
(1991) 03 CAL CK 0014
In the Calcutta High Court

Sudarsan Das

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 26-03-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 39

Citation : (1991) 1 CALLT 456 : 95 CWN 1183

Hon'ble Judges : Kalyanmoy Ganguli, J

Bench : Single Bench

Judgement

Kalyanmoy Ganguli, J.—The petitioner who is a Sweeper appointed temporarily on daily basis on March 28, 1990 by the respondent bank has prayed in this application under Article 226 of the Constitution of India, for a writ, inter alia, in the nature of mandamus commanding the respondents to regularise the service of the petitioner in the post of Sweeper in respect of Argoal Branch of United Bank of India.

2. The petitioner contends that he has been working in the post of Sweeper on daily basis with effect from March 28, 1990 against a regular vacancy. The petitioner apprehends that as the respondents are taking steps to invite applications for the post of a Sweeper, the petitioner may lose his job after having rendered such service in such post for about 11 months.

3. The bank contends that although it has no animosity against the petitioner personally, but as a public sector undertaking it has to follow certain formalities in the matter of recruitment of its employees. Mr. Subrata Roy, learned advocate appearing for the respondent bank has handed up to this court a circular of personnel department of the bank being Circular No. P(AS)/88/GM/125/88 dated November 21, 1988 regarding the policy for recruitment of posting of part time/full time Sweepers in the bank.

4. For the purpose of a decision on the point in issue only paragraph 1 of the said circular is material. The said paragraph, inter alia, provides that for filling up the

vacancy of part time/full time Sweeper for the newly opened branches/offices, requisition is to be sent to the local employment exchange detailing therein the nature of vacancy, remuneration to be paid to the selected candidates as well as the eligibility criteria of the candidate for the said post. The said policy further provides that other sources may be tapped when employment exchange failed to supply suitable candidates for recruitment in the post of Sweeper. Mr. Roy contends that in view of such a circular, it is not possible for the bank to regularise the appointment of the petitioner without complying with the provisions of the said circular namely, without inviting applications from intending candidates through the employment exchange. No doubt the policy is laudable but the point to be seen in the instant case is whether in the facts and circumstances of the case the said circular can be pressed into service. It may be mentioned that the circular is applicable in the cases for filling up the posts of such posts of such Sweepers for the newly opened branches and offices of the bank. In the instant case it was open to the bank authorities to have followed the provisions of the circular before giving the appointment on a temporary basis to the petitioner but when once the respondent bank has already appointed a person holding out future hopes and dreams whether the bank should be ordered to shatter such dreams taking shelter under such recruitment policy. There is no doubt that the respondent bank has no personal animosity against the petitioner but still then the legality of the action taken recourse to by the bank can be gone into in the instant application. It is further contended by the respondent bank that as the petitioner has not completed 240 days of work, he cannot claim absorption. The petitioner has shown that in fact the petitioner as actually worked for 257 days even excluding Sundays and holidays during his term of appointment. But that is not the point, In the instant case the petitioner has referred to the case of Satyanarayan Sharma and others Vs. National Mineral Development Corporation Ltd. and others, wherein it was, inter alia, observed that principle of regularisation of a daily rated workman and appointment to him of the pay scale to that of a regular workman arises only when the daily rated workman is doing the same work as the regular workman and there being a vacancy available for him, he is not absorbed against it or not even paid the equal pay for the period during which the same work is taken from him.

5. The petitioner has also referred some other cases but it is not necessary to discuss the said cases in the context of the present case.

6. The admitted position in this case is that in the fact the petitioner has been rendering service of a Sweeper to the bank for 257 days without break and there is a vacancy for a permanent post for him. On that count alone, on the basis of the case of Satya Narayan Sharma (supra) regardless of the fact as to whether the recruitment policy of the bank provides for a different method and mode of recruitment the service of the petitioner is to be regularised. That recruitment policy is applicable in the case of first appointment but cannot take away the right of a person who has already rendered service for a number of days against a vacancy existing in the bank at the time of his initial appointment.

7. In the circumstances, this application succeeds and is allowed. The respondent is directed to regularise the service of the petitioner according to its prescribed scheme forthwith. It is however, ordered that the petitioner will not be entitled to any back wages in the prescribed scale for the work already rendered by him.

The application is disposed of as above.

There will be no order as to costs.