

02
25.02.2026
Ct. No. 11
KCP

MAT 2355 of 2024
with
IA No. CAN 2 of 2025
(The State of West Bengal & Anr. Vs. Sandip Ghosh & Ors.)

Mr. Swapan Kumar Datta, Ld. G.P.
Mr. Tapash Kumar Dey
..... For the appellants

Mr. Arunava Banerjee
Ms. Simantika Dasgupta
Ms. Ritika Mondal
Mr. Sk. Qareeb
..... For the writ petitioners/respondents

1. Records reveal that the writ petition being WPA 11667 of 2024 was disposed of by an order dated 10th September, 2024. By the said orders the respondents were directed to treat the writ petitioners as permanent Government employees and to extend the status and service benefits as available to Group-D employees of the Government of West Bengal including pay scale, allowance, service and superannuation benefits and to release all service benefits from the respective dates of appointment. The above appeal has been preferred against the said order by the Stata and its functionary.

2. Mr. Swapan Kumar Datta, learned Government Pleader assisted by Mr. Dey, learned advocate appearing for the appellants argues that the conditions of service of the writ petitioners would clearly reveal that the master of the writ petitioners is the Hostel Committee. The right to control as also the right to determine the manner and mode of working is also

vested with the Hostel Committee. There is no relationship of master and servant between the writ petitioners and the Institutes in which they were appointed and the said Institutes were not under any statutory obligation to run the canteen/mess. In view thereof, the writ petitioners cannot be treated as Group-D employees. Such contention was upheld in the case of *State of West Bengal & Others versus Prabir Chakraborty*, reported in (2007) 3 Cal LT 545(HC) 545 which the Hon'ble Supreme Court affirmed by dismissing the Special Leave Petition (in short, SLP). Such argument, as urged, was glossed over by the learned single Judge and no finding was returned on the same.

3. He submits that much reliance has been placed upon a note-sheet dated 21.11.2014 issued by the Director of Technical Education and Training which merely expressed an opinion that in view of the notification dated 28.10.2014 issued by the Principal Secretary, Higher Education Department, the Hostel/mess employees of Government and Sponsored Polytechnic may be treated as Group-D government employees. The said notification cannot be construed to be a reservoir of right towards regularisation and it has no statutory force. It is not a decision of the government and cannot be regarded as anything more than being provisional in character. Reliance has been

placed upon a judgment delivered in the case of *Nareshbhai Bhagubhai versus Union of India and Others*, reported in (2019) 15 SCC 1.

4. Mr. Datta contends that there subsists two contradictory views of two co-ordinate Benches (both Division Bench) with regard to the applicability of similar service facilities and/or status to the employees of Hostel canteen-cum-kitchen staff being run by the Hostel Committee/Mess Committee and in several polytechnics and Junior technical schools as are being enjoyed by the employees of the Hostel canteen-cum-kitchen staff being run in diverse Universities and/or colleges under the said universities. In view of such conflicting decisions, the appropriate course of action was to refer the matter to the larger Bench. Reliance has been placed upon a judgment delivered in the case of *Engineers India Limited versus Commissioner of Income Tax*, reported in (2018) 12 SCC 593.

5. *Per contra* Mr. Banerjee learned advocate appearing for the writ petitioners contends that the issue urged by the appellants is no more *res integra* and has been finally decided in the cases of *Director of Technical Education and Training versus Chunilal Chakraborty & Others* and *Director of Technical Education and Training versus Madan Mohan Sarkar & Others* which were affirmed by the Hon'ble Supreme Court by dismissing the SLPs preferred against the

same. The canteens operated by the technical department and other departments were identical in the type and quality of service rendered to the students. They were permanent employees rendering continuous service which was of the same type as other canteen employees under universities or government aided colleges.

