
(2025) 01 CAL CK 1686
In the Calcutta High Court, Appellate Side
Case No : WPA No. 17478 Of 2022

Dipta Sen & Ors

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 03-01-2025

Acts Referred:

Citation : (2025) 01 CAL CK 1686

Hon'ble Judges : Subhendu Samanta, J

Bench : Single Bench

Advocate : Ayan Banerjee, Soumo Choudhury, Suman Banerjee, Sujit Bhunia, Pantu Deb Roy, Sayak Chakraborty

Final Decision : Disposed Of

Judgement

Subhendu Samanta, J.

1. Petitioners were initially engaged in the post of Part Time Lecturers in Polytechnics under Technical Education, Training and Skill Development Department Government of West Bengal with fixed remuneration and for a particular period. Their engagement was extended time to time. The fixed remuneration per class was also enhanced by different notification of the Government of West Bengal. Vide notification No. 557 dated 2nd September, 2010, Department of Technical Education and Training, Polytechnic Branch, Government of West Bengal, had issued a notification, thereby implemented contractual fixed remuneration of part time lecturers and other categories of employees of Government/Government Sponsored Polytechnic in the State.
2. It is the case of the petitioner by such notification the Government has changed the status of the part time lecturers to contractual lecturers with fixed remuneration for months.
3. Thereafter Government also issued another GO No. 675 dated 29th August 2011 for engagement of part time faculty and non-teaching faculty in Polytechnic on hourly basis providing fixed remuneration of the faculties and non-teaching

faculties hourly basis or class basis.

4. Vide GO No. 765 dated 23rd September, 2011 the Government has clarified its position regarding status of the petitioners as follows:-

No.765-TET(Poly)/4E-26/2010

Dated, Kolkata, the 23rd September, 2011.

From : Shri H. P. Ghosh

Deputy Secretary to the Government of West Bengal

To: The Director of Technical Education & Training, West Bengal

Sub: Clarification regarding Part-time appointment of teaching and non-teaching faculty in Polytechnics

Consequent upon issuance of Government Order No.675-TET(Poly) dated 29.08.2011 allowing engagement of Part-time faculty and non-teaching faculty in Polytechnics on hourly basis, a question has been raised from some corner as to whether the Part-time faculty and non- teaching faculty of Polytechnics who were engaged prior to July, 2010 and were allowed contractual fixed remuneration in terms of this Deptt's G.O. No.557-TET (Poly) dated 02.09.2010 be guided by the latest Govt. Order.

After careful consideration, the undersigned is directed by order of the Governor to say that the Part-time faculty and non-teaching faculty engaged in Polytechnics prior to July 2010 will continue to draw contractual fixed remuneration as defined in the manner in this Deptt. G.O. No.557-TET (Poly) dated 02.09.2010 until further orders. However the part-time faculty and non-teaching faculty to be engaged from October, 2011 will be guided by the Deptt's G.O. No.675- TET(Poly) dated 29.08.2011.

This order issues with the approval of the competent authority.

Deputy Secretary to the

Government of West Bengal

No.765/1(4)-TET(Poly)

Dated, Kolkata, the 23rd September, 2011.

5. The Government of West Bengal, Finance Department has issued a memorandum No. 9008-F (P) dated 16th September 2011, whereby the State of West Bengal in order to provide security of tenure, appropriate emoluments and to provide certain terminal benefits as framed a scheme for casual/daily rated/ contractual workers who have remained engaging in various Government establishment for a considerable period for more than 10 years. The Memo dated 16th September 2011 is set out as follows:-

No.-9008-F(P) dated 16th September,2011

In order to provide security of tenure, appropriate emoluments and certain terminal benefits subject to fulfilment of certain conditions to the casual/daily rated/contractual workers who have remained engaged in various Government Establishments for a considerable period of more than 10 years in connection with Implementation of various schemes/projects of various Departments of the government two Memorandums vide No. 2966- F(P) dt. 23-04-2010 and No. 11794-F(P) dt. 22-12-2010 were issued by the Government in Finance Department.

