

(2014) 04 CAL CK 0098

Calcutta High Court

Case No: Writ Petition No. 34665 (W) of 2013

Chittaranjan Chakraborty

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision: April 1, 2014

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Citation: (2014) 4 WBLR 197

Hon'ble Judges: A.K. Dasadhikari, J

Bench: Single Bench

Advocate: Priyabrata Ghosh, Advocate for the Appellant

Judgement

Ashoke Kumar Dasadhikari, J.

This is third occasion when the writ petitioner has come up before this Court and questioned the impugned order passed by the Director of Public Instruction, West Bengal, dated 25th September, 2013. The fact of this case is that the petitioner was initially appointed as library assistant in 1984. Thereafter as desired by the college authority he was appointed as Chemistry laboratory attendant-since 1st February, 1986. At that point of time there were four vacancies of laboratory attendants since one post was withdrawn pursuant to Government memo No. 1468-Edn.(CS) dated 19th September, 1984 as per norms. However, out of four posts two were permanently filled up by Kalobaran Mondal and Raghunath Mukherjee and the petitioner was appointed in the third post which is sanctioned one and fallen vacant after, retirement of Prafulla Kundu. The college authority took, resolution and asked for regularisation of three other posts and thereafter they also took a resolution to absorb the petitioner in place of Prafulla Kundu, Chemistry laboratory bearer before the Director of Public Instruction. However, that was not considered and disposed of. Subsequently, college authority took a resolution to appoint the petitioner with effect from 1st September, 1999. College authority also issued appointment letter and forwarded the case of the petitioner for approval. In spite of representations

and reminds the concerned authorities did not grant approval in favour of such appointment. The writ petitioner came up before this Court and the learned Single Judge of this Court dismissed the writ application. Being aggrieved by and dissatisfied with the order of the learned trial Court the petitioner preferred an appeal before the Hon'ble Appeal Court contending that the case of Uma Devi is not applicable since the writ petitioner is working more than 10 years and the case of the petitioner is covered by exception engrafted in paragraph 53 of the judgment which was also the view expressed by the Hon'ble Apex Court in case of [State of Karnataka and Others Vs. M.L. Kesari and Others](#), . However, the Hon'ble Appeal Court without expressing their views relegated the matter to the respondent No. 2 for taking a decision whether appointment of the writ petitioner can be approved in the facts and circumstances of this case. The concerned respondent No. 2 was directed to give an opportunity of hearing to the parties for adducing evidence as they may like to rely upon and the concerned respondent was directed to pass a reasoned order in accordance with law and to communicate the same to the petitioner. Pursuant to order passed by this Court the concerned Director of Public Instruction gave an opportunity of hearing to the petitioner and passed the impugned order dated 25th September, 2013. The concerned respondent rejected the prayer of the writ petitioner taking the points that at the time of his appointment there is no permanent vacancy and the candidates who were working like the petitioner in three other posts were approved in different posts other than the post of laboratory attendant which was sent to the concerned respondent along with resolution dated 6th February, 2000. However, so far the post of the petitioner is concerned, the Principal was to move before Director of Public Instruction for sanction of staff pattern. Moreover proposal for absorption of the petitioner was made against the post which was vacant at the time of retirement of Kanti Kumar Ganguly since 1st July, 1985. Thereafter by a letter dated 19th May, 2000 he request for absorption of the petitioner was made against the post became vacant at the retirement of Prafulla Kundu, laboratory bearer. The concerned respondent was confused as expressed in his order. He had referred to Government circulars, one is of 31st October, 1995 and the other one is of 9th September, 2008. According to those circulars the appointment of Group "C and Group "D" are to be made through proper recruitment process and the selection to be made from the sponsored candidates of the employment exchange as well as the candidates who would respond on publication. It was mentioned in the order that the concerned respondent asked for some details for approval of appointment of the petitioner in the post of laboratory attendant but the proposal was forwarded bereft of materials as sought for by the office of Director of Public Instruction dated 24th April, 2012. The concerned respondent relied on some judgments. According to him, there was no sanctioned vacancy and the petitioner cannot be considered as it violates Articles 14 and 16 of the Constitution of India. He is of the view that the appointment against unsanctioned post as stated by him is void ab initio and illegal.

