

**(2009) 11 CAL CK 0023**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 20139 of 2007**

Arun Roy Chowdhury and Others

APPELLANT

Vs

Damodar Valley Corporation and Others

RESPONDENT

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**Date of Decision :** 26-11-2009

**Acts Referred:**

**Citation :** 114 CWN 623 : (2010) 124 FLR 374

**Hon'ble Judges :** Jayanta Kumar Biswas, J

**Bench :** Single Bench

**Advocate :** R.N. Das and Durga Prasad Datta, for the Appellant; Alope Kumar Banerjee, Subimal Mukherjee and Uttam Kumar Mandal, for the Respondent

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## Judgement

Jayanta Kumar Biswas, J.—The eleven petitioners in this writ petition to provide them with employment to Group D posts in accordance with the policy decision of Damodar Valley Corporation dated September 6, 1996, the order of the Chairman of the Corporation dated November 1, 2001 and the order of this Court dated March 18, 2002 in W.P. No. 2320 (W) of 2002 (Shri Prem Singh and others v. Union of India and others).

2. The policy decision dated September 6, 1996 is Annexure P4 at p. 55. It was issued by the Corporation with respect to introduction of Group D and restructuring to Group C and Group B posts in the Corporation. The decision of the Chairman of the corporation dated November 1, 2001 is Annexure P6 at p.62. It was given in compliance with an order dated July 6, 2001, Annexure P5 at p.61, made in W.P. No. 8748 (W) of 2001 (Prem Singh and others v. State of West Bengal and others).

3. The decision of the Chairman of the Corporation dated November 1, 2001 is set out below:

The undersigned, Chairman, Damodar Valley Corporation has considered the representation dated 4.6.2001 submitted by Shri Prem Singh and others, empanelled casual workers, in terms of the order dated 6.7.2001 passed by the

Hon"ble Kolkata High Court in Shri P. Singh and others v. UOI and others (W.P. No. 8748 (W)/2001).

In this connection, it is pertinent to mention here that Damodar Valley Corporation is a multi-purpose organisation, primarily generating and transmitting electrical energy as per DVC Act, 1948 (Act XIV of 1948). DVC has a permanent manpower of 13, 187 as on date.

Casual workers are time to time engaged by DVC for casual nature of jobs in different departments at DVC Hqrs. as well as in its various field formations situated in several places both in the States of Jharkhand and West Bengal.

In DVC Headquarters employment has already been given to empanelled casual labourers and persons on compassionate ground in the lowest category of unskilled employees i.e. Group-D (erstwhile Group-C) on 1:1 quota on overall Group-D vacancies subject to availability of vacancies and after complying with the reservation rules of Government of India.

Already 74 empanelled casual workers have been given employment in DVC Hqrs. The panel of casual workers at present contains name of 37 casual workers which also includes the names of the petitioners and they may be considered for regular employment in DVC Hqrs. in the event vacancies arise in future.

Therefore, the undersigned, after considering all the relevant aspects of the matter, hereby disposes of the representation dated 4.6.2001 submitted by Shri P. Singh and others with the direction that the cases of the petitioners who are empanelled casual workers may be considered for regular employment in DVC Headquarters as and when their turn comes for employment as per their panel position, depending upon clear vacancy, actual requirement and reservation rules.

4. The order of this Court dated March 18, 2002 in W.P. No. 2320 (W) of 2002 (Shri Prem Singh and others v. Union of India and others), Annexure P-7 at p.64, is set out below:

The petitioners are casual workers. Pursuant to an order dated 6th of July, 2001, passed by this Court in writ petition No. 8748 (W) of 2001 moved by the petitioners, the respondent had considered their case for absorption and recorded its order on 1st of November 2001 (Annexure "P-5"). From the said order, it appears that a Panel of casual workers was prepared. Within the said panel, 74 casual workers have been given employment. A balance of 37 casual workers in the Panel is still remaining. These 37 candidates include the petitioners. It was stated that they would be given appointment as soon vacancy is available on 1:1 ratio subject to the reservation Rules. I do not find any infirmity in the order. However, the respondent shall consider the case of the petitioners according to such scheme as disclosed in the impugned order before considering filling up of any vacancy in Group-D posts on the ratio 1:1.

With this observation, this writ petition is disposed of.

