
(2016) 12 CAL CK 0063
In the Calcutta High Court
Case No : W.P.S.T. No. 422 of 2004

Md. Anwarul Haque

APPELLANT

Vs

The West Bengal Administrative Tribunal

RESPONDENT

Date of Decision : 06-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 WBLR 357

Hon'ble Judges : Nishita Mhatre, ACJ. and Tapabrata Chakraborty, J.

Bench : Division Bench

Advocate : Md. Sarwar Jahan, Mr. Sirajul Haque and Mr. Jakir Hossain, Advocates, for the Petitioner; Ms. Chaitali Bhattacharyya and Ms. Sukla Das Chandra, Advocates, for the State

Final Decision : Allowed

Judgement

Tapabrata Chakraborty, J.—The instant writ petition has been preferred challenging an order dated 15th March, 2004 passed by the learned West Bengal State Administrative Tribunal in OA 89 of 2003.

2. Mr. Jahan, learned advocate appearing for the petitioner submits that the land of the petitioner's father was acquired for the Teesta Barrage Project. The State authorities took a decision to provide employment to candidates hailing from the land loser's families, as would be explicit from the Labour Department Circular dated 17th October, 1977. The petitioner was thereafter asked to participate in a selection process. In response thereto, the petitioner duly participated in the interview and the written test and emerged successful and his name was included in the panel. Thus, the petitioner was not appointed de hors the recruitment rules. On a purported plea of lack of vacancies the petitioner was denied permanent appointment and instead he was engaged as a temporary Job Amin since there was a pressing need for survey work in the Chapra Block in the district of Uttar Dinajpur. The fact that the petitioner had rendered service for 2627 days for the period from the month of June, 1990 till the month of

September, 2002 stands admitted by the respondents, as would be explicit from the letters dated 18th July, 1990, 7th January, 1997, 12th May, 1997, 2nd September, 2002 and 29th October, 2002. The petitioner's engagement was periodically extended but with certain break period in between so that the petitioner cannot claim that he had rendered a continuous period of service. After utilising such service rendered by the petitioner for a long continuous period over a span of more than 10 years, his extension of engagement was abruptly and illegally denied by the respondents subsequent to the month of September, 2002, without granting any opportunity of hearing and by adopting a hire and fire policy.

3. He further submits that the petitioner was denied permanent appointment in a regular establishment though four other similarly situated persons, whose names appeared along with that of the petitioner in the memorandum dated 7th January, 1997, were permanently absorbed. The State as the model employer cannot act arbitrarily and such discrimination as practised by the respondents warrants interference of this Court.

4. Drawing the attention of this Court to the order passed by the learned Tribunal, Mr. Jahan submits that a perusal of the same would reveal that the petitioner's claim has been rejected in a cryptic manner. The learned Tribunal failed to appreciate the fact that the petitioner was claiming appointment as a member of a land loser's family. The ground of discrimination as practised by the respondents was also not taken into consideration by the learned Tribunal.

5. Per contra, Ms. Chaitali Bhattacharyya, learned advocate appearing for the State respondents submits that it would be explicit from the documents annexed at pages 32, 35 and 38 of the writ petition that the petitioner was appointed on temporary basis and not against any approved post and on the basis of such service, as rendered, no legal right stands crystallized in favour of the petitioner to avail regularization. It is well settled that on the rudiments of mere continuity in engagement/service as a temporary Job Amin, the petitioner cannot claim regularization.

6. She further submits that the statutory requirement was not followed while appointing the petitioner and the concerned post in which the petitioner was engaged was not a sanctioned one and no prior permission for filling up such post was ever granted by the competent authority and no selection process was conducted in terms of the statutory rules and that as such the petitioner cannot claim regularization and consequential monetary benefits from the State authorities. The original application, which was filed in the year 2002, was rejected in the year 2004 and the present petition filed thereafter is pending for 12 years. The petitioner did not take appropriate steps for expeditious disposal of the matter and as such no benefit can be granted to the petitioner at this stage. Reliance has been placed upon the judgment delivered in *Secretary, State of Karnataka & Ors. v. Umadevi & Ors.*, reported in 2006 (4) SCC 1.