2. At the time of moving this writ petition learned Counsel for the State appeared and time was given for filing affidavit. Today at the time of call nobody appeared for the State authority nor any accommodation is sought for. No affidavit is also filed for and on behalf of the State as recorded in the departmental note dated 28th January, 2014.

3. Learned Counsel appearing for the writ petitioner submits that the concerned respondent proceeded totally on a wrong footing. He submits that the writ petitioner was appointed initially in 1984 in library of the college. Later on his service was required in Chemistry Department and college authority gave him appointment as Chemistry Laboratory attendant on and from 1st February, 1986. At that point of time there were five vacancies available in the college. Out of which two permanent employees were there and two were working as temporary basis amongst two temporary employees, the writ petitioner is one. He submits that in 1985 the Government withdrew one sanctioned vacancy from total strength of five and the vacancy position remained four for the laboratory attendant. He also submits that in view of retirement of Prafulla Kundu in 1983 the vacancy occurred there and the college authority recommended petitioner's case for permanent absorption and/or regularization in place of Prafulla Kundu. He submits that the previous recommendation was not for Library Attendant. Therefore, the concerned respondent had no scope to be confused. He further submits on and from 1st September, 1999 college authority issued appointment letter and the college authority repeatedly representing for regularization of the petitioner who is in service in the institution/college since 1984 for about last 28 years or more.

4. Learned Counsel submits that the Director of Public Instruction failed to appreciate the case of the writ petitioner and cited two Government circulars which have, come into effect much after the petitioner's appointment made on 1st February, 1986.

5. Learned Counsel submits that those two circulars are not at all applicable. He further submits that this Hon'ble Court being satisfied on the exception has engrafted in paragraph 53 of Umadevi's case referred the matter before the concerned Director of Public Instruction to reconsider the case posing a question whether the petitioner's appointment could be regularised.

6. Learned Counsel submits that the case of the writ petitioner is squarely coming within the exception as engrafted in paragraph 53 of the judgment which was observed by the Hon'ble Appeal Court and the concerned Director of Public Instruction failed to appreciate the scope and purport of the judgment and order passed by the Hon'ble Division Bench. He also submits the exception as engrafted in paragraph 53 was also followed by the Hon'ble Apex Court in case of State of Karnataka & Ors. v. M.L. Kesari (supra).

7. Learned Counsel submits that the approach of the Director of Public Instruction is totally wrong. He has failed to appreciate the facts and circumstances of the case. Learned Counsel further submits that the 4th post, which was filled up by Bibhas Dutta, was regularised.

8. Learned Counsel submits that why this discrimination was made to the petitioner who has served this institution since 1984 uninterruptedly and diligently.

9. Learned Counsel submits that there are several instances in these types of cases. In case of "Funia Done" this Hon"ble Court directed regularisation of her after setting aside the impugned decision of the Tribunal rejecting the prayer for regularisation. Learned Counsel cited the decision reported in (2013) 1 WBLR (Cal.) 256. He submits that in that case the concerned petitioner was working on casual basis for last 22 years. Despite certain Government orders the petitioner has not been made permanent.

10. Learned Counsel submits relevant Government order No. 1700 dated 3rd August, 1979 clearly stipulated casual workers who have been engaged in work of a perennial nature for a continuous period of more than three years should be absorbed in regular establishment and in case suitable vacancies are not available necessary step should be taken by the authority to create the requisite number of posts.

11. Learned Counsel submits there are several other judgments in support of his client's case. According to him, the impugned order should be quashed and/or set aside This Court should direct the respondents to regularize the, petitioner's service.

12. Heard the learned Counsel appearing for the petitioner and considered the materials available on record. The admitted facts are as follows.

