
(2019) 12 CAL CK 0144

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 533 (W) Of 2018

Khokan Chandra Jana & Ors

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 24-12-2019

Acts Referred:

Civil Defence Regulations, 1968 — Regulation 8(1)

Citation : (2019) 12 CAL CK 0144

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

**Advocate : Swarup Pal, Trina Banerjee, Pradip Kumar Roy, Shrabani Sarkar,
Tapan Mukherjee, Sougata Mitra**

Final Decision : Dismissed

Judgement

Amrita Sinha, J

The petitioners pray for implementation of the memo no. 1107-F (P) dated 25th February, 2016 issued by the Audit Branch, Finance Department, Government of West Bengal and the order dated 10th July, 2017 issued by the Additional Secretary to the Government of West Bengal, Department of Fire and Emergency Services, in their favour, with retrospective effect.

Pursuant to an order dated 19th January, 2012 being no. 138/FES/O/2E-04/12 issued by the Secretary to the Government of West Bengal, Department of Fire and Emergency Services the petitioners were appointed on contractual basis as Auxiliary Fire Personnel at a consolidated pay of Rs.289/- per day, subject to maximum of 22 days in a month. The contract was for a period of one year against the existing post in the Directorate of Fire and Emergency Services. The said order was issued with the concurrence of the Finance Department, and the charge was debited to the head of account "2070-Other Administrative Services-00-108-Fire Protection and Control-NP-Non Plan-001-Direction and Administration(FE)-01-Salaries" in the current budget year.

By a further order being no. 139/FES/O/2E-04/12 dated 19th January, 2012 the Secretary to the Government of West Bengal, Department of Fire and Emergency Services laid down the method of recruitment of the various posts created in the Department of Fire and Emergency Services. It mentioned that the Civil Defence Volunteers aged between 20-30 years would be deployed as Auxiliary Fire Personnel. The Department of Civil Defence would provide the list of trained volunteers and the Director General, West Bengal Fire and Emergency Services would take further endurance test. The petitioners claim that pursuant to the above order they were recruited in the post of Auxiliary Fire Personnel and are serving in the said post till date.

By an order being no. 1394/FES/O/2E-04/12 dated 10th July, 2017 the Additional Secretary to the Government of West Bengal, Department of Fire and Emergency Services published that the Governor was pleased to extend the period of engagement of Auxiliary Fire Operator for further one year, that is, up to 18th November, 2018 on the existing terms and conditions or till regular filling up of posts. The Auxiliary Fire Operators were to be engaged for maximum 22 days per month with daily wage/honorarium at the rate of Rs.395/- per day. The order was issued with the concurrence of the Finance Department and the charges were to be debited from the head of accounts "2070-00-108-Fire Protection and Control-NP-Non Plan-001-Direction and Administration (FE)-02-Services.

By a memo being no. 1107-F(P) dated 25th February, 2016 the Audit Branch, Finance Department, Government of West Bengal allowed certain service benefits to the contractual / casual / daily rated workers. It was decided that all contractual/casual/daily rated workers will continue to be in engagement up to the age of 60 years. Engagement of contractual/casual/daily rated workers shall not be terminated except as prescribed. The consolidated monthly remuneration of the contractual/casual/daily rated workers was enhanced. Decision was also taken for enhancement of remuneration at the rate of 3% every year. Terminal benefit of Rs.2,00,000/- (rupees two lac) was to be given on attaining the age of 60 years and all contractual/casual/ daily rated workers and they families were to be covered under the Health Insurance Coverage. Leave Benefit was also extended to them. The said benefits were effective from 1st March, 2016.

The Government by notification no. 1104-F(P) dated 25th February, 2016 introduced a Group Health Insurance Scheme named "Swasthya Sathi" for workers/volunteers/ASHA workers, ICDS workers and other contractual/casual/ daily rated workers.

The grievance of the petitioners is that even though the Government extended the aforesaid benefits in respect of the contractual/ casual/daily rated workers the aforesaid benefits were actually not disbursed in their favour. The petitioner's state that they are receiving a paltry sum of only Rs.338/- per day and they are not being paid in accordance with the Government Orders issued from time to time. The petitioners pray for implementation of the orders of the State of West Bengal dated 25th February, 2016 and 10th July, 2017 in their favour.

The prayer of the petitioners has been opposed by the respondents. It has been categorically stated that Civil Defence Organizations were established under the Civil Defence Act, 1968 along with the Civil Defence Regulations, 1968. In Regulation 8(1) of the Civil Defence Regulations, 1968 the conditions of service mentioned that the members of the Civil Defence Organizations shall ordinarily serve in a voluntary and honorary capacity. The State Government may, by order, authorize payment of duty allowance to a member, when called for duty. The petitioners are governed and bound by the aforesaid law.

At the time of requirement these Civil Defence Volunteers are deployed at various organizations. The nature of service offered by the petitioners differs from those who are engaged as contractual/casual/daily rated workers under different contractors and agencies.