The question of making the provisions of the two aforesaid orders more effective and suitable to the convenience of the Government Establishments/Organization has been under active consideration of the Government for some time past.

After careful consideration of the matter and in supersession of the aforesaid orders and all other orders issued by other Departments in the matter, the undersigned is directed by order of the Governor to say that the Governor, has now been pleased to order that the casual/daily rated/contractual workers, who are remaining attached to various establishments of the Government Departments/ Directorates/Regional Offices/other Organizations for not less than 10 years continuously as on 01-08-2011 and have rendered service for at least 240 days each year will be allowed the following benefits:

(i) The casual/daily rated/contractual workers who have rendered 10 years of service continuously with at least 240 days attendance each year may remain engaged in the same status and capacity till their attaining the age of 60 years.

The continuity of service shall have to be certified by a competent officer not below the rank of Assistant Secretary in the case of a Secretariat Department, Director in the case of a Directorate and Assistant Engineer/S.D.O/B.D.O in the case of Regional Offices. 'The concerned officer, who certifies may be advised to exercise extreme precautions and take assistance of an office of WBA & AS, if necessary.

(ii) An entry point basic pay in PB-I i.e. Rs. 6600/- (Rs. 4900 + 1700) p.m. will be admissible to casual/daily rated/contractual Group 'D' workers as consolidated remuneration, similar entry point pay (entry point pay in the Pay Band plus Grade Pay) will be admissible to casual/daily rated/contractual Group 'C' worker and an employee of any other category, if he/she fulfils the required condition will be entitled to a monthly remuneration which will be minimum entry level pay of Pay Band and Grade Pay corresponding to his/her category and the remuneration may be determined in "consultation with the Finance Department in the some manner as mentioned above.

(iii) When such casual/daily rated/contractual workers are allowed the entry point basic pay, they will not get any other allowances like dearness allowance, house rent allowance etc. However, their basic pay will be enhanced by 5% after

every three years and the three years will be counted by treating the period from 1st August 2011 to 1st July 2012 as completed year for giving effect to 5 per cent increase in basic pay.

(iv) The remuneration of casual/daily rated/contractual workers who have not yet completed 10-year service will be equivalent to 75% of the remuneration admissible under sub-para (ii) above subject to a minimum of Rs. 5000/- p.m

(v) Those casual/daily rated/contractual workers who will complete 10- year service on 1 July every year will come under the purview of this Order provided..no, such worker if engaged after 01-04-2010 will come under the purview of this Order.

(vi) A casual/daily rated/contractual worker who will fulfil the conditions as laid down in sub-para (i) above will continue to be engaged in such a manner till he/she attains the age of 60 years when he/she will be paid an amount of Rs. 1 lakh as one time cessation of engagement benefit.

(vii) A casual/ daily rated/contractual worker may be allowed 30 (thirty) off days a year and a female such worker may be allowed Maternity leave of 180 (one hundred eighty)days in addition to 30 days off as mentioned hereinbefore.

(viii) A casual/daily rated/contractual worker who is engaged in two different Government Departments but has rendered services for 10 years without a break will come under the purview of this Order.

(ix) 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. However, having regard to the exigencies of situation and in order to facilitate smooth running of any project/administration or for serving academic interest where it is absolutely necessary contractual engagement may be made for a very limited period not exceeding 1 (one) year. This engagement shall be made on strict observance of recruitment rules and against sanctioned vacancies. Advertisement shall be published in newspaper and applications shall be invited from eligible candidates to fill up those temporary vacancies. Simultaneously steps should be taken to fill up the vacancies on regular basis following recruitment rules. Such contractual engagement may be renewed from time to time, but not exceeding a total period of 6 (six) years. No claim to regularization of this contractual service in terms of G.O. No. 8305-F dt. 26-09-2005 read with G.O. No. 642-F dt. 24-01-06 shall lie.

