

(2018) 10 CAL CK 0046

In the Calcutta High Court

Case No : Writ Petition No.3588, 3590, 3599, 3601, 15893 (W) Of 2017

Prasenjit Hazra and Others @APPELLANT@Hash State of West Bengal and Others

Date of Decision : 09-10-2018

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226

Citation : (2018) 10 CAL CK 0046

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Robilal Moitra, Arka Bhattacharya, Tapas Adhikari, Somraj Dhar, Bellal Shaikh, Benazir Ahmed

Final Decision : Dismissed

Judgement

Sambuddha Chakrabarti, J.

All these writ petitions are disposed of together as the facts involved therein are more or less same and the issue involved is identical. The petitioners

in all these writ petitions were appointed as civic volunteers on October 11, 2013. They allege that they have not been assigned any duties with effect

from June 30, 2017 without showing any reason. They were merely told by the respondents as that they had assembled at Rani Rashmoni Road and at

Nabanna to voice their protest against the Government they were not assigned any duties.

The petitioners had not received any notice. In some of the writ petitions, the petitioners have denied being part of any agitation or assembly at Rani

Rashmoni Road or Nabanna. They made a representation to the Superintendent of Police, Murshidabad i.e., the respondent no. 2 herein as well as the

Officer-in-Charge of the respective Police Stations. They have further alleged that demobilization from the Civic Volunteer Force without assigning

any reason and show-cause has been in violation of the principles of natural justice and also Articles 14, 19 and 21 of the Constitution of India.

By these petitions, the petitioners have inter alia prayed for a writ in the nature of mandamus directing the respondents not to give any effect to the

order of demobilization and to allow the petitioners to join their duties as civic volunteers in respect of various police stations in the district of

Murshidabad to which they were attached. The stand of the respondents as reflected in the affidavits, except that in connection with W.P. No. 3588

(W) of 2017, filed by the Superintendent of Police is that after completion of the process of selection the petitioners were selected provisionally as

civic volunteers for the respective Gram Panchayats temporarily on contractual basis.

The then Officers-in-Charge of the concerned police stations submitted a report to the respondent no. 2 to the effect that the petitioners were

indisciplined, casual and reluctant to do their duties. They made demonstrations at Nabanna on July 10, 2014 without taking prior permission from the

concerned authorities and absented themselves from their duties. From the said report it was ascertained that the petitioners left their place of duty

without intimating their units-in-charge or taking any permission from him. It was unethical for them to take part in any demonstration against the

Government and that too without seeking the permission from the authorities.

The affidavit further states that during enquiry it was revealed that the petitioners misbehaved with the public, engaged themselves in unethical

activities and were indisciplined during their duty hours. They also leaked out secret information of the police stations and indulged in acts of

disobedience. After carefully considering all the aspects of the case, the respondent no. 2 disengaged the petitioners from duties on the grounds as

mentioned above. Since they had already completed six months of their contractual services and since their activities were causing problem in running

the administration of police stations, their continuation as civic volunteers was not considered desirable in a disciplined department. Their activities

were creating bad precedent to other disciplined members of the Force and the police department.

In connection with W.P. No. 3588 (W) of 2017 the respondent no. 2 in his affidavit-in-opposition mentions that the petitioners were attached to

Beldanga police station. The Officer-in-Charge of the said police station submitted a report which revealed that the petitioners were indisciplined,

casual and reluctant in discharge of their duties. They wanted the duties to be detailed as per their choice and absented themselves from the duties.

There was yet another report given by another Officer-in-Charge of the said police station wherefrom it appeared that the petitioners misbehaved with

the public and indulged themselves in unethical activities in an indisciplined manner. In other words, in the affidavit-in-opposition to this writ petition,

the respondents have not mentioned that the petitioners took part in any demonstration or agitation against the Government either at Nabanna or Rani

Rashmoni Road.

The petitioners have denied these allegations against them in their respective affidavits-in-reply. The court is thus required to adjudicate the right of the

petitioners to the reliefs prayed for by them within the broad framework of the allegations and their denial. Admittedly, the petitioners were holding

temporary posts and were on contractual employment.

