

Bimal Mali Vs State of West Bengal

Court: Calcutta High Court

Date of Decision: April 23, 2002

Acts Referred: Constitution of India, 1950 " Article 21

Citation: (2002) 2 ILR (Cal) 339

Hon'ble Judges: Pratap Kumar Ray, J

Bench: Single Bench

Advocate: Subrata Talukdar, for the Appellant; Saurav Bhattacharya, for Respondents No. 4 to 6, for the Respondent

Final Decision: Allowed

Judgement

Pratap Kumar Ray, J.

In this writ application, the Petitioner has challenged the decision dated January 14/ 19, 1993 of the Deputy

Secretary, Government of West Bengal, Education Department, being annexure "H" to the writ application whereby and where under the

recommendation of the college authority seeking approval of appointment of the Petitioner's service in a Group "D" post, more precisely in the

post of Night Guard in the Evening Section of the college was rejected only on the ground that the same was not legally sustainable in view of the

existing rules and regulations.

2. None appears for the State Respondents to oppose this application. No affidavit in opposition has also been filed. However, an affidavit in

opposition has been filed by the college authorities.

3. From the records it appears that the service of the Petitioner was taken by the college authorities on diverse dates on casual basis right from

February 3, 1984 till May 1988 with certain breaks at different points of time. The last appointment from December 5, 1986 to May 30, 1988

was made following the recruitment rules as set up by the Governing Body of the college. The post was advertised in Amrita Bazar Patrika on

April 29, 1986, interview was held on July 20, 1986 and in terms of the decision of the selection committee wherein many candidates appeared,

the Petitioner ultimately was appointed. But since the college had no funds to pay the salary of the Petitioner, under such financial restraint, the

Petitioner's service was terminated with effect from May 30, 1988. Subsequently, Group "D" post was sanctioned under Government order No.

1334/2(3) Edn. (CS) dated October 26, 1989 when such post was sanctioned, in view of the previous appointment of the Petitioner by following

selection is made on regular way, they cannot be deprived of from their service benefits. The impugned action of the Deputy Secretary is

completely in violation of Article 21 of the Constitution of India, since by unfair procedure the Petitioner's case has been rejected. No discussion

has been made about the history of the case and the Petitioner's past service as rendered. Since it is a Group "D" post and there is a sanctioned

post, which is now being held by the Petitioner since the year 1990, applying the doctrine of social justice, it is a fit base wherein the Petitioner's

service is required to be absorbed. Reliance in this connection may be placed in the cases of State of Haryana and others Vs. Piara Singh and

others etc. etc., Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, ; LIC of India and Another Vs. Consumer Education

and Research center and Others, , in the case His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr. (1973) 4 S.C.G.

225.

4. In that view of the matter, this Court is of the view that the impugned decision is not sustainable and as such, the same is set aside and quashed.

It is declared that the Petitioner is entitled to have the approval of service in the permanent sanctioned post with effect from October 23, 1990.

The Respondents authorities are directed to accord necessary approval of the service of the Petitioner with effect from that date and to release all

arrear salaries and service benefits upon fixing the scale to that effect with reference to the revised scale of pay as made from time to time. Such

arrear salary must be paid along with interest at 10% per annum and the approval order must be passed within 4 weeks from date, and payment of

all arrear salaries must be released within 3 months from the date of communication of the order along with interest, as directed.

5. This application is allowed.

6. Urgent Xerox certified copy of the order, if applied for, be supplied expeditiously.