

(1992) 05 CAL CK 0018**Calcutta High Court****Case No:** F.M.A.T. 303 of 1991

Manas Kumar Biswas

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: May 14, 1992**Citation:** (1992) 2 ILR (Cal) 31**Hon'ble Judges:** B.P. Banerjee, J; A.M. Sinha, J**Bench:** Division Bench**Advocate:** Haradhan Banerjee and A.N. Pyne, for the Appellant; A.N. Alam, for the Respondent**Judgement**

B.P. Banerjee, J.

This is an appeal against the judgment and order dated March 14, 1990, passed by the learned trial Judge in C.O. No. 9471 (W) of 1987. By that order, the learned trial Judge dismissed the writ application. In the writ application the Petitioners prayed for regularisation of the Petitioners' service as a clerk of the Judgeship of Howrah.

2. The case of the Petitioner is that the Petitioner's name were empaneled for appointment in the post of Lower Division Clerk, by an order passed by the learned District Judge, Howrah, dated July 29, 1976. It is the case of the Petitioners had passed the Higher Secondary Examination in the year 1974 and applied to the District Judge, Howrah, for appointment in the said posts. It is stated that in terms of the order of the learned District Judge, the Petitioners' along with other appeared in the said written test and then appeared before the Board constituted for taking interview in the year 1976. On the basis of the interview the Petitioners names were empaneled for appointment in the post of Lower Division Clerk by the order dated July 29, 1976 passed by the learned District Judge. On July 29, 1976, the learned District Judge was pleased to appoint the Petitioner No. 1 out of the said panel to act as temporary clerk on daily wages basis pending receipt of sanction for further post from the Government and in terms of the said order, the Petitioner, No. 1 joined in the said post on August 3, 1976 on daily rated basis under the control of the Chief

Judicial Magistrate, Howrah, and continued to work till April 30, 1977, without any break for about 271 days. It is stated that thereafter in the last part of August 1976 the then District Judge was transferred and new District Judge assumed office and that the successor in the office of the District Judge prepared a new panel without following any rules and regulations, sometime in the month of December 1976 when the Petitioners were working and it was stated that the Petitioners' name were not included in the panel deliberately and it was further stated that the person so empanelled by the successor-in-office of the District Judge were all appointed and, thereafter, all on a sudden the Petitioners' services were terminated without any assigning any cause on the ground that the Petitioners were working temporarily and on daily rated basis. Thereafter, the Petitioners made various representations and ultimately the Petitioner's representation were rejected by the Government which was communicated by the learned District Judge to the Petitioner No. 1 on November 11, 1987, wherein it was stated that the Government had the prayer of Shri Manas Kumar Biswas, ex-temporary clerk of this judgeship, for appointment in the regular post has been given carefully consideration by the Government, but Government regrets its inability to accede the same.

3. It appears that the-learned District Judge, Howrah, by his letter dated August 17, 1987, forwarded the representation of the Petitioner No. 1 Shri Manas Kumar Biswas stating that appointment of Shri Manas Kumar Biswas, in the post of Lower Division Clerk of this judgeship may be favourably considered in view of the decision in Bimal Kumar Pal and Anr. v. State of West Bengal 1985 (1) C.H.N. 35 of the Hon'ble High Court at Calcutta (in C.R. No. 9417(W) of 1983 on December 14, 1984) on almost identical facts, and in view of the Labour Department letter No. 1700/1(60) EMP dated August 3, 1979, because of Shri Biswas rendered 9 months i.e. more than 240 days service as temporary daily basis clerk with effect from August 1976 to April 1977. The learned trial Judge dismissed the writ application holding, *inter alia*, that the decision referred to before the learned trial Judge in Bimal Kumar Pal v. State of West Bengal was a case where the order of termination of daily rated workers who continued for over 280 days had acquired a right to be absorbed in the regular post but the ratio of that judgment was not applicable as in that case the termination order of a daily rated worker whose service has been terminated on the basis of appointment which were irregularity, but in the instant case the fact was otherwise. The learned trial Judge held that the Petitioners have no claim for absorption in the regular establishment under the Government. The circular No. 1700 referred to laid down the principle for regularisation in case of an employee who held a post for more than 240 days With regard to regularisation reference was made to the decision of the Supreme Court in Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, following Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, held that appointment by way of stop gap arrangement continued in service for many years the employees were entitled to be regularised in service, otherwise such acts would

