
(2001) 03 CAL CK 0011
In the Calcutta High Court
Case No : C.R. No. 10303 (W) of 1993

Pradip Kumar Biswas

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 05-03-2001

Acts Referred:

Citation : (2001) 2 ILR (Cal) 338

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Saibal Acharya and Ambar Majumdar, for the Appellant;

Judgement

Amitava Lala, J.—This writ petition being C.R. 10303(w)/93 relates to absorption of the Petitioners who have performed their duties for long five years with not less than 120 days of work consecutively in regular basis in appropriate establishments.

2. From the record it appears that another writ petition being Company No. 19182(W)/94 (Pradip Kr. Biswas and Ors. v. Election Commission of India and Ors.) is also tagged with the matter for the purpose of analogues hearing. In the scone writ petition a challenge has been thrown not to give effect or further effect to the directives of the Election Commission in its letter No. 23/94-vol. TV dated August 23, 1994 banning appointment of job workers as enumerators/supervisors/inspectors during the revisions of electoral rolls with reference to January 1, 1995 as the qualifying date as connected by the radiogram of the Chief Electoral Officer, West Bengal dated August 25, 1994 (Annexure "C to the writ petition). Therefore, it appears to me that the second writ petition was directed to be heard with the first writ petition for a common purpose i.e. regularisation of service which is the ultimate purpose of the parties.

3. In the record, no papers relating to Company No. 14702(w) of 1994 is available although it was directed earlier to be heard analogously. Therefore, such writ petition has not been taken into consideration.

4. From the main writ petition it appears to this Court that the Petitioners have done important functions during the conduct of election. Admittedly ; the duties were seasonal. But they have been doing such seasonal duties for years together. Under Memorandum No. 1700 EMP dated August 3, 1979 the concerned Labour Department laid down certain principles in the matter of absorption of casual and such other categories of workers under the State Government. By a further Memorandum No. 1650-EMP dated August 28, 1980 it gave a definition of seasonal workers referred to in para. 5 of the earlier memorandum as aforesaid. The seasonal workers mean those who were still continuing as such and who possess the qualifications prescribed in the rules of recruitment for the posts in which they would be considered for appointment in the regular establishments subject to the condition that they were in employment at the material time for five calendar years or more in consecutive seasons from the date of their initial appointment as seasonal workers.

5. Under memorandum No. 1100-EMP of the State of West Bengal, the Labour Department also laid down the guidelines for the purpose of the above by saying that for appointment of casual and such other categories of workers in regular service the incumbent should be allowed to deduct from his/her actual age the period spent by him/her as casual worker and if after deducting the period he/she is within the maximum age limit he/ she shall be considered eligible for absorption. Under another memorandum being No. 300-EMP dated May 13, 1985 the election job workers/enumerators who were engaged by the Home (C & E) Department during the revision of the electoral rolls between 1979 and 1985 and who have put in a total of at least 240 days" work during the prescribed period may be included in the exempted categories provided that these job workers/enumerators fulfilled the conditions of eligibility as may be laid down by the relevant rules of recruitment prescribed for the posts. Their names will be forwarded to the Director of National Employment Service who will maintain a running list for such persons. By a further memorandum being No. 350-EMP dated September 21, 1990 the period between 1979-85 was extended upto June, 1989.

6. For an example, the Petitioners have given the instance of "punkha-pullers". Such "punkha-pullers" were doing their seasonal work in the summer season and by memorandum No. 600-EMP dated August 17, 1984 it was decided that such "punkha-pullers" who have worked for 5 calendar years or more in consecutive seasons from the date of their initial appointments and are still in employment or have been rendered surplus due to introduction on electricity may be absorbed in the regular establishment.

7. According to me, in this respect two very important judgments have been delivered by the Apex Court. One is reported in case of Arun Kumar Rout and Others Vs. State of Bihar and Others, and also in case of (Keshav Narayan Gupta and Others Vs. Jila Parishad, Shivpuri (MP) and Another, where it has been held that the persons who are working as casually or temporarily they deserve

sympathy for consideration even if they could not claim regularisation as a matter of course. This was considered as an equitable justice since such incumbents, are not guilty of fraud or/sharp practice and they did not lack any requisite qualification. The case of the Petitioner also be considered along with others by waiving the age bar, if necessary.

Therefore, according to me, the case of the Petitioners should be guided by the well-settled principles of law as aforesaid.

8. By a further judgment Secretary, Secretary, H.S.E.B Vs. Suresh and Others etc. etc., the Supreme Court has taken a very wide outlook to give a shape and offer reality to the Part III and Part IV of the Constitution by the Law Courts. Such case is specially important in this respect on the ground that the same is related contract labour. The view of the Supreme Court is as follows:

The equality clause in the Constitution does not speak of mere formal equality before the law but embodies the concept of real and substantive equality which strikes at the inequalities arising on account of vast social and economic differentiation and is thus consequently an essential ingredient of social and economic justice. The security clause in the Constitution has been equated to mean that the people of the country ought to be secured of socioeconomic justice by way of a fusion of Fundamental Rights of Directive Principles of State Policy. Socialism ought not to be treated as a mere concept or an ideal but the same ought to be practiced in every sphere of life and be treated by the Law Courts as a Constitutional mandate since the Law Courts exists for the society and required to act as a guardian angel of the society. As a matter of fact, the socialistic concept of society is very well laid in Part III and Part IV of the Constitution and the Constitution being supreme, it is a bounden duty of the Law Courts to give shape and offer reality to such a concept.

9. According to me, all the aforesaid cases are dealt with for service security by giving a permanent shape to those who have worked in the aforesaid manner with a hope and trust to get an equitable relief for the purpose.

10. Therefore, such equitable relief cannot be ignored. Hence, the writ petitions are allowed with a direction upon the authority concerned to consider their representation or representations in the light of the judgment of this Court within a period of four months from the date of communication of this order upon giving fullest opportunity of hearing and by passing a reasoned order thereon. For the purpose of effective adjudication, copies of the writ petitions along with annexures and the affidavits in connection therewith also along with the annexures will be forwarded to such appropriate authority. This order will be operative subject to payment of Court fees by all the Petitioners as well as added Respondents asking similar relief? excepting the petition owner No. 1 on whose account the Court fees are treated as paid.

11. Thus, both the writ petitions stand disposed of. No order is passed as to costs.

Let an urgent Xeroxed certified copy of this judgment, if applied for, be given to the learned Advocates for the parties within two weeks from the date of putting the requisites.