

(2023) 06 CAL CK 0055

In the Calcutta High Court

Case No : W.P.A No. 13845 Of 2019, CAN 1 Of 2021

Imran Mondal

APPELLANT

Vs

State West Bengal And Ors.

RESPONDENT

Date of Decision : 27-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 226

Citation : (2023) 06 CAL CK 0055

Hon'ble Judges : Partha Sarathi Sen, J

Bench : Single Bench

Advocate : Pradip Kumar Roy, Tirthajit Roy Chowdhury, Sutapa Sanyal, Debrup Bhattacharya, Pradeep Kumar Tulsyan

Final Decision : Dismissed

Judgement

Partha Sarathi Sen, J

1. The petitioner of this case is aggrieved with the decision of the Chief Executive Officer of West Bengal State Agricultural Marketing Board (the respondent no.2 herein) which has been communicated to him under cover of Memo No. 1255(8)/Gen-35/Court-110/P-69/2018 dated 6.03.2019 and thus filed the instant writ petition under Article 226 of the Constitution of India . By the impugned memo dated 06.03.2019 the respondent no.2 refused to place the present writ petitioner in regular scale of pay in the office of the respondent no.3. however he was permitted to act as a casual employee and thus enabling him to get consolidated pay as per G.O dated 25.02.2016 issued by the Finance Department, Audit Branch, Government of West Bengal.

2. Mr. Roy, learned advocate for the writ petitioner in support of the instant writ petition at the very outset draws attention of this Court to Annexure P4 of the instant writ petition whereby and whereunder the Secretary of the respondent no.3 i.e. Assansol Regulated Marketing Committee (hereinafter referred to as the said 'Committee') appointed the present writ petitioner in the post of Group D on

regular basis at a consolidated pay of Rs.4500/- together with other admissible allowances. Mr. Roy submitted before this court that from Clause 4 of the said memo dated 15.02.2011, it would reveal that the Secretary of the said committee communicated that the petitioner would be placed on an appropriate scale of pay after six months by the said committee on completion of police verification report and medical fitness. It is contended further on behalf of the petitioner that prior to the absorption of the writ petitioner in the office of the said committee the said committee took approval of the West Bengal State Marketing Board, (hereinafter referred to the said 'Board') which would be evident from page no. 32 of the writ petition.

3. Mr. Roy in course of his submission draws attention of this Court to the order dated 08.05.2018 as passed in WP No.4077(W) of 2015 with WP No.4078(W) of 2015 with WP No.4079(W) of 2015 with WP No.4080(W) of 2015 with WP No.4081(W) of 2015 wherein a Co-ordinate Bench of this Hon'ble Court in a similar type of case directed the Burdwan Zila Regulated Market Committee to consider the claim of the said writ petitioners and to take a decision in accordance with law with regard to the fixation of pay and allowances of the writ petitioners of the aforesaid writ petition. Drawing attention to Annexure P5 Mr. Roy, learned advocate for the writ petitioner submits that in compliance of the direction issued by the Co-ordinate Bench of this Hon'ble Court, as passed in the said writ petitions the employment of the said writ petitioners have been regularized in their proper scale of pay. Mr. Roy, learned advocate for the writ petitioners thus submits that since the present writ petitioner is similarly circumstanced with the writ petitioners of the aforementioned writ petitions, the respondent no.2 ought to have taken a similar decision as has been taken by the then Chief Executive Officer of the self same board.

4. It is further argued by Mr. Roy, learned advocate for the writ petitioner that the Chief Executive Officer of the self same board cannot sit on appeal over the decision of his predecessor in office and thus cannot negate and/or alter the earlier decision of his predecessor in office as communicated under memo no. 467 dated 15.02.2011 whereby and whereunder the proposal of the said Board for absorption of the petitioner in suitable post has been approved.

5. It is thus contended by Mr. Roy that by issuing the impugned memo dated 06.03.2019 the respondent-authorities have violated the provision of Article 14 of the Constitution for which a writ of Mandamus may be issued for setting aside the impugned memo dated 06.03.2019 with a further direction to the respondent-authorities to absorb the present petitioner in the regular scale of pay as per memo dated 15.02.2011 which has been Annexed with the Mark P4 of the instant writ petition.