7. Heard the learned advocates appearing for the respective parties and considered the materials on record. For proper adjudication of the lis, the following dates would be relevant :

- a) 15th December, 1980 - The petitioner enrolled his name in the Employment Exchange;
- b) 22nd November, 1982 - The petitioner was asked to appear in an interview before the Selection Committee to be held for the posts under regular establishment;
- c) 18th December, 1982 - Date fixed for interview in which the petitioner participated;
- d) 30th January, 1987 - The petitioner was asked to attend the written test examination scheduled for candidates whose lands have been acquired for Teesta Barrage Project;
- e) 18th February, 1987 - Date fixed for written test examination in which the petitioner participated;
- f) 9th January, 1989 - Letter issued by the Land Acquisition Officer, Teesta Barrage Project to the Additional District Magistrate recommending the petitioner's claim for employment under land loser category for Teesta Barrage Project;
- g) 16th April, 1989 - Meeting held by the Government officials with the land losers and a resolution was adopted to provide Government jobs to members of the land losers' families;
- h) 18th July, 1990 - Upon discussion with the respondent no.4, the respondent no.5 issued the letter of engagement observing that such engagement was urgently required;
- i) 16th August, 1990 - Order of engagement of the petitioner in the post of Job Amin issued by the respondent no.5;
- j) 3rd April, 1991 - Letter issued on behalf of the respondent no.3 to the respondent no.4 intimating that casual Amins, if any, working in the district can be considered for absorption as regular Amins in the Integrated set-up;
- k) 25th November, 1991 - Letter issued by the respondent no.4 to the respondent no.5 to obtain options from Job Amins for recruitment to the post of Amin;
- l) 11th December, 1991 - Letter issued by the respondent no.7 forwarding the petitioner's name to the respondent no.5;
- m) 22nd September, 1994 - Letter issued by the respondent no.4 to the respondent no.3 recommending the petitioner's claim for absorption;

- n) 7th January, 1997 - Letter of engagement as Job Amin/Job Peon issued in favour of the petitioner and 4 others by the respondent no.5;
- o) 10th January, 1997 - Order of appointment issued in favour of one Baidyanath Singh, similarly situated with the petitioner;
- p) 2nd April, 1997 - Letter issued on behalf of the respondent no.3 to the respondent no.4 to forward the petitioner's particulars for absorption in Group "C" (Amin) or Group "D" post in the District of Uttar Dinajpur;
- q) 12th May, 1997 - Particulars as sought for in the letter dated 2nd April, 1997 forwarded by the respondent no.7;
- r) 8th March, 2001 - Petitioner's representation to the respondent no.4 for absorption as Job Amin;
- s) 2nd June, 2001 - Letter issued by the respondent no.4 to the respondent no.3 for disbursement of the petitioner's wages;
- t) 2nd September, 2002 - Letter issued by the respondent no.5 towards engagement of the petitioner as Job Amin for the period from 4th April, 2002 to 20th June, 2002;
- u) 29th October, 2002 - Letter issued by the respondent no.5 to the respondent no.4 recommending the petitioner's claim for extension of his engagement as a Job Amin;
- v) 15th March, 2004 - Order passed by the learned Tribunal.

8. From the above sequence of facts it stands established that the petitioner did render service through temporary engagement over a span of more than 10 years as a Job Amin at Chapra Block in the district of Uttar Dinajpur. The petitioner had the appropriate qualification and was belonging to the land loser category and as such he was asked to appear in a selection process and he duly participated in the same and was empanelled and engaged and that as such it cannot be stated that the petitioner's engagement was a backdoor appointment. The respondents themselves have admitted that there was a pressing necessity of a Job Amin and to meet such exigencies, the petitioner had to be engaged. It also could not be denied by the respondents that persons similarly situated with the petitioner and whose names appeared along with the petitioner in the memorandum dated 7th January, 1997 issued by the respondent no.5, were regularised in service.

9. The petitioner was appointed as a Job Amin and there had been a continuing necessity towards such engagement. When an ad hoc appointment is continued for a long time the Court presumes that there is a regular need for the petitioner's services. No document has been placed before this Court to show that the respondents were dissatisfied with the service rendered by the petitioner. Discontinuance/termination in accordance with the procedure established by law is an integral facet of right to life and livelihood assured by

Article 21 of the Constitution. Thus, the factors which impelled the respondents to deny extension of service are nothing but the mere whims of the employer and such action even in contractual engagements cannot be excluded from the purview of judicial review.

10. The respondents refused to extend the petitioner's engagement in the year 2002. At that point of time the judgment in the case of Umadevi & Ors. (Supra) was not delivered. In the instant case the petitioner's claim is based upon the policy decision of the respondents to provide employment to a member of a land loser's family.