(x) The provisions of this Order will not be applicable where contractual engagement has been made without any sanctioned post and for any specific project for a very temporary period upto a maximum 6 (six) years of turning up the project whichever is earlier. This in such cases steps will not be required to be initiated for filling up the posts through regular appointments as per the Recruitment Rules since the posts are temporary by nature.

(xi) During the period of engagement, the service of a casual/daily rated/

contractual worker may be terminated because of involvement in criminal case/ misconduct/delinquency/incapacitation etc. or if the concerned worker intends to opt out of the engagement on his/her own.

(xii) The benefit of this Memo will be applicable mutatis mutandis to the Panchayat Bodies/ULRs/ Statutory Bodies.

(xiii) The casual/daily rated/contractual workers who have already got the benefit with reference to 1 April, 2010 as cut off date will continue to get the benefit in terms of F.D. Memo No. 2966-F(P) dt. 23-04-2010 and No. 11974-F(P) dt. 22-12-2010, while the others will be covered in terms of provisions of this Memo.

The undersigned is further directed to reiterate that henceforth no further engagement of Group 'D' employees, who are engaged in the manner as laid down in F.D. Memo. No. 3727-F dt. 20-05-2009 and paid out of contingency, will be done, on or after 01-04-2010. Officer/Officers responsible for such engagement will be personally liable for violation of this Order.

(xiv) The final approval will be given by the ACS/Principal Secretary/Secretary as the case may be, of the concerned Department, after exercising necessary checks & balances & ensuring that any ineligible person does not get the benefits of this order.

(xv) A Performa statement is hereby annexed for supplying information by the respective appointing authority to the Administrative Department.

6. Learned Counsel for the petitioner submits that the State of West Bengal in the year 2010 has changed the status of the petitioner from being part time employees to contractual fixed remuneration of part time employees. The petitioners are now paid fixed remuneration as a contractual employee. Petitioners being the contractual employee are entitled to get the benefit at par with the other contractual employees vide Finance Department Memo No. 9008 F (P) dated 16th September 2011.

7. It is the further case of the petitioner that the petitioners are attached to the Directorate for more than 10 years and are serving for at list 240 days each year. Thus they are entitled to the benefits vide memo No. 9008 F (P).

8. Learned Counsel for the petitioner argued that the present petitioners are also entitled to get the same remuneration as to that of the regular lecturers on the principle for "equal pay for equal work".

9. In support of his contention Learned Counsel for the petitioner has cited decision by Hon'ble Apex Court passed in State of Punjab and Ors Vs. Jagjit Singh and Ors 2007 (1) SCC 148. He argued that the possession of Jagjit Singh was followed by the Supreme Court subsequently in Subhasankar Dubey Vs. Divisional Forest Officers and Ors (2019) 12 SCC 279.

10. Learned Counsel appearing on behalf of the State Authority submits that the appointment of the petitioners was contractual in nature and it was not against

any sanctioned vacant post. The State Authority has further argued that the petitioner's service cannot be regularised and they are not entitled to the benefits of Government notification as sought for. The said benefits are only available to contractual/casual/daily rated employees. It is the further argument of the said respondents that petitioner are not rendering functions of full time employees and they have not appointed as full time employees by exhausting due course of employment. Thus the petitioners are not entitled to get the same benefits according to the GO Dated 16th of September 2011.

11. Learned Counsel for the State authority has also demonstrated the view of Hon'ble apex Court in Union of India Vs. Ilmo Devi.

12. The added respondents are also part time contractual lecturers of different Government Institutions. They claimed same relief at par with the petitioners.