Due to shortage of operational staff in the Directorate of West Bengal, Fire and Emergency Services it was difficult for the Directorate to run the different fire stations throughout the State smoothly. For manning the Fire Services Department a decision was taken to fill up the huge number of posts as temporary measure by deploying Civil Defence Volunteers as Auxiliary Fire Personnel. The Government initially accorded approval for engagement of two thousand members of auxiliary fire personnel from amongst the civil defence volunteers who were specifically trained in fire fighting, for a period of one year but thereafter the vacancy was reduced to 1572. The age group of the candidates were also extended from 30 years to 33 years.

The honorarium that was payable to the Auxiliary Fire Personnel was mentioned in the order of their engagement. Thereafter the Scheme of Swasthya Sathi was implemented for the Auxiliary Fire Personnel. The process of implementation of the Swasthya Sathi Scheme is under progress and the same will be implemented in a phased manner in respect of all the Auxiliary Fire Personnel.

The benefits which have been claimed by the petitioners are not payable to them as the petitioners do not fall under the expression "worker". The petitioners are "volunteers" and accordingly the benefit which is payable in respect of the workers cannot be extended for the petitioners.

It is the specific stand of the Government that the status of the Civil Defence Volunteers who are deployed as Auxiliary Fire Operators differs from the workers under the various agencies or contractors who fall within the purview of the Contract Labour (Regulation and Abolition) Act, 1970; Employees' Provident Fund and Miscellaneous Provision Act, 1952 and Employees' State Insurance Act, 1948 and the Minimum Wages Act, 1948.

By the order being no. 1278/FES/O/2E-04/12(Pt-1) dated 28th June, 2019 issued by the Department of Fire and Emergency Services the daily wage of the Auxiliary Fire Personnel has been enhanced from Rs.427/- to Rs.480/- per day with effect from 1st January, 2019, subject to the condition of their engagement for continuous 89 days with weekly one day paid off and then one day

compulsory break before engaging them for the next cycle of 89 days. The order has been issued with the approval of the Finance Department.

The petitioners have annexed documents to show that the Divisional Fire Officer, North 24 Parganas, West Bengal Fire and Emergency Services as lately as in February, 2019 issued letter of appointment in respect of contractual employee in the Group-D category with a consolidated remuneration of Rs.10,000/- per month. The petitioners submit that as there is requirement of fire personnel in the Fire and Emergency Services Department and as the petitioners are serving as Fire Personnel in the said Department for a considerable period of time, similar benefit of contractual employee may be extended in their favour.

I have heard the submission made on behalf of both the parties.

The initial engagement of the petitioners appears to have been made on contractual basis for a period of one year. The engagement was to be made by selection from the Civil Defence Volunteers at a remuneration payable per day. The respondents have submitted that the status of a volunteer is different from a worker. Admittedly, the status of volunteer cannot be equated to that of a worker. A worker under the State Government whether temporary/contractual/casual or daily rated is entitled to certain service benefits which a volunteer may not be entitled to in law.

The petitioners pray for implementation of memo and orders which are applicable in respect of the temporary/contractual/daily rated workers. The petitioners do not qualify as either casual/contractual/daily rated worker and accordingly they cannot pray for implementation of the said memo and orders in their favour. As there is a difference in status, a volunteer cannot pray for implementation of an order in his favour, which is applicable in respect of a worker. They belong to two absolutely independent and separate classes with distinct service benefits. In the absence of specific rules or regulations one cannot claim the service benefit of the other, irrespective of the similar nature of work performed by them.

In other words, the prayer of the petitioners is akin to praying for regularization of their service as contractual/casual/daily rated workers of the State Government. The petitioners are claiming service benefits in an indirect, circuitous manner which is not permissible. What cannot be done directly cannot be done indirectly.

From the various memoranda and orders of the Government annexed with the writ petition and the report filed by the respondents it appears that separate memoranda and orders have been published in respect of the two sets of employees. One set consists of the Auxiliary Fire Personnel and the other the contractual/casual/daily rated workers of the Government. The finance of the two groups are debited under two separate heads.

As regards implementation of the Swasthya Sathi Scheme in respect of the Auxiliary Fire Personnel it has been submitted that the process of implementing

the said Scheme is under progress and the same will be implemented in a phase wise manner in respect of all the districts of the State. It is only a matter of time by which the Swasthya Sathi Scheme will be implemented in usual course in respect of all the Auxiliary Fire Personnel throughout the State.

As regards engagement of Group-D employee in the Fire and Emergency Services Department the same is in respect of filling up of regular vacancies of Group-D employees in the Department. There is no bar for the Government to engage Group-D employees in a department. The Government, as and when required, may initiate recruitment process for filling up regular vacancies in accordance with law. If the petitioners are eligible for being appointed in the post in question they are always at liberty to apply pursuant to the advertisement published for recruitment in the said post. The petitioners cannot claim right of appointment or regularization in the post of Group-D employee under the Emergency and Fire Services Department only by dint of their service as Auxiliary Fire Personnel. The same is impermissible in law.

In view of the above, I am of the opinion that the prayer made by the petitioners for implementation of the memo no. 1107-F (P) dated 25th February, 2016 and order dated 10th July, 2017 in their favour cannot be granted in the facts and circumstances of the instant case. The writ petition fails and is hereby dismissed.

W.P No. 533 (W) of 2018 is dismissed.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties on compliance of usual legal formalities.