
(1995) 07 CAL CK 0048
In the Calcutta High Court
Case No : C.O. No. 10971 (W) of 1995

Krishna Chandra Singha

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 11-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 1 CALLT 118

Hon'ble Judges : Satyabrata Sinha, J

Bench : Single Bench

Advocate : Sukiran Biswas, for the Appellant;

Judgement

Satyabrata Sinha, J.—The question that has arisen for my consideration in this application as to whether Tahasil peon is entitled to retiral benefit computed on the basis of past services. The following facts are not disputed.

2. In the Land Manual, Tahasildar used to be appointed for collection of land revenue, cess etc. The said Tahasildars were also not government employees and were appointed on contract basis. In terms of the said Land Manual, Tahasildars were entitled to appoint Tahasil peons subject to payment of a minimum sum. It is not and could not be the case of the petitioner that the Tahasildars or that the Tahasildar peons were appointed by the State upon following the recruitment rules and in compliance of the provision of Article 16 of the Constitution of India.

3. However the State Government adopted a policy decision in the year 1984 in terms whereof the Tahasildars were absorbed and re-designated as Bhumisahayaks. Some of the Tahasil peons appointed by the Tahasildars are said to have been absorbed. In one of the case, Paritosh Mukherjee, J.--held that Tahasildars were not entitled to get the benefit of their service when they has been acting as agent of the State and not as its employees. However, the said decision was later on departed from by other learned single Judge of this Court. In one case reported in 1993 (2) CLJ 330 in Tahasildar Mohorar Kalyan Samity v.

The State of West Bengal, it was held by a learned single Judge of this Court that the judgment of Justice Paritosh Mukherjee, although would operate as res judicata, but the State in view of the subsequent Judgments, must be deemed to have weighed the said question. In one of my judgments, Jamaludin v. State, I have disagreed with the said view, keeping in view the first judgment passed by Paritosh Mukherjee, J. and upon taking into consideration a large number of Supreme Court decisions and the decision of the Patna High Court. Reference in this connection may be made to J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc., , State of Bihar Vs. Bhagirath Sharma and Another, , R.N. Nanjundappa Vs. T. Thimmiah and Another, and V. Sreenivasa Reddy and others Vs. Govt. of Andhara Pradesh and others,

4. There after also several decisions have been rendered by different High Courts to the effect that by reason of an appointment in violation of the Mandatory provision of recruitment rule as also Article 16 of the Constitution of India, no right is derived by the employees and such appointment is void ab initio. Although the point aforementioned is covered by a large number of decisions, I am referring only to a few decisions of them. [See 1994 1 PLJ 366, Bishandeo Choudhary and Others Vs. State of Bihar and Others (Full Bench) of the Patna High Court) Smt. Ravinder Sharma and Another Vs. State of Punjab and Others, In another recent decision in State of Orissa and Another Vs. Dr. Pyari Mohan Misra, , the Supreme Court observed that mere prolonged or continuous services does not ripen into regular services to claim permanent or substantive status. In a case reported in V. Sreenivasa Reddy and others Vs. Govt. of Andhara Pradesh and others, it has been held that when an appointment is made in violation of the recruitment rules, the said appointment would be void ab initio. In that case it was categorically held while considering the question of seniority that the seniority of such employee would be counted from the date of regularisation i.e from that date they would be deemed to have entered into service. Yet recently, a learned single Judge of the Patna High Court in 1995 Lab IC 1123 relying upon a large number of decisions, has held that illegal appointment made by the Speaker of the Assembly is void ab initio. In that case, the learned Judge relied upon Krishan Yadav and another Vs. State of Haryana and others, , Ram Janam Singh Vs. State of Uttar Pradesh and another, apart from the decision of the Patna high Court. In this case, admittedly the petitioners were absorbed in service by reason of a policy decision adopted by the State, they, thus became the employees of the State only on and from the date when they entered into the said service.

5. It has been alleged that the said petitioner was also appointed as Tahasilder peons by an Officer of the State. But keeping In view, the provision of Land Manual (even if the contention of the petitioner is accepted to be correct) such appointment was wholly without jurisdiction and thus a nullity.

6. Apart from the said facts, nobody can be appointed at the State service unless the post is sanctioned. It is not the case of the petitioner that the State of West

Bengal had sanctioned the post of Tahasildar peons even prior to 1984.

7. In absence of sanctioned post as also for the reasons aforementioned, in my opinion, the petitioner would be deemed to have entered the said service only from the date of his absorption. For the reasons aforementioned, his service cannot be valid as Tahasildar peon when he was under a contract of service having been appointed by the then Tahasildar on commission basis and thus the same cannot be treated to be a service under the State and the said period thus cannot be clubbed together for the purpose of computation of the retiral benefits although in terms of the provision of West Bengal Death-cum-Retirement Rules, a minimum of 10 years regular service is essential for obtaining the said benefit.

8. In view of my finding aforementioned, I express my inability to agree with the decision of the learned single Judge which have been relied upon by the petitioner in the writ application. This application may therefore now be placed before the Division Bench for hearing. However, let the records be placed before the Hon''ble Chief Justice for his Lordship''s consideration as to whether the matter should be heard by a larger Bench keeping in view the importance of the question involved as also the fact that In the event this writ application is allowed, the same would involve huge financial burden cast upon the State Exchequer.