6. Per contra, Ms. Sutapa Sanyal, learned advocate for the respondent no.2 at the very outset draws attention of this court to the affidavit-in-opposition as filed by her client. In course of her submission she also placed her reliance upon the impugned memo and Annexure R2 of her affidavit-in-opposition. It is contended

by Ms. Sanyal that from Annexure R2 to the affidavit-in-opposition it would reveal that in course of disposal of WP. No. 4077 (W) of 2015 it has come to the notice of a Co-ordinate Bench of this Hon'ble Court that throughout West Bengal illegality and irregularity has been found in the appointments made by various regulated market committees for which comprehensive enquiry was conducted in view of an order as passed in WP No. 4077 (W) of 2015. Drawing attention to the Annexure R I to the affidavit-in-opposition vis-à-vis to the impugned Memo, it is submitted by Ms. Sanyal, learned advocate for the respondent no.2 that the present petitioner cannot be circumstanced with the petitioners of the aforementioned five writ petitions since in course of enquiry it has been noticed that in the appointment process whereby the present petitioner was appointed the said committee published an advertisement in a local newspaper having no much circulation throughout State clearly indicating sanction of 17 posts on purely temporary ad-hoc basis. It is further submitted by Ms. Sanyal that in the case of the writ petitioners of the aforementioned five writ petitions however, such appointment notification was published in a widely circulated daily newspaper in the State of West Bengal as well as in different parts of the country. It is contended further by Ms. Sanyal that in course of enquiry it has also been noticed that no records were found with regard to the selection procedure of the present petitioner and others and it has also been noticed that though the then Chief execution Officer of the said Board under cover of his memo 467 dated 15.02.2011 had approved the proposal made by the said committee but on scrutiny of the office records, nothing could be detected that such approval was given pursuant to the decision of the Board who is the Appropriate Authority to grant approval for appointment by the committee. It is thus submitted on behalf of the respondent no.2 that since the process of the recruitment of the present writ petitioner was found to be opaque one, the Chief Executive Officer of the respondent no.2- Board is very much justified in issuing the impugned memo no. 1255(8)/Gen-35/Court-110/P-69/2018 dated 06.03.2019.

7. This court has perused the entire materials as placed before this court by the contending parties. This court has also given its due consideration over the submissions of the learned advocates for the writ petitioner and the respondent no.2.

8. Admittedly by memo no. 467 dated 15.02.2011 the then Chief Executive Officer of the said Board approved the proposal for absorption of all casual employees in suitable posts of Group D and Group C in the lowest scale and pursuant to such letter dated 15.02.2011 the then Secretary for the aforesaid committee on the self same day regularized the service of the present writ petitioner as well as others with an assurance that they would be placed on an appropriate scale of pay after completion of six months by the said committee on completion of successful police verification report/medical fitness. The grievances of the writ petitioner as ventilated before this court is that inspite of completion of the said period and inspite of having no adverse report as against the present

writ petitioner, he had not been placed in the appropriate scale of pay as communicated to him under cover of memo dated 15.02.2011 by the Secretary of the then Committee. In order to come to a logical conclusion as to whether the Chief Executive Officer of the respondent no.2 is at all justified in issuing memo no. 1244(8)/Gen-35/Court-110/P-69/2018 dated 06.03.2019 it reveals to this court that sufficient materials have been placed before this court to substantiate that pursuant to the direction of the Co-ordinate Bench of this Court in WP No.4077 (W) of 2015 an enquiry was conducted by the State wherein serious illegality and irregularity has been noticed in the appointment process by the said committee in which the present writ petitioner was appointed in the said committee. From Annexure R I to the affidavit-in-opposition it reveals that notification for such recruitment was published only in a local newspaper having no circulation throughout the state thereby depriving a large number of unemployed youth of the country to apply for the said post. As rightly pointed out by Ms. Sanyal, the learned advocate for the respondent no.2, there under no stretch of imagination the writ petitioner can be said to be equally circumstanced with the writ petitioners of the aforementioned five writ petitions since in the case as involved in the said five writ petitions the recruitment notice was published in a renowned daily newspaper having wide circulation not only in our State but also throughout the country. It has been rightly pointed out by Ms. Sanyal, learned advocate for the respondent no.2 that pursuant to the direction as passed in WP no.4077(W) of 2015 nothing could be found as to how and/or by which method the selection process was conducted while appointing the present writ petitioner and others and therefore the CEO of the respondent no.2 i.e. West Bengal State Agricultural Marketing Board is very much justified in holding that the selection process of the present writ petitioner and the others have been conducted in an illegal and irregular manner and that the approval for regularization of the service of the present writ petitioner and others given by the then CEO without the consent of the Board is beyond his jurisdiction. From the memo impugned it reveals however that the respondent/State however took a lenient view in respect of the petitioner as well as in respect of the similar circumstanced persons and thus did not terminate their job but allowed them to continue in the said employment in consolidated pay basis but not in regular scale of pay as wrongly claimed.

9. In view of the discussion made hereinabove this court considers that the present petitioner has miserably failed to substantiate that he has been denied with the Fundamental Rights of Equality before Law as enshrined in Article 14 of the Constitution of India and therefore the writ petition is liable to be dismissed.

10. As a result the instant writ petition fails and the same is dismissed but considering the facts and circumstances of the present case without any order as to costs.

11. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.