
(1994) 02 CAL CK 0009
In the Calcutta High Court
Case No : C.O.No. 1302 (W) of 1990

Gopal Chandra Ghosh

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 14-02-1994

Acts Referred:

Citation : (1994) 2 CALLT 63 : (1995) 1 LLJ 339

Hon'ble Judges : Susanta Chatterjee, J

Bench : Single Bench

Advocate : Rabindranath Bag, for the Appellant; Prafulla Kumar Ghosh, for the Respondent

Judgement

Susanta Chatterjee, J.—The present writ petition at the instance of the petitioner Gopal Chandra Ghosh claiming to be a helper-cum-trailer driver of Teesta Mechanical Division, Siliguri under care of Executive Engineer, Teesta Mechanical Division, Department of Irrigation & Waterways, Government of West Bengal seeks relief :-

(a) A writ in the nature of mandamus and/or any other appropriate Writ or Writs, order or orders" and/or direction or directions be issued commanding the respondents and/ or each of them and/or their servants, agents or assigns to act and proceed in accordance with law by not giving any effect or further effect to the impugned Memo No. 6549/121-10/A dated 18th December 1989 issued by the Superintending Engineer, Mechanical and Electrical Circle, Irrigation and Waterways Directorate, Government of West Bengal and by considering the selection of the petitioner to the scale of pay Rs. 300-10-400-15-565-20-685/- settled for the post of tractor-cum-trailer driver on the basis of the principle "equal pay for equal work"

(b) A Writ in the nature of mandamus and/ or any other appropriate Writ or Writs, order or orders and/or direction or directions to be issued commanding the respondents and/or their servants, agents or assigns to act and proceed in

accordance with law by declaring the service of the petitioner permanent and/or quasi-permanent and by giving regular status to the said service:

(c) A writ in the nature of certiorari be issued directing the respondent to transmit the records of the case and to certify the same so that conscionable justice may be done to the petitioner;

(d) Any other appropriate Writ or Writs be issued by providing complete protection and remedy to the petitioner;

(e) Rule Nisi in terms of prayers (a) to (d) above and to make the Rule absolute if no cause is shown and/or insufficient cause is shown;

(f) Ad interim order of injunction be issued restraining the respondents and/or each of them and/or their servants, agents or assigns from giving any effect and/or further effect to the impugned Memo No. 6549/121-10/A dated December 18, 1989 issued by the Superintending Engineer, Teesta Mechanical & Electrical Circle, Irrigation and Waterways Directorate, Government of West Bengal;

(g) Ad interim order in terms of prayer (f) above;

(h) Cost or costs;

(i) Any other or further order or orders and/or direction or directions be issued as this Hon'ble Court may deem fit and proper.

2. It is stated in detail that the petitioner joined the Kangsabati Circle under the Chief Engineer, Irrigation and Waterways Directorate, Government of West Bengal as muster roll employee in the year 1973. He was transferred from Kangsabati Circle to Teesta Mechanical Division No. II in 1979. It is further stated that he has completed 17 years of service and out of the said 17 years, 10 years have been completed as work charged helper at Teesta Mechanical Subdivision No. II. The service of the petitioner has not been declared permanent or quasi-permanent and he has not been given either permanent status or regular status. It is placed on record that the petitioner offered his candidature as a departmental eligible candidate for the post of Tractor-cum-Trailor Driver as he has requisite qualification and experience. The petitioner possessed the licence issued by the appropriate authority also. It has been highlighted that he learnt about his selection to the post but he has been intimated otherwise by communication dated May 8, 1986. It has been intimated that he has been appointed as work charged Helper-cum-Tractor Driver in the scale of pay of Rs. 260-537/- plus usual allowances as admissible. The petitioner filed a previous writ application and the same was disposed by M.R. Mallick, J., directing the Superintending Engineer to consider the representation of the petitioner within a specific period and the respondent No. 2 asked the petitioner to appear before a board for hearing on 12th December, 1989. The representation was disposed by holding that since the petitioner does not possess the requisite qualification the case of selection does not arise and he cannot get the scale of pay of Rs. 300-685. The petitioner submits that from the very date of appointment in the

