

(2019) 11 CAL CK 0076

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 9492 (W) Of 2015

Biswanath Das

APPELLANT

Vs

State Of West Bengal And Others

RESPONDENT

Date of Decision : 22-11-2019

Acts Referred:

Citation : (2019) 11 CAL CK 0076

Hon'ble Judges : Rajasekhar Mantha, J

Bench : Single Bench

Advocate : Washef Ali Mondal, Narayan Chandra Bhattacharjee, Manas Kumar Sadhu

Final Decision : Disposed Of

Judgement

Rajasekhar Mantha, J

The writ petitioner claims to have been engaged as a casual worker by the Block Development Officer, Nowda as a sweeper. He claims that he has worked for 240 days continuously in the last ten years and had approached the State Administrative Tribunal by way of O. A. 1165 of 1997 for regularisation of his service.

The Tribunal by order dated 26th June, 2000 directed the District Magistrate, Murshidabad to consider his case for regularisation of service.

By an order dated 4th December, 2000 the District Magistrate had declined his case for regularisation as there are no rules and provisions in the State Government therefor.

The petitioner then filed the instant writ petition in the year 2015 claiming benefits as per G. O. No. 11794-F(P) dated 22.12.2010 and G. O. No. 6077-RD dated 06.12.2013.

By the aforesaid two Circulars, the State Government had in lieu of regularisation of the casual workers, decided to extend certain benefits in the form of a pay

revision and also security for length of casual service.

The writ petitioner obtained various certificates from the B. D. O. concerned that he was employed for over 240 days from 1990 till date on a daily rated basis. The B. D. O. vide various communications, inter alia, dated 28.01.2010 stated that the petitioner was engaged against the sanctioned post.

However, certain contradictions were found in the communication of the B. D. O. and several contradictory reports were received by Co-ordinate Benches of this Court in this regard. The State was thereafter directed to file a comprehensive and proper affidavit-in-opposition.

By an affidavit-in-opposition affirmed one Sudipta Porel, the Additional District Magistrate, Murshidabad on 18th June, 2019 the B. D. O. issued a letter dated 28.03.2019 correcting his earlier letter stating that the petitioner was not engaged in any sanctioned post, contrary to the earlier Memo No. 750 where it was stated that the petitioner was engaged in a sanctioned post as a casual worker.

In the aforesaid Circular dated 06.12.2013, it is specifically stipulated that the casual daily rated workers engaged in sanctioned posts under the Government would get remuneration at the rates mentioned thereunder.

It is clear to this Court that 2013 Circular was not in supersession of the Circular of 22nd December, 2010.

In those circumstances, since the Circular dated 22nd December, 2010 does not require the petitioner to be engaged against any sanctioned post, he would be entitled to benefits only thereunder i.e. under the Circular No.11794 F(P) dated 22nd December, 2010. The Circular dated 22nd December 2010 was only modified vide Circular dated 16th September, 2011.

Counsel for the State would argue by reference of Clause (ix) that even the modified 2010 Circular as in the Circular No. 9008-F(P) dated 16th September, 2011 that entitlement thereunder must be made upon strict observance of Recruitment Rules and against sanctioned vacancies.

The opening lines of Clause (ix) state that "it is reiterated that Officer/Officers responsible for any further engagement of such casual/daily rated/contractual worker will be personally liable for violation of this order".

It would therefore mean that the requirement of being appointed against sanctioned vacancies was for future engagements and the same is supported by the Circular dated 06.12.2013.

This Court, therefore, is of the view that the petitioner is entitled to benefits only and only under the Circular dated 22nd October, 2010 and not under any other Circular. He would be paid the remuneration mentioned thereunder i.e. the Circular dated 22.10.2010 and get the benefits thereunder from the date of filing of the writ petition.

With the aforesaid observations, the writ petition shall stand disposed of.

No order as to costs.

Photostat certified copy of this order, if applied for, be given to the parties on urgent basis.