
(1995) 03 CAL CK 0020
In the Calcutta High Court

Madhusudan Pal and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 20-03-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309

Citation : (1995) 2 CALLT 302

Hon'ble Judges : Satya Brata Sinha, J

Bench : Single Bench

Advocate : Md. Quadrat-E. Kabir, for the Appellant;

Judgement

Satya Brata Sinha, J.—The petitioner has, inter alia, prayed for issuance of writ in the nature of Mandamus directing the respondents to appoint them on regular services to regularise their services as also for issuance of Certiorari for quashing the order dated 12th December, 1994 passed by the Director of Employment, West Bengal as contained in Annexure "J" to the writ application. Mr. Kabir, learned counsel for the petitioner, submits that keeping in view the fact that the petitioners have been engaged by the Employment Officer to work as Typist cum L.D. Clerk on daily wages basis and as they have worked for a period of more than 240 days, their services are liable to be regularised. The learned counsel, in support of his aforementioned contention, has relied upon the decision of this court in Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, The learned counsel has further drawn my attention to the fact that the petitioners moved this court earlier and Bhagabati Prosad Banerji, J by an order dated 30.9.94 directed the Director of Employment Exchange to consider the case of the petitioners pursuant where to the impugned order has been passed. From a perusal of the impugned order it appears that the appointments of the petitioners had been wholly illegal not only being contrary to the mandatory provisions of the Recruitment Rules framed by the State of West Bengal, but also are in violation of the provisions of Articles 14 and 16 of the Constitution of India. The said authority had categorically held that one Sri A. K. Roy appointed the petitioners as daily rated employees without the approval of the Director of

Employment who is the only competent authority for such purposes. The salary of the petitioner was also being paid from the office expenses. The said salary of the petitioner purported to be @ Rs. 5/- per day was never the sanctioned rate of the State Government. It has been stated that the said Employment Officer kept the State completely in dark.

2. It is now well settled by reasons of the various decisions of the Supreme Court that regulation can be a mode of service when rules are framed in terms of proviso appended to Article 309 of the Constitution of India. The State is bound to comply with the said rules while granting appointment. The State is also bound to comply with the provisions of Articles 14 and 16 of the Constitution of India. The appointments of the petitioners ex-facie being wholly illegal and without jurisdiction were void ab-initio and they, pursuant thereto, did not derive any legal right whatsoever to continue in service. They have, thus, acquired no right whatsoever to get their services regularised. In fact, in absence of any statute or statutory rules appointment by regularisation is unknown to service jurisprudence. Mr. Kabir has not been able to show before me that there exists any statute or statutory rules in terms whereof the petitioners can be absorbed in the permanent service of the State of West Bengal only on the ground that they had been working for some time in the Employment Exchange. The decision in Jacob's case, referred to by the learned counsel is of no assistance inasmuch as in that case there existed such a rule being Rule 9 of the Kerala State and Subordinate Service Rule. The decision of the Supreme Court of India in Jacob's case (supra) has been distinguished by the Supreme Court of India itself in its subsequent decisions.

3. The contention of Mr. Kabir that the petitioners has obtained a right to be regularised in the State Services on the ground that they have completed 240 days is again without any merit. The Supreme Court in *Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc.*, clearly held that completion of 240 days even under the Industrial jurisprudence does not entitle a worker to obtain a regular employment. The Supreme Court again in *J and K. Public Service Commission, etc. Vs. Dr. Narinder Mohan and others etc. etc.*, has, upon following various earlier decisions, categorically held that no appointment by way of regularisation is possible, This aspect of the matter has been dealt with by me in extensor in *Chittaranjan Mondal v. State of West Bengal and Jagat Kiran Sinha v. Asstt. Commissioner, Kendriya Vidyalaya Sangathan and Ors.*

4. Yet again the Supreme Court in the case, reported in *V. Sreenivasa Reddy and others Vs. Govt. of Andhara Pradesh and others*, followed Dr. Narinder Mohan's case (supra) as also the other decision of the Supreme Court including the case, reported in *R.N. Nanjundappa Vs. T. Thimmiah and Another*, as well as the case, reported in *B.N. Nagarajan and Others Vs. State of Karnataka and Others*, . Keeping in view the aforementioned decisions of the Supreme Court of India the petitioner cannot claim any right to be absorbed in the services. However, as they have been working for a long time it is expedient in the interest of justice

that their cases for appointment should be considered along with other eligible candidates in accordance with law. In the event the petitioners have crossed the age bar, the concerned authorities will consider the desirability of relaxing the said age bar of the petitioners if they are selected. The State should take appropriate steps for filling up the regular vacancies forthwith.

5. This application is dismissed with the aforementioned observations.