
(2019) 01 CAL CK 0063

In the Calcutta High Court

Case No : Writ Petition (W.p) No. 15606 (W) Of 2018

Tapan Ghosh

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 21-01-2019

Acts Referred:

Citation : (2019) 01 CAL CK 0063

Hon'ble Judges : Subrata Talukdar, J

Bench : Single Bench

Advocate : Yamin Ali

Final Decision : Allowed

Judgement

Party/Parties is/are represented in the order of their name/names as printed above in the cause title.

By the previous order of this Court dated 28th of November, 2018, Mr. Naren Ghosh Dastidar, Learned Counsel, was granted the opportunity to take instructions on behalf of the State-respondents.

However, none appears today to assist this Court on behalf of the State Respondents.

Mr. Ali, Learned Counsel, appearing for the petitioner and takes this Court to the reasoned decision of the District Panchayat and Rural Development Officer (DPRDO), Cooch Behar/the Respondent No. 7 to this writ petition dated 9th of August, 2018 and passed pursuant to the direction of the Hon'ble Court dated 22nd of June, 2018 in W.P. 14108 (W) of 2017, being an earlier writ petition filed by the present petitioner.

Mr. Ali submits that although the eligibility criteria examined by the DPRDO in his impugned order dated 9th of August, 2018 connected to the fulfilment of such criteria by the petitioner under Memo No. 9008-F(P) dated 16th of September, 2011 substantially records the correct position of facts, the observations and the

conclusions drawn thereon by the Respondent No. 7 is wholly erroneous. For the benefit of this discussion the observations and the conclusion drawn by the Respondent No. 7/DPRDO are reproduced below:-

"OBSERVATION

1) That as per the resolution dated 22/05/2006, the petitioner was engaged as Group-D/casual worker and as per the engagement letter he was appointed as a casual worker for maintenance & preservation of Street Light, Generator and for other official work. But there is no such sanctioned & permanent post in Gram Panchayats. Hence, the appointment of the petitioner was given not against any sanctioned and permanent post.

2) That the petitioner was engaged in the year of 2006 and still working as casual worker but the continuity of the service of the petitioner has not been certified by the Block Development Officer, Dinhata-II Development Block as required by Memo No. 9008-F(P) dated 16/09/2011 issued by Finance Department, Government of West Bengal.

3) That it is not clear from the documents submitted by the petitioner, the Pradhan, the Executive Assistant that the petitioner had rendered at least 240 days each year during his engagement.

Hence, the representation submitted by Sri Tapan Ghosh dated 29/06/2017 (submitted before the undersigned on 17/07/2018) for giving financial and other benefits in terms of the Memo No. 1107-F(P) dated 25th February, 2016 cannot be entertained and cannot be forwarded to the Principal Secretary, Department of P&RD, Government of West Bengal for necessary approval."

Upon hearing the petitioner, this Court need not await the presence of Learned State Counsel since, no assistance is offered and, no accommodation is sought even at the second call. Accordingly, the matter is dealt with on the basis of the available materials on record.

With regard to the Observation No. (1), this Court is of the view that the conferment of benefits under the Memo dated 16th of September, 2011 (supra) qua the casual workers, need not await the fulfilment of the criterion of such appointments being made against the sanctioned post since, in view of paragraph (x) of the said Memo dated 16th of September, 2011, the requirement of sanction of a permanent post is only specified qua contractual appointments.

Admittedly, the appointment of the petitioner in terms of the Observation No. (1) of the DPRDO order dated 9th of August, 2018, including the examination of the eligibility criterion of the petitioner, shows that the petitioner was appointed as a casual worker. Such casual worker is free of the shackles of the requirement imposed by Paragraph (x) of the Memo dated 16th of September, 2011.

In this connection this Court usefully refers to its final order dated 7th of January, 2019 in W.P. 7913 (W) of 2018 which discusses the position of law, in

the view of this Court, threadbare.

Accordingly, Observation No. (1) of the order impugned dated 9th August, 2018 stands set aside.

With regard to Observation Nos. (2) and (3) of the DPRDO/the Respondent No. 7, this Court is of the view that it was always open to the DPRDO in his capacity as the apex District Panchayat Officer to verify the details of the engagement of the petitioner from the office of the GP to which appointed.

The DPDRDO, to the mind of this Court, has fallen short of the requirements expected to be discharged by him qua the solemn directions dated 22nd June, 2016.

In the above view of the matter, both Observation Nos. (2) and (3) also stand set aside.

The DPRDO/the Respondent No. 7 shall now revisit the issues in terms of the findings of this Court above read with the final Judgment and Order dated 7th of January, 2019 in W.P. 7913 (W) of 2018, not later than a period of eight weeks from the date of communication of this order.

W.P. 15606 (W) of 2018 stands accordingly allowed. There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.