post of work charged helper, the petitioner has been performing the duty of operating heavy earth moving vehicles like tractors and trailers as well as crane with minimum scale of pay for the post of helper whereas he is entitled to the scale of pay fixed for the post of work charged tractor-cum- trailer driver as per the principle of "equal pay for equal work". Stating all these facts in details the petitioner has come to this writ Court again seeking reliefs as indicated above on the grounds that the respondent authorities have not considered the principle of equal pay for equal work in the matter of service of the petitioner and thereby have acted arbitrarily, malafide and without following the principles of justice, equity and fair play. Since the petitioner has been actively working, there is no bar and/or impediment to grant the reliefs to the petitioner as asked for.

3. The writ petition is opposed by the respondents 1 to 5 by filing a comprehensive affidavit-in-opposition sworn by the respondent No. 3, Executive Engineer, Teesta Mechanical Divisions. The allegations of the writ petition have been denied. It is disclosed inter alia, that the petitioner actually joined the Teesta Division as muster roll employee in terms of the Memo dated January 31, 1979 and he was subsequently appointed as helper under work charged establishment on and from March 3, 1979. The petitioner has already been absorbed under work charged establishment on and from April 30, 1980. He has already been declared as permanent in the post of helper. In terms of Labour Department's Memo No. 800-EMP dated April 24, 1980, duly qualified departmental candidate is to be considered for appointment to higher post along with the candidates sponsored by the Employment Exchange. It is further disclosed that the petitioner was never selected for the post of tractor-cum-trailor driver. In fact, for the purpose of utilization of the machinery, the departmental candidates who are possessing atleast a licence for driving medium vehicle and earth moving tractor was considered for appointment in a lower post of helper-cum-tractor driver in the pay scale of Rs. 260-537. Accordingly, on emergent basis a practical test was conducted by a selection committee on March 4, 1986 amongst the avail-able department candidates and as a result of such test, three candidates including the petitioner were selected by the selection committee. They were appointed for a period of three months on a purely ad hoc basis. The State official has no authority to intimate anybody beyond the scope of the Government orders. No interview for the selection to the post of tractor-cum-trailor driver was conducted on March 4, 1986. As per the direction of the Hon"ble Court the representation of the petitioner was considered and an appropriate communication was sent to the petitioner. The Selection Board has specifically held that the petitioner does not possess requisite qualification at that time, namely on 12th December, 1989.

4. The petitioner has, however, filed an affidavit-in-reply reiterating the same points raised in the writ petition. He has however, controverted the statements made on behalf of the respondents.

5. Upon perusal of the materials on record and considering the submissions of

the learned lawyers of the respective parties this Court is of the view that the only point for consideration in the case is as to whether the acts done and/or caused to have been done by the respondents require any interference by the writ Court. Admittedly the petitioner has been working as a permanent staff. He had been allowed to officiate as helper-cum-trail or driver for a limited period. As a department candidate the petitioner appeared before the Selection Board but since it has been found that he has no requisite qualification he was not selected. His specific representation was considered in terms of the Court's order while the petitioner filed an earlier writ petition. It has been found that the petitioner worked for a limited period and there is no question of application of the principle of "equal pay for equal work". If the petitioner is not actually working the duties of helper-cum-trailor driver" there is no scope for such application but if it appears that beyond the period of ad hoc arrangement this petitioner was allowed to work for a continuous period of more than one year his case ought to be considered for regularisation. It is needless to observe that unless the job is perennial in nature and unless the petitioner has served continuously for more than one year, he cannot ask for regularisation of his such service. In the instant case there is no material on record to come to the conclusion that the work of the helper-cum-trailor driver is perennial in nature. If the said assignment and/or post is continuing and if the petitioner has been allowed to function in the said post for a continuous period he should get reliefs otherwise, for rendering service under any ad hoc "arrangement will not entitle him to obtain the reliefs as prayed for. For the foregoing reasons the writ petition is disposed directing the concerned respondent authority to review the case of the petitioner within a period of three months from the date of communication of this order and take an appropriate decision in the light of the observation as indicated above and communicate such decision to the petitioner within a period of four weeks from the date of such decision. There is no order as to costs.