

(2007) 12 CAL CK 0008

Calcutta High Court

Case No: Writ Petition No. 18916 (W) of 2006 and CAN No. 8410 of 2007

Sitangshu Maity

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision:** Dec. 5, 2007**Acts Referred:**

- Constitution of India, 1950 - Article 12

**Citation:** (2008) 1 CALLT 393**Hon'ble Judges:** Jayanta Kumar Biswas, J**Bench:** Single Bench**Advocate:** Jayak Kumar Gupta, for the Appellant; Amaresh Bag, for First and Fourth Respondents and K.K. Maity, for Second and Third Respondents, for the Respondent**Final Decision:** Dismissed

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### Judgement

Jayanta Kumar Biswas, J.

In all these writ petitions the second and third respondents, the Director, Zoological Survey of India, and the Deputy Director and Officer-in-Charge, Zoological Survey of India, Marine Aquarium (Digha) respectively, have taken out applications for vacation of the interim order directing them to go on engaging the petitioners as security guard and safaiwala and also to pay their remuneration. Since the writ petitions are ready for final hearing, I invited counsel for the parties to argue them, and accordingly they have argued the writ petitions for final disposal. W.P. No. 18919 (W) of 2006 and CAN No. 8412 of 2007 are not appearing. By consent of counsel for the parties they are treated as on the day's list. Since common questions of fact and law are involved in all the cases, they have been heard together, and are being disposed of by this common Judgment.

2. The petitioners have prayed for a mandamus commanding the second and third respondents to enter into an agreement with the fifth respondent, the Director, Bengal Sainik Punarvas Limited, so that they may be engaged as security guard in

Marine Aquarium Research Centre, Digha, Purba Medinipur of the second and third respondents. They are also seeking a mandamus commanding the fifth respondent, it is submitted that it is a registered society, to pay them salary from June 15th, 2006 till August 10th, 2006 when the writ petition was taken out. The questions which have arisen for decision are: (i) whether a mandamus can be issued directing the second and third respondents to enter into an agreement with the fifth respondent for engaging the petitioners as security guard in their marine aquarium research centre; (ii) whether a mandamus can be issued commanding the fifth respondent to pay salary to the petitioners for the period mentioned hereinbefore for working as security guard in the marine aquarium research centre of the second and third respondents.

3. The petitioners were engaged by the Zoological Survey of India (in short ZSI) for working as security guard and safaiwala in its marine aquarium research centre. They were engaged on the basis of a contract, ZSI entered into with one Indian Ex-Services League, Contai, Purba Medinipur. They were members of that Indian Ex-Services League (in short IESL), an organization sponsored by Zilla Sainik Board, Medinipur. The engagement took place for the first time on June 6th, 2003. With effect from February 10th, 2004 the contract was extended for one year. Again with effect from May 1st, 2005 it was extended for one more year. In terms of the contract ZSI was to pay the agency supplying the security guards and safaiwalas at the rate of Rs. 5,684/- per month per head. In May 2006 Rajya Sainik Board informed ZSI about the formation of the fifth respondent. The petitioners became its member. The contract with IESL was extended lastly upto June 14th, 2006. ZSI was willing to take the security guards and safaiwalas from Rajya Sainik Board that sponsored the fifth respondent. A draft agreement was prepared, and ZSI decided that Rajya Sainik Board should provide a new set of ex-servicemen. Such decision was taken in the face of the new salary structure. Though letters were written Rajya Sainik Board and the fifth respondent did not take any steps for entering into any contract. At such stage the petitioners took out the writ petition.

4. I am unable to see how a mandamus can be issued directing ZSI to enter into a contract with the fifth respondent. There is nothing to show that the fifth respondent is a state within the meaning of Article 12 of the Constitution of India. Mr Gupta, counsel for the petitioners, submits that it is a registered society. He says that the petitioners will be benefited once the contract is executed by and between ZSI and the fifth respondent. Such an expectation, in my view, is not a warrant for issuing a mandamus when ZSI is under no statutory duty or obligation to enter into any contract with the fifth respondent for extending consequential benefits to the petitioners. As a matter of fact, ZSI never entered into any sort of contract with the fifth respondent. That ZSI continued to engage the petitioners even after its contract with IESL stood terminated on expiration of the stipulated period, is not a ground to exercise writ powers for compelling it to engage them. There is absolutely no master-servant relationship between ZSI and the petitioners. ZSI was paying for

supplying security guards and safaiwalas to IESL, the agency concerned. A mandamus cannot be issued directing the fifth respondent to pay salary to the petitioners, when they were never supplied by that respondent. It seems to me that these are misconceived writ petitions. Although Mr. Gupta has said that everything flowed from a scheme framed by the central government, nothing has been produced before me. The question is whether ZSI and the fifth respondent have failed to discharge any legal obligation or duty. I do not find any such case. Hence I hold that the petitioners are not entitled to any relief from the Writ Court.

5. For these reasons, I dismiss the writ petitions. The applications shall be deemed to be disposed of. There shall be no order for costs.

6. Urgent certified xerox copy of this order, if applied for, shall be supplied to the parties within three days from the date of receipt of the file by the section concerned.