11. The order impugned in the instant writ application reveals that the petitioner's claim was mechanically rejected and without even considering the averments made in the original application. Being oblivious of the facts that the petitioner was claiming appointment and absorption to the post of Job Amin under the land loser's category and that the Labour Department circulars dated 3rd August, 1979 and 28th August, 1980 have already been declared ultra vires to the Constitution of India by the judgment delivered in the case of Rabindranath Ghosh & Ors. v. The State of West Bengal & Ors., reported in (2010) 1 CAL LT 187(HC), the learned Tribunal rejected the petitioner's claim by making a statement to the effect that he does not fulfil the requirements of the Labour Department Circular No.1700-EMP dated 3rd August, 1979. The learned Tribunal also did not take into consideration the fact that persons similarly situated with the petitioner were absorbed in permanent posts whereas the petitioner was left out. The cryptic order passed by the learned Tribunal is thus not sustainable in law and the same is, accordingly, set aside.

12. Now in the backdrop of the facts that the petitioner is presently about 53 years of age and that he had been disengaged more than a decade ago and that at this stage, there is no possibility to ascertain as to whether the petitioner could have been accommodated in a permanent vacancy in the year 2002 when his extension was denied, the Court cannot direct regularization of service. Any order passed to that effect may be an impossibility to be implemented in the absence of any direction towards creation of a permanent vacancy and as a matter of judicial policy the Court should guard against itself from being stultified in circumstances by holding that it is powerless to undo a wrong done in disobedience of the Court's order.

13. However, the fact that the petitioner has rendered service for a period of more than 2627 days on and from the month of June, 1990 till the month of September, 2002 and that there had been a continuing necessity to engage the petitioner cannot be denied. There was no endeavour on the part of the respondents to take appropriate steps to permanently absorb the petitioner when there was a continuing necessity to substantively appoint a Job Amin under Chapra Block in the district of Uttar Dinajpur and as a consequence thereof the petitioner had been made to suffer. The petitioner being a member of a land loser's family ought to have been considered for absorption in the light of the

earlier Labour Department Circular dated 17th October, 1977 in which it was provided that vacancies in the land loser category can be filled up by the employing authorities without referring to the employment exchange and in the same there was also no rider towards continuous service of three consecutive years. The petitioner was continued in temporary engagement over a span of ten years and such engagement was thereafter denied to be extended causing great hardship and injustice to the petitioner. Such illegalities and laches on the part of the respondents cannot be allowed to earn immunity.

14. In course of hearing attention of this Court was drawn to the circulars dated 23rd April, 2010 and 25th February, 2014 issued by the Principal Secretary and the circular dated 16th September, 2011 issued by the Special Secretary to the Government of West Bengal, Department of Finance. In the said circulars it has, inter alia, been observed that for implementation of various schemes/projects of the various departments of the Government, the controlling authorities have been compelled to engage casual, daily dated workers and that in many cases, these employees render service for a substantial period of time even for more than ten years remaining attached to various departments of Government. Upon consideration of such fact and in furtherance of the welfare principles and to provide security of tenure, appropriate emoluments and certain terminal benefits to such temporarily engaged workers, the Government decided to place such temporary workers in a permanent scale of pay and to allow such workers to remain engaged till the attainment of 60 years of age. The said circulars have been issued by the Government in exercise of its executive power under Article 162 of the Constitution of India and the same are binding upon all the departments under the State of West Bengal.

15. Judiciary has a very strong sense of justice and it works to maintain social justice and fairness. Equity regards as done, which should have been done [See the judgment delivered in the case of D.M. Premkumari v. The Divisional Commissioner, Mysore Division and Ors., reported in (2009) 12 SCC 267]. Applying such proposition of law to the facts of the case, it would be the bounden duty of this Court to put an end to the protracted long agony of the petitioner, who have suffered the distraught pain and was kept in animated tenterhooks in anticipation of an employment and faced stone walled response from an apathetic administration with no success before the learned Tribunal.

16. For the reasons discussed above, this Court directs the respondents to engage the petitioner on temporary basis in any Group "C" or Group "D" post according to his qualifications in the office of the respondent no.7 or in any other office of the respondents and to allow the petitioner to continue in such temporary engagement till attainment of the age of 60 years and to pay remuneration to the petitioner in the prescribed scale of pay and other consequential benefits, in terms of the circulars dated 23rd April, 2010 and 25th February, 2014 issued by the Principal Secretary and the circular dated 16th September, 2011 issued by the Special Secretary to the Government of West

Bengal, Department of Finance. The above exercise should be completed by the respondents within a period of 4 weeks from the date of communication of this judgment.

17. The writ petition is, accordingly, disposed of with the aforesaid findings and observations.

18. There shall, however, be no order as to costs.

19. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

Nishita Mhatre, A.C.J.—I agree.