6. He submits that in a group of appeals (FMA 741-743 of 2005 and FMA 2679-2681 of 2007), a coordinate Bench of this Court considering the issue as to whether the cook and their assistants working in various hostels/mess should be regularised as University employees as Group-D staff passed an order 17.12.2007 observed *inter alia* that the issue has been decided otherwise by another Division Bench and accordingly referred the matters to a larger Bench for final consideration framing two issues by an order dated 17.12.2007. Thereafter the Hon'ble Special Bench disposed of the reference on 26.11.2014 observing *inter alia* that in view of memo dated 28.10.2014 issued by the Principal Secretary, Higher Education Department conferring the status of non-teaching Hostel/Mess employees and the benefit of General Provident fund and Pension to the Hostel/Mess employees of State-aided Universities, Government-aided Colleges including Government General Degree Colleges and Government Engineering and Technology

Colleges in West Bengal, nothing remains for final consideration so far as the reference made earlier by the order dated 17.12.2007. Considering the same and upon distinguishing the judgment delivered in the case of *Prabir Chakraborty (Supra)*, two coordinate Benches in the cases of *Chunilal Chakraborty & Others (Supra)* and *Madan Mohan Sarkar & Others (Supra)* decided that the status Hostel/mess employees of Government and Sponsored Polytechnic may be treated as Group-D government employees and directed disbursement of all consequential benefits and as such the appellant at this stage cannot reinvigorate an issue finally decided moreso such directions have been complied with as would be explicit from the memoranda dated 11.07.2024, 02.04.2025, 03.04.2025.

7. We have given our thoughtful consideration to the arguments advanced by the learned advocates appearing for the respective parties and have gone through the materials placed before us.

8. The argument advanced by Mr. Datta that there are contradictory views of two coordinate Benches was considered and referred to a larger Bench framing the following issues:

i) Would the canteen employees and hostel/mess employees of any educational institution be entitled to recognition as Group 'D' stall irrespective of the fact whether such institution was residential or not?

ii) What would be the yardstick of deciding the issue for regularization of canteen employees and /or hotel/mess employees, specially when the State Government themselves have framed a committee to fix the pay scale for these employees working in various Universities under the State?

9. Thereafter, the Hon'ble Special Bench disposed of the reference on 26.11.2014 observing *inter alia* that in view of memo dated 28.10.2014 issued by the Principal Secretary, Higher Education Department, nothing remains for final consideration so far as the reference made. The entire sequence of facts and the order passed by the Hon'ble Special Bench on 26.11.2014 including the note-sheet dated 21.11.2014 were considered in the cases of *Chunilal Chakraborty & Others (Supra)* and *Madan Mohan Sarkar & Others(Supra)* and the judgment delivered in the case of *Prabir Chakraborty (Supra)* was distinguished giving reasons and the Hon'ble Supreme Court gave its imprimatur to the reasoning given by the Hon'ble Division Benches in the cases of *Chunilal Chakraborty & Others (Supra)* and *Madan Mohan Sarkar & Others (Supra)*.

10. Doctrine of precedents and stare decisis are the core values of legal system. When substantial judicial time and resources are spent on references the same should not be made in a casual manner. It is only when

a proposition is contradicted by a subsequent judgment of the same Bench or it is shown that the proposition laid down has become unworkable or contrary to any well-established principle or when there is an irreconcilable conflict, the matter may be referred to a larger Bench. We do not find any compelling or strong reasons to depart from the orders passed by the Division Bench in the cases of *Chunilal Chakraborty & Others (Supra)* and *Madan Mohan Sarkar & Others (Supra)*. The judgments upon which reliance has been placed by the appellants are also distinguishable on facts.

11. An appellate power interferes not when the order appealed is not right but only when it is clearly wrong. The learned single Judge upon considering the factual issues arrived at a specific finding that the writ petitioners, who are employees of polytechnics, stand in the same footing as those aggrieved employees, who had earlier been granted similar benefits by coordinate Benches. In appreciation of the proposition that judicial propriety demands that the findings arrived at on the rudiments of similar facts by another Court should be given respect and should be followed, the learned single Judge extended the benefits to the writ petitioners and we do not find any infirmity in the same.

12. Accordingly, the appeal and the connected application are dismissed.

13. There shall, however, be no order as to costs.

14. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)