13. Admitted facts of the instant matter is that the petitioners and the added respondents are engaged as a part time lecturers in the various Polytechnic Colleges. It is the case of the petitioner that vide memo No. 557 dated 2nd September 2010, the status of the petitioners were changed from part time employees to contractual employees. It is further case of the petitioners that their remuneration are not fixed as per class basis but they are under contractual relationship with the State under fixed remuneration per month.

14. It is the further case of the petitioner that the Government vide memo dated 765 dated 23rd September 2011, has clarified the position /status of the present petitioner.

15. On perusing the entire notification No. 557 dated 2nd September 2010, it appears to me that scheme of implementation of contractual fixed remuneration of part time lecturers are on the basis of the criteria that, the lecturers should take at list 15 classes per week. The said notification also provided "other terms and conditions in respect of the part timers will be decided later on". Notification 765 dated 23rd September has specifically clarified that the teaching faculty under contractual fixed remuneration of part time lecturers who were engaged prior to July 2010 will continue to draw contractual fixed remuneration per month as defined in the manner in GO No. 557 dated 2nd September 2010.

16. So after perusing the entire dispute it appears to me that by issuance GO No. 557 dated 2nd September 2010, the status of the petitioners was not changed at all, they are always regarded as part time lecturers of particular class basis. The notification declared a condition precedent of 15 classes weekly.

17. Impugned memorandum dated 16th September 2011 has implemented for certain casual/ daily rated/ contractual workers who have remained engaged in various Government establishment for a considerable period of more than 10 years. The status of the petitioner was always a part time lecturers on contractual fixed remuneration. The impugned memo dated 16th September

2011 never allowed part time lecturers under fixed remuneration to have the benefits has mentioned therein.

18. The Hon'ble Supreme Court in Jagjit Singh (Supra) has canvassed for equal pay for equal work it has been held that:-

In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work cannot be paid less than another who performs the same duties and responsibilities. Certainly not, in a welfare State. Such an action besides being demeaning, strikes at the very foundation of human dignity. Anyone, who is compelled to work at a lesser wage does not do so voluntarily. He does so to provide food and shelter to his family, at the cost of his self-respect and dignity, at the cost of his self- worth, and at the cost of his integrity. For he knows that his dependants would suffer immensely, if he does not accept the lesser wage. Any act of paying less wages as compared to others similarly situate constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

19. In this particular case the petitioners have pleaded successfully that they are taking a great number of classes than regular teachers as it evidence from their routine; they are engaged with their colleges from 10:30 A.M. to 05:00 P.M. like other regular employees and being no scope to work in other college; they are entrusted with additional duties such as examiner, paper setter, member of special cell in the college, election duties, invigilator, classes at other colleges, monitoring admissions etc. Admittedly, these additional duties are beyond they ambit of their job description. Thus, it is true the petitioners are discharged duties and responsibilities at per with the regular employees; in that score I think it necessary that the Government being a benevolent State must provide proper remuneration and other terms and conditions of service of petitioners apropos to their job responsibilities. Under above observations I am of a view that the writ petitioners are not entitled to get the benefit of Finance Department memo No. 9008-F (P) dated 16th September 2011 but it is true that they are entitled to earn a prestigious remuneration as a lecturer of an Educational Institutions.

20. Under the above observations I think it necessary to direct the respondent to decide and implement necessary structure of pay and other terms and conditions of service of the present petitioner, by virtue of memo No. 557 dated 2nd September 2010.

21. Thus the writ petition is disposed of.

22. The petitioners are at liberty to approach the concerned authority within four weeks from the date of passing of this order coupled with the copy of the order through a representation for implementation of structure of pay and other terms and conditions of service by virtue of memo dated 2nd October, 2010.

23. On such representation the concerned authority shall take a being reasoned decision after giving appropriate opportunity of being heard to the petitioner, within eight weeks thereafter.

24. The decision of the authority shall be intimated to all concerned two weeks thereafter. Respondent Authorities are also directed to take prompt action in this regard.

25. Under the above observation the writ petition is disposed of.

26. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.