
(2021) 08 CAL CK 0099
In the Calcutta High Court
Case No : W.P.S.T. 180 Of 2019

Abdul Azad

APPELLANT

Vs

Abdul Azad

RESPONDENT

Date of Decision : 31-08-2021

Acts Referred:

Citation : (2021) 08 CAL CK 0099

Hon'ble Judges : Soumen Sen, J;Hiranmay Bhattacharyya, J

Bench : Division Bench

Advocate : Piyush Chaturbedi, Manorandan Jana, Tapan Kumar Mukherjee-III, Somnath Naskar

Final Decision : Allowed

Judgement

This writ petition has arisen out of an order dated August 2, 2019 passed by the West Bengal Administrative Tribunal in Original Application No. 766 of 2016 in which the writ petitioner had prayed for regularisation of his services.

The writ petitioner claims himself to be a landless, physically handicapped and very poor person. He belongs to below poverty line. The admitted facts are that he was engaged as water carrier-cum-sweeper on daily rate basis since 1990 in the office of the Deputy Director, Animal Resources Development and Parishad Officer, Purulia. Earlier he had approached the tribunal in the year 2013 for appropriate remuneration as per the relevant Government Circular, since in spite of representation being made his case was not considered by the Government. On December 13, 2013, the earlier application being Original Application No. 1143 of 2013 was disposed of by the tribunal directing the Deputy Director, Department of Animal Resources Development, Purulia, to consider whether the petitioner would be governed by the latest circular of the Finance Department with regard to remuneration payable to part time contingent menial and to decide the matter within a period of two months from the date of communication of such order. The tribunal further directed that in the event the petitioner found eligible, he should be paid in accordance with the circular.

The said order, however, was not immediately implemented and ultimately in a contempt proceeding an order was passed on August 25, 2015 wherein it was recorded that the order of the tribunal had been complied with and he has been paid Rs. 23,760/-, after revision of his remuneration, in terms of the Government Order dated June 6, 2015. In the order dated June 6, 2015, it was recorded that the petitioner is a part time sweeper at the Block Animal Health Centre, Manbazar-I at Chepua, Purulia, and that considering the nature and time involvement of the service rendered by the petitioner, he would be entitled to monthly remuneration at the rate of Rs. 500/- per month.

Subsequently, the Government of West Bengal issued a Memorandum being No. 1107-F(P) dated February 25, 2016 which concerns all contractual/casual/daily rated workers working in various establishments of the Government. It lays down certain conditions and guidelines and was issued after review of the Government's earlier notification dated September 16, 2011.

The writ petitioner, in view of the said circular dated February 25, 2016, approached the Government for his regularisation of his services. Since his prayer for regularisation of enhanced remuneration was not considered by the Government, he moved the tribunal.

Before the tribunal, the respondents have fairly stated that the petitioner was engaged as water carrier and cleaner on contingent charge basis under the Deputy Director, Animal Resources Development and Parishad Officer, Purulia, since 1990, but he could not claim for any absorption or regularisation as Group-D as he had worked for certain few hours.

On a plain reading of the Memorandum dated February 25, 2016, it does not appear that the petitioner would be excluded from the purview of the said memo, since it is established that he has been working under the establishment since 1990 and he had been paid his remuneration, which, however, is different from the salary and/or wages paid to a regular Group-D staff.

It is submitted that there is no sanctioned post for water carrier-cum-sweeper. However, it is not denied that his service is required almost on a daily basis for cleanliness of the office of the Deputy Director, Animal Resources Development and Parishad Officer, Purulia. The status of the petitioner as casual worker is being disputed before the tribunal.

We have heard the learned advocates appearing for the parties. We feel that it would be appropriate for the authorities to decide the claim of the petitioner for absorption and/or for appropriate remuneration in terms of the Memo dated February 25, 2016 and keeping in view the decision of the Hon'ble Supreme Court rendered in the case of State of Karnataka & ors. vs. Uma Devi(3) reported in (2006) 4 S.C.C. 1 (paragraph 53) as also the observations made by the Hon'ble Supreme Court in the case of Sheo Narain Nagar & ors. vs. State of Uttar Pradesh & ors. reported in A.I.R. 2018 S.C. 233. The authorities shall also consider the decision rendered by this court in W.P.C.T. 62 of 2020 (Union of

India & ors. vs. Subrata Mondal & anr.) on July 20, 2021 apart from the relevant rules and applicable circulars in deciding the claim of the petitioner for enhanced remuneration and absorption. A specific finding is to be arrived at by the authorities concerned with regard to the applicability of the Memorandum dated February 25, 2016 in the case of the writ petitioner. It is expected that the respondents being the model employer shall take a pragmatic and well-founded view in deciding the claim of the writ petitioner, who is working in the department concerned since 1990.

The order passed by the tribunal is set aside and the writ petition succeeds accordingly.

The Secretary, Department of Animal Resources Development, West Bengal, shall decide the matter, as aforesaid, within a period of eight weeks from the date of communication of this order, after giving a reasonable opportunity of hearing to the writ petitioner and/or his authorised representatives and by passing a speaking and reasoned order and shall communicate his decision to the writ petitioner within a period of two weeks from the date of taking his decision.

We make it clear that the Secretary of the Department of Animal Resources Development shall decide the matter in accordance with law after taking into consideration the observations made by us in this order.

There will be no order as to costs.

Photostat certified copy of this order, if applied for, will be made available to the applicant within a week from the date of putting in the requisites.