It has been decided in series of judgments that a temporary employee has no right to the post. In the State of U.P. Vs. Kaushal Kishore Shukla,

reported in (1991) 1 SCC 691, the Supreme Court observed that since a temporary employee has no right to the post his service may be terminated in

terms of his appointment. The legal position of a temporary employee from the point of view of service jurisprudence relating to the termination of his

service is to a large extent similar to that of a probationer. In the matter of termination of a temporary employee the authorities are not required to

comply with the principles of natural justice by giving such employee an opportunity of being heard. In the case of Rajasthan State Transport

Corporation and Another Vs. Charan Singh, reported in (2007) 15 SCC 789, the Supreme Court held that in cases of temporary employees, that too

those who are appointed on ad hoc basis, their services can be put to an end if the same are not satisfactory on examination of the total service

record. If termination of services is as on that basis no enquiry need be held.

Moreover, there is always a basic difference between termination of a temporary employee and disengaging a civic volunteer who gets his salary on

daily basis. Mr. Moitra, learned senior counsel appearing for the petitioners, submitted that these petitioners were appointed for a period of six months

and, therefore, within that period they could not be terminated without proper compliance of the principles of natural justice.

Apart from the fact that all these volunteers were disengaged long after six months from the date of their initial engagement, there was nothing in the

relevant guideline to show that these petitioners were in fact engaged for six months. This is a very common misconception lulled by the petitioners

themselves. The relevant guidelines say that the selected volunteers from the first panel will be deployed for six months and then be replaced by

volunteers selected in the next panel for the next six months with usual break. It does not anywhere say that the petitioners or for that matter civic

volunteers would be engaged for a period of six months. All that it says is that from the first panel civic volunteers would be deployed for a period of

six months.

The obligation of the respondents is to engage civic volunteers from the first panel for a period of six months. This does not mean that the civic

volunteers have no right to be engaged for six months. Thus, even if the name of a civic volunteer is in the first panel the authority, if he so decides,

may not engage him for any work. Moreover, civic volunteers do not have a monthly salary. They get their honorarium at a certain rate on daily basis

after furnishing the working statement to be certified by the officer-in-charge of the police station or the traffic guard were deployed. Thus, this was a

contractual employment on day to day basis. For a civic volunteer each day provided a new opportunity of engagement. If the authorities do not want

they may disengage a civic volunteer within the period of first six months as well.

One legal position stands out very clearly that none of these petitioners were disengaged within the period of first six months after their employment,

even if it could be argued that the authorities were required to appoint them for a period of six months. In the case of Director, Institute of

Management Development, U.P. Vs. Pushpa Srivastava, reported in (1992) 4 SCC 33, the Supreme Court observed that since the appointment was

on purely contractual and ad hoc basis on consolidated pay the appointee had no right to continue in the post and to claim regularization of service in

the absence of any rule providing for regularization after the period of service.

These petitioners have no right to the posts and, therefore, no right to the reliefs prayed for by them nor are the respondents obliged so to do. Any

direction upon the respondents to give the petitioners an opportunity of being heard is bound to be a purposeless one as the respondents can still decide

not to give any employment to the petitioners who are engaged on daily wage basis. In *Suresh Vs. Vasant*, reported in AIR 1972 SC 1680, the

Supreme Court observed that a High Court while granting relief under Article 226 of the Constitution of India should keep in view that no injustice will

be caused to the opposite party and that the issue of writ will not be futile. In the present case, any direction in terms of the reliefs prayed for is bound

to prove futile for the reasons mentioned above.

In *Balmadies Plantation Vs. State of Tamil Nadu*, reported in AIR 1972 SC 2240, the Supreme Court observed that when issue of writ is likely to be

futile such question should not be dealt in writ jurisdiction. For the reasons stated above, I am of the view that the petitioners are not entitled to the

reliefs prayed for by them, far less any direction for regularization of service. All these writ petitions are dismissed as devoid of merits. There shall be

no order as to costs. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all

requisite formalities.