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(2002) 2 ILR (Cal) 339

Calcutta High Court

Case No: Civil Order No. 5492 (W) of 1993

Bimal Mali — APPELLANT

Vs

State of West Bengal — RESPONDENT

Date of Decision: April 23, 2002

Acts Referred:
Constitution of India, 1950 â€" 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 1,4/ 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 hot 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

the procedure for regular appointment, the college authority, that is the Governing Body took a decision to appoint the Petitioner in such

sanctioned post in terms of the resolution dated September 20, 1990 and accordingly the Petitioner joined in the post in question on October 23,-

1990 in terms of the appointment letter dated September 21, 1990 as issued in a sanctioned post on whole time basis in the sanctioned pay scale

of Rs. 220-388/-. The college authorities referred the papers for approval of such appointment in terms of the rules by communicating the same to

the appropriate authority of the State Government. On receipt of such, the Deputy Secretary, by his communication dated June 2, 1992 wanted

some papers relating to the selection of the Petitioner as made by the selection committee when the Petitioner was appointed in the year 1986. All

the papers were forwarded by the communication dated November 16, 1992 by the college authority. Reminder was sent again on December 21,

1992 clarifying all positions. However, it appears that without going through the records of the case and considering the matter that the Petitioner

already was selected by a selection committee in terms of the interview as held, the impugned decision was passed. Hence, from the record it

appears that the Petitioner admittedly is working continuously since the year 1986 to 1988 in non-sanctioned post and thereafter since the year

1990 regularly in a sanctioned post. It is true that after the post was sanctioned, selection process for appointment of candidate on permanent basis

was not followed, but in view of the Petitioner''s past service as rendered since 1986 till 1988 regularly read with earlier service as rendered since

1984 on casual basis on diverse dates and on consideration of the matter that during the tenure of service Of the Petitioner for the period 1986-88,

as the Petitioner was appointed following the recruitment rules by proper selection, the Governing Body took a decision to appoint the Petitioner in

the sanctioned post with effect from October 23, 1990. The Petitioner enjoyed salary in pre-revised scale of pay which was sanctioned under the

grants-in-aid rules by the Government. Hence, for all practical. Ã¯Â¿Â½ purposes, it appears that on due consideration of the Petitioner''s service and

on the basis of the selection as made in the pre-sanctioned stage of the post, the Petitioner was appointed. Unfortunately, the Deputy Secretary did

not consider these aspects of the matter and thereby came to an erroneous decision which has caused serious suffering to the Petitioner''s service

career. It is not a settled legal position that so far as Group ''D'' staffs are concerned, when they are appointed on casual basis and thereafter

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.