
(2014) 05 CAL CK 0016
In the Calcutta High Court

Case No : Writ Petition S.T. Nos. 119, 120 and 121 of 2014

Baidyanath Kahar and Others

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 14-05-2014

Acts Referred:

Citation : (2015) 1 CHN 100

Hon'ble Judges : Nishita Mhatre, J; Tapash Mookherjee, J.

Bench : Division Bench

Advocate : Swapan Kumar Nandy and Subhashish Dutta, for the Appellant;
Joytosh Majumder and Tulsidas Roy, for the Respondent

Judgement

1. The Petitioners in WPST 119 of 2014, WPST 120 of 2014 and the Petitioner in WPST 121 of 2014 are all aggrieved by the decisions of the West Bengal Administrative Tribunal by which their Original Application Nos. 912 of 2011 (WPST 119 of 2014), 962 of 2011 (WPST 120 of 2014) and 237 of 2013 (WPST 121 of 2014) respectively have been dismissed and also by the dismissal of the Review Applications being R.A. Nos. 09 of 2013, 7 of 2013 and 8 of 2013 filed in respect of the orders passed in the aforesaid Original Applications. The Petitioners in all these writ petitions claim to be the Special Attendants working in Government Hospitals. They have sought to be absorbed as Group "D" staff in Government Hospitals, which are run under the Department of Health and Family Welfare. They claim this absorption on the basis of a scheme, which was formulated by the Government of West Bengal and published on 10th of August, 1981. Under the scheme Special Attendants, who had worked for five consecutive years in a Government Hospital and who had rendered at least 240 days of service in each of those years and whose names were registered by the Authorities of the Hospital, were entitled to be appointed in vacant posts of Group "D" staff on the regular establishment in the Hospital in which they have worked as Special Attendants. 15% of the vacancies occurring in the Group "D" staff cadre could be filled in this manner under the scheme. However, the

maximum age limit of a Special Attendant to be absorbed as a Group "D" staff was limited to 45 years on the first day of the year in which the recruitment was to be made. The panels of such Special Attendants employed in the Hospitals were to be maintained in the Hospitals and the Superintendents of the Hospitals were authorized to earmark vacancies for the candidates having regard to the requirement of the Hospitals. The scheme was to take immediate effect. However, the scheme stipulated that there would be no fresh enrolment of Special Attendants. Thus the Special Attendants could not be employed after 10th of August, 1981 and if such Special Attendants were employed, the scheme was not applicable to them.

2. It appears that one set of employees moved the West Bengal Administrative Tribunal in O.A. No. 1516 of 2001. By an order of 14th May, 2009, the Tribunal directed the Authorities to consider within six months the pending representation of the applicants in that case regarding their absorption in accordance with the Government Policy. The Tribunal further directed that the status of the applicants as Special Attendants on record should not be disturbed while their representation was being considered. The Authorities then considered the representation of those employees and the Director of Health Services, Government of West Bengal, disallowed the representation. Aggrieved by that order, those employees filed O.A. No. 45 of 2010. The Tribunal disposed of that application by passing the following order:

"It is true that the applicants were employed not against the sanctioned post. In the present case, we are satisfied that petitioners were never given employment against any sanctioned post.

We find from the facts not disputed by the state government that petitioner rendered the service since a long time. When their service is terminated, we find that in the past there was an attempt to get sanctioned post to accommodate the petitioners and in view of this position, we hold that even we cannot interfere with the termination order of the petitioner, it our desire that however, in future any sanctioned post is available the petitioners should be considered through a legal process for engagement against the sanctioned post and in that case the petitioner's age should be condoned by the appropriate authority considering the facts that they rendered the continuous service in more than a few years".

3. This order was passed on 28th June, 2011.

4. The Petitioners in WPST 119 of 2014, WPST No. 120 of 2014 and the Petitioner in WPST 121 of 2014 also filed O.A. Nos. 912 of 2011, 962 of 2011 and O.A. No. 237 of 2013 respectively, essentially claiming the same reliefs as were claimed by the employees, who had moved the Tribunal in O.A. No. 45 of 2010. These applications were filed by the Petitioners in WPST 119 of 2014 and WPST 120 of 2014 in 2011 prior to the order being passed in O.A. No. 45 of 2010 and the Petitioner in WPST No. 121 of 2014 after that order was passed by the Tribunal.

5. The Tribunal has disposed of those applications filed by the Petitioners by passing the same order, which is almost verbatim.

6. Aggrieved by those orders the Petitioners moved the Tribunal by filing Review Applications, being R.A. No. 9 of 2013, 7 of 2013 and R.A. No. 8 of 2013 respectively which have been dismissed by the Tribunal on 11th September, 2013.

7. In our opinion, the challenge to the orders passed in the Review Applications is not sustainable, as the Tribunal has given cogent reasons for rejecting the Review Applications.

8. As regards the orders passed in O.A. Nos. 912 of 2011, 962 of 2011 and O.A. No. 237 of 2013, we do not find that there is any infirmity in these orders. There is no material on record to show that the Petitioners were in service in 1981 when the scheme was formulated. There is also no material to show that the Petitioners had, in fact, rendered five consecutive years of service in which they had worked for 240 days in each year. Some documents indicating that the Petitioners were in service in the decade between 1990 and 2000 have been placed on record. These documents do not, in any manner, indicate that the Petitioners were in service when the scheme was formulated. The scheme stipulated that no enrolment of Special Attendants should be made after the scheme came into effect on 10th August, 1981. Thus, if the Petitioners were employed after 10th August, 1981, they cannot be covered by this scheme.

9. We have been informed by Mr. Majumder, the learned Counsel appearing for the State in WPST No. 119 of 2014 and WPST No. 120 of 2014, that the post of Special Attendants has been abolished because there was no recruitment as stipulated in the scheme.

10. In these circumstances, in our opinion, there is no need to interfere with the orders passed by the Tribunal in O.A. Nos. 912 of 2011, 962 of 2011 and the O.A. No. 237 of 2013.

11. The petitions being WPST Nos. 119 of 2014, 120 of 2014 and WPST No. 121 of 2014 are dismissed with no order as to costs.

12. Photostat certified copy of the order passed in WPST Nos. 119 of 2014, 120 of 2014 and WPST No. 121 of 2014, if applied for, be given to the learned Advocates for the parties upon compliance of all necessary formalities. Photostat copy of this order duly counter-signed by the Assistant Court Officer be retained with the records of WPST Nos. 120 of 2014 and 121 of 2014.