
(2000) 07 CAL CK 0034
In the Calcutta High Court
Case No : W.P.S.T. 373 of 2000

Tarun Kundu and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 05-07-2000

Acts Referred:

Constitution of India, 1950 — Article 14
Industrial Disputes Act, 1947 — Section 25

Citation : 104 CWN 921 : (2000) 87 FLR 987 : (2001) 1 LLJ 258

Hon'ble Judges : S.B. Sinha, J;H. Banerjee, J

Bench : Division Bench

Advocate : B.K. Bose and Subhrajit Basu, for the Appellant;Pradyut Kumar Dutta, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, J.—In this writ application, the petitioners have questioned an order dated September 10, 1999 passed by the learned Tribunal whereby and whereunder the prayer of the petitioners for being regularised in services had been dismissed.

2. The only case made out by the petitioners is that as they had completed more than 240 days of service in a year and had worked for 6 years, they are entitled to be regularised in services.

3. Law nowhere states that if a person has worked for more than 240 days in a year is entitled to be regularised in service. Provision contained in Chapter v. of the Industrial Disputes Act had been enacted merely to protect the right of workman from being, illegally dismissed from service. Section 25-F of the said Act merely contemplates payment of compensation at the rate of 15 days' wages per each year of completion of service," and only in that context, it has been provided that such year of completion of service shall be deemed to have been completed if a person has worked for more than 240 days in a year. Section 25 of the said Act, therefore, does not contemplate creation of any right of

absorption in favour of any person. It appears that the petitioners have proceeded on a wrong premise.

4. This aspect of the matter has been considered by the Apex Court in *Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc.*, The aforementioned decision of the Apex Court has been considered in many judgments including *Swapan Kumar Banerjee v. Union of India*, reported in 1999 (5) SLR 807, *Sairindhri Dolui of W.B.* reported in 2000 (1) SLR 803. Furthermore, it is now a well settled principle of law that if a person acquires a particular status at the time of his appointment, such status cannot be changed only because he has worked in the department for some time. Reference in this connection may be made to *State of Madhya Pradesh and Another Vs. Dharam Bir, , W.B. Essential Commodity Supply Corporation Ltd. v. Md. Sarif* reported in 2000 II LLT 708 (Cal-DB). Reference in this connection may also be made to *Director of Public Instructions, W.B. and Ors. v. Dr. Ashish Pal and Ors.* reported in 1998 (II) CHN 241 as also the latest decision reported in 2000 (1) SLR 803.

5. For the reasons aforementioned, we are of the opinion that the order of the learned Tribunal cannot be faulted, which is based on sound principle.

6. Other contention of Mr. Basu to the effect that other persons having been appointed, in our opinion, the petitioners had also a right of regularisation has been rightly rejected by the learned Tribunal, in as much as, Article 14 of the Constitution of India being a positive concept, cannot be invoked in a case where equality is being sought for on the ground of commission of illegality on the part of the authorities concerned. Court or the Tribunal cannot perpetuate any illegality.

7. This application is, therefore, dismissed.

H. Banerji, J.

I agree.