be an affront to the concept of job security and would run counter to the constitutional philosophy, particularly the concept of right to work in Article 41 of the Constitution. Reference was also made to the judgment delivered by one of us sitting singly in the case of *Bakul Raj v. State of West Bengal* 91 C.W.N. 298 the ratio of the above cases is that if a person was in service either temporarily or on stop gap basis or on part-time basis for quite sometime, he is entitled to job security and consequently right to work and that by working in the said post being qualified for appointment in such post he had acquired experience and had acted to the satisfaction of all concerned and under the, circumstances after working for a longer time he might have lost chances for appointment elsewhere because of acquiring disqualification with regard to the age and other factors. Whenever an employee is appointed, without making it clear that such appointment for a particular period or for a particular contingencies or any deputation vacancy, in that event the incumbent concerned have a legitimate expectation that he would be continued and absorbed after regularisation in case his service found to be satisfactory. But in the instant case there is practical difficulty in getting the relief by way of a regularisation in view of the fact that the Petitioner continued in the service upto April 30, 1977 and that the writ application was filed after 10 years and only explanation is that the representation of the Petitioner was turned down finally by the State Government only in November 1987 immediately thereafter the writ petition was filed. It is a case where the Petitioner that in some other similar case the parties herein got benefits and after the judgment was delivered the Petitioners have moved this Court for relief relying upon those cases.

4. The Supreme Court in the case of *Rabindranath Bose and Others Vs. The Union of India (UOI) and Others*, observed that the Court will not go into a state demand after lapse of the years. Supreme Court in the case of *Rup Diamonds and Others Vs. Union of India and Others*, held that the Petitioner cannot wait till somebody else's case is decided and then reagitate claims which he had not pressed for several years. He cannot ask relief on the basis of the decision taken in other case after a lapse of so many years.

5. Accordingly in the facts and circumstances of the case and particularly in view of the fact that no vacancy is there, It is not possible on the part of this Court to grant the relief as prayed for by the Petitioners which the Petitioners could have got if they had moved this Court immediately after the cause of action had arose. We are of the view that the Court below's approach was not correct but in the facts and circumstances of the case for the aforesaid reasons we are unable to grant the relief as prayed for. But considering the facts and circumstances of the case and the keeping in mind the spirit of the decisions mentioned above and also keeping in mind the fact that the Petitioners were eligible to get relief but delay had stood in the way, the Petitioner No. 1 should be appointed in the future vacancy.

6. The learned Advocate appearing on behalf of the Petitioners produced before this Court written instructions with regard to the availability of the post dated April 4, 1992, wherein it appears that at present there is no vacancy in the post of Lower Division Clerk, but the same is likely to be occurred on September 1, 1992, consequent upon retirement of one Shri Khagendra Nath Dhar, Sheristadar, Assistant District and Sessions Judge, Second Court, Howrah, on superannuation. Accordingly, in order to mitigate the hardship and on the basis of the principle of social and economic justice as enshrined in the preamble of the Constitution. we direct the Respondents to appoint in the vacancy that would cause on and from September 1, 1992, by appointing the Petitioner No. 1 after condoning the age limit if it was ultimately found that by this time the Petitioner had crossed the age required for such recruitment by efflux of time and that the Petitioner should be considered to be a new entrance without getting any past benefit on account of seniority and/or any other past claim. So far as the Petitioner No. 2 is concerned, we do not find that he was vigilant like that of the Petitioner No. 1 and that it is only the Petitioner No. 1 Manas Kumar Biswas who had pressed his claim from time to time and accordingly, the Appellant No. 1, Shri Manas Nath Biswas, will be entitled to get the benefit in terms of this order in the next vacancy and. thereafter, if there is any future vacancy the Petitioner No. 2 Sri Kartick Chandra Rakshit should be appointed in the similar manner. The appeal is, accordingly, disposed of. There will be no order as to costs.

Abani Mohan Sinha, J.

I agree.

Appeal disposed of S.C.