After the above order was passed, learned Counsel for the petitioners from the Supplementary Affidavit filed contends that one person is taken from outside. The scheme is that the vacancy will be filled up on the ration 1:1. Therefore, if one person is taken, in that event another person is taken from the panel if the vacancy is available. Therefore, I do not think that the ration 1:1 has been deviated from.

Xerox certified copy of this order, if applied for, be given.

5. The petitioners have taken out the present writ petition alleging that though a substantial number of vacancies are available in the headquarters of the corporation and according to the decision of the Chairman of the Corporation dated November 1, 2001 and the order of this Court dated March 18, 2002, the Corporation was under the obligation to appoint them to Group D posts concerned, the respondents did not take necessary steps for the purpose.

6. The Corporation has filed an opposition dated March 12, 2008 stating a case that not only there is no vacancy for accommodating the petitioners, but the Corporation, not in a sound financial condition, has not been making any new recruitment to any post as well, and hence there is no question of refusing to appoint the petitioners according to the decision of the Chairman of the Corporation and the order of this Court. By filing a reply dated March 31, 2008 the petitioners have disputed the case of the Corporation that requisite vacancies for appointing them on permanent basis are not available.

7. Mr Das, their Counsel, wanted an order directing the Corporation to produce the incumbency register and permitting the petitioners to inspect it. An order was made and after inspecting the register the petitioners have filed a supplementary affidavit dated August 20, 2009 stating that it is evident from the incumbency register that as many as fifty-two vacancies for Group D posts are available in the Corporation's headquarters. The Corporation has filed a counter dated November 10, 2009 reiterating its case that the petitioners, working as casual workers, have no right to claim regularisation. Mr Banerjee, their Counsel, has also referred to the Constitution Bench decision in the State of Karnataka and others v. Umadevi. 2006 (109) FLR 826 : 2006 (42) AIC 935 (SC)

8. After hearing Mr. Das and Mr. Banerjee, and after going through the pleadings and materials produced with them, I am of the view that a mandamus commanding the corporation to appoint the petitioners to Group D posts in the Corporation's headquarters cannot be issued. The decision of the Chairman was that cases of the petitioners would be considered for regular employment in the Corporation's headquarters according to their turn and position in the list of the casual workers and on availability of clear vacancy and actual requirement. It is the case of the Corporation that there is no requirement of recruiting to any Group D post. There is no reason to say that the corporation has come up with an untrue case.

9. According to their positions in the list of casual workers from which the casual

workers have been given regular employment from time to time, the petitioners are entitled to be considered. It is not the Corporation's case that their turn has not come according to the list. In view of the case stated in the supplementary affidavit based on the incumbency register, it cannot be said that clear vacancies are not available. In view of the decision of the Chairman and the order of this Court, it cannot be said that the petitioners are not entitled to be considered for regular employment. The Corporation is bound by its own decision on which it has acted upon from time to time. Hence, I am of the view that to the cases of the petitioners the principle laid down by the Constitution Bench in *Umadevi* cannot be applied.

10. The only difficulty in giving the petitioners regular employment in the corporation's headquarters is the actual requirement for recruitment to the Group D posts. When the corporation has clearly stated that its financial condition does not justify fresh recruitment, and that, as a matter of fact, it has not been recruiting to Group D posts for quite sometime, I am unable to say that there is an actual requirement, but the Corporation is not considering the cases of the petitioners. But one thing cannot be ignored that the petitioners have been working as casual workers for decades, and that in the process they have given themselves over to the services of the Corporation, and further that in a few years they will reach the age of superannuation.

11. In my opinion, keeping these things in mind, the Corporation should examine the question of providing them regular employment, even though it has not been recruiting to any Group D posts for quite sometime. If the present condition continues, then the petitioners will never get regular employment in the Corporation. A substantial number of the listed casual workers have already been given regular employment and only a small number is awaiting the benefit. On these facts, I think it will be appropriate for the corporation to give a fresh look to the entire matter and examine the cases of the petitioners closely and sympathetically.

12. With the foregoing observations, I dispose of the writ petition directing the corporation to examine the cases of the petitioners. The Chairman of the Corporation shall give a decision within eight weeks from the date of communication of this order. There shall be no order for costs.

13. Urgent certified xerox of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the section concerned.