applicant was informed that his claim for regularisation cannot be accepted “due to adverse report of fingerprint examiner regarding his genuineness”. Aggrieved, respondent filed O.A. 350/639/2023 before the tribunal seeking direction for considering his claim for regularisation. The tribunal by impugned order, allowed the original application. The said order dated 19.02.2025 is the subject-matter of challenge in this petition.

CONTENTION OF PETITIONERS/DEPARTMENT

4. Learned counsel for petitioners/department submits that the respondent was not an “approved substitute”. Instead he was “unapproved substitute”. The definition of “substitute” mentioned in Rule 3(26) of the **Railway Services (Pension) Rules, 1993 (Pension Rules)** is heavily relied upon.
5. Next submission of learned counsel for petitioners/department is that in view of the adverse report of fingerprint examiner, the respondent’s identity became doubtful and therefore, no fault can be found in the action of the department in not regularising him or giving him desired status.

CONTENTION OF RESPONDENT/APPLICANT

6. Learned counsel for respondent/applicant submits that the learned tribunal has not committed any error of fact or law, which warrants interference by this Court. The case of present respondent is similar to a matter decided by this Court in **WP.CT. 201 of 2024 (Union of India & Others vs. Shri Sanjib Mukherjee)** on 30.07.2024. The department unsuccessfully filed a review petition before the Tribunal, which was also dismissed. The employee therein has already been regularised and order of tribunal/ High Court has been implemented.
7. We have considered the arguments at length and perused the record.

FINDINGS

8. It is not in dispute that the respondent herein was engaged in October 1985 and continuously working thereafter. The parties are at loggerheads on the question of his status while working as such from 1985. Learned counsel for the department, as noticed above, stated that the respondent was “unapproved substitute”. However, reliance is placed on the definition of “substitute” mentioned in the Pension Rules, which reads thus:

“3 (26) “substitute” means a person engaged against a regular, permanent or temporary post by reason

of absence on leave or otherwise of a permanent or temporary railway servant and such substitute shall not be deemed to be a railway servant unless he is absorbed in the regular railway service;"

(Emphasis supplied).

9. A careful reading of this rule makes it clear that a 'substitute' is a person, who is engaged against a regular, permanent and temporary post. Thus, there is no cavil of doubt that if a person works as a substitute, it means that he was engaged against a clear regular/ permanent/temporary post. Department could not produce any definition of "unapproved substitute". Thus, one thing is crystal clear that respondent has worked as substitute against a clear permanent and temporary post. The relief of screening and regularisation was denied on the ground that there is an adverse report of fingerprint examiner. The said report dated 10.01.2014 (page-94) is relied upon by learned counsel for the department. The report contains following remark :

"Fresh L.T.I. is to be verified once again to establish the genuinity".

10. This finding clearly shows that there is no specific finding that L.T.I. of respondent is not matching with the specimen. Instead, the finding is that it requires further verification. Thus, in our opinion, this finding, by no stretch of imagination can be treated

to be a conclusive finding creating doubt on the identity of the respondent.

11. This finding was recorded way back in January 2014. Thereafter, the department did not conduct any further inquiry and did not bring it to the notice of the tribunal that the genuineness of the L.T.I. was examined at any later point of time. Tribunal discarded the argument by specifically holding that in absence of any further inquiry or report, the said document (page-94) will not cause any dent to the claim of the respondent.
12. The tribunal gave another important finding that if respondent's identity was doubtful, why he has been continued by the department since 1985. It goes without saying that if respondent's engagement since 1985 is not disputed, the department must have given him monthly wages and other benefits during those several decades.
13. The tribunal considered the order of this Court in **Shri Sanjib Mukherjee (supra)**, relevant portion of which is reproduced below:

“We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Indisputably, the respondent was engaged as a substitute Group- D employee in the Traffic Department under the Station Superintendent, Sealdah Eastern Railway in the year 1985. He attained temporary status in 1990. He was sent for screening in 1997. In 2002 he was posted as substitute under Senior DEE/ G/Sealdah. Thereafter the respondent's claim for regularization was sought to be kept in abeyance for an indefinite period. The sole ground towards denial of regularization was that a Chief Fingerprint Examiner had reported that there was a mismatch in fingerprints of the respondent. Such mismatch in fingerprints implies impersonation and warrants an enquiry. However, the petitioners miserably failed to substantiate that any such enquiry was ever conducted. The petitioners also failed to produce the report of the alleged committee constituted pertaining to examination of the fingerprints of the respondent.

Accordingly, the learned Tribunal rightly negated the contention of the petitioners and issued necessary directions for regularization of the services of the respondent and we do not find any infirmity in such decision.

In view thereof, the writ petition, being WPCT 201 of 2024 is dismissed.

As the writ petition has been dismissed, the petitioners are directed to comply with the order dated 23rd March, 2023 passed by the learned Tribunal and to extend all consequential benefits to the respondent positively within a period of one month from the date of communication of this order."

(Emphasis Supplied)

14. This matter has similarity with that of **Shri Sanjib Mukherjee (supra)**. It is not in dispute that the order of tribunal in **Shri Sanjib Mukherjee (supra)** got a seal of approval by this Court in WP.CT. 201 of 2024.

15. The tribunal, in our judgement, has taken a plausible view of the matter. The tribunal rightly considered several judgments of Supreme Court in paragraphs 9 and 10 of the impugned order. In our opinion, the said judgments were relevant and deprecates the practice of employer in continuing the employees on substitute/temporary basis for decades. In tune of those Supreme Court judgments, the tribunal rightly held that respondent herein was entitled to get a right of consideration for regularisation. In this view of the matter, we are unable to hold that the tribunal has committed any error of fact and law.
16. Resultantly, all the petitions are **dismissed**.
17. Order(s) of the tribunal under challenge are affirmed.
18. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(SUJOY PAUL, CJ.)

I agree.

(PARTHA SARATHI SEN, J.)