13. The writ petitioner was appointed in laboratory sometime in 1984. On requirement of the college the writ petitioner was appointed on casual basis in the post of Chemistry laboratory attendant with effect from 1st February, 1986. It is admitted position that out of five vacancies of laboratory attendants one was withdrawn but four vacancies were there. In two vacancies there were permanent staffs. In two other vacancies petitioner was appointed along with Bibhas Dutta. It would be relevant to mention that in case of other three Group "D" staff who were similarly employed by the college were approved by the Director of Public Instruction but so far the petitioner's case is concerned, that was not approved. College authority subsequently recommended petitioner's case for approval in the vacancy of Prafulla Kundu who has retired in 1983 but that was not approved. It is also not in dispute that the case of Bibhas Dutta who was similarly placed as petitioner, was considered and approved. The writ petitioner's case was not approved and he was aggrieved against the inaction. He came up before this Court. He was unsuccessful before the learned Trial Judge. Appeal was preferred and the

Hon"ble Appeal Court being satisfied about the case of the petitioner passed the following order:--

"The appeal is directed against a judgment and order dated 15th May, 2012 passed by brother Jayanta Kumar Biswas J. dismissing the writ petition on the ground that the appointment of the writ petitioner as a Laboratory Assistant on casual basis against a sanctioned post was not only irregular but also was illegal. Assailing the aforesaid judgment and order the present appeal was filed by the writ petitioner.

The learned trial Court obviously had in his mind the Constitution Bench judgment in the case of Uma Devi. Mr. Ghosh, learned Advocate appearing for the appellant submitted that in the case of Uma Devi an exception has been made in respect of the persons working for 10 years or above. He submitted that the writ petitioner has admittedly been working at the college for more than 10 years. Therefore Uma Devi's case does not apply to his case. His case shall, in fact, be covered by the exception engrafted in paragraph 53 of the judgment in the case of Uma Devi which was also the view expressed by the Apex Court in the case of [State of Karnataka and Others Vs. M.L. Kesari and Others,](#) .

Without expressing any opinion we are of the view that the matter should be remanded to the respondent No. 2 for consideration in accordance with law.

Ms. Bhattacharyay, learned Advocate appearing for the State did not draw our attention to any rule which was violated in appointing the writ petitioner.

In that view of the matter, the order under challenge is set aside. The matter is relegated to the respondent No. 2, he shall consider the following question:-

Whether the appointment of the writ petitioner can be approved in the facts and circumstances of the case?

The respondent No. 2 shall consider the aforesaid question after giving an opportunity of hearing to the parties to adduce such evidence, as they may like to rely upon. The respondent No. 2 shall after hearing the parties pass a reasoned order in accordance with law and shall also communicate the same to the writ petitioner. The aforesaid exercise be completed as early as possible preferably within four months from the date of communication of this order.

The appeal and the connected application are both thus disposed of."

14. It appears from the order of the Hon"ble Division Bench that taking note of the submission of the learned Counsel appearing for the petitioner referred the matter before the Director of Public Instruction. The concerned Director of Public Instruction cited some circulars which are of 31st October, 1995 and 9th September, 2008, which are all issued by the Government much after the petitioner's appointment. Since these circulars are later circulars, it can safely be concluded that those circulars are not at all applicable in the instant case rather the circular of 3rd

August, 1979 stipulating the conditions of giving permanent status to the casual employees are applicable. The concerned Director of Public Instruction failed to consider the circular. Here in the instant case a person working as laboratory attendant for more than 25 years was denied regularisation when several other employees who are similarly placed were regularised. This Hon"ble Court have decided in case of *Funia Done (supra)* that as per Government order of 1979 casual workers who are working in regular establishment of temporary basis should be absorbed in existing vacancies if such workers have been engaged in work of perennial nature for continuous period of more than three years where the perennial job of work meant a job which was a permanent nature.

15. I do not find that anything is available on record which would show that the petitioner was illegally appointed. Had there been illegal appointment? The concerned authorities would have taken appropriate action for removal of the writ petitioner. It appears from the order passed by the concerned Director of Public Instruction that the Director of Public Instruction also asked the college authority to supply details for regularisation of the petitioner. May be there is lapse on the part of the college authority but that cannot be a ground for refusal to regularize petitioner. It may be college authority failed to supply relevant documents but fact remains that petitioner was appointed in 1984 in laboratory of the college and thereafter in need of the college he was given appointment as Chemistry laboratory attendant in a work of perennial nature and in continuous service, more than three years. He is entitled to get the benefit of Government order of 1979.

16. In my view, the reason disclosed in the order of the concerned Director of Public Instruction is of no substance and not justifiable nor even lawful and valid one to refuse regularisation of the writ petitioner.

17. Accordingly, the impugned order dated 25th September, 2013 is set aside. The concerned respondents are directed to regularize petitioner with effect from 1st September, 1999 since when the college authorities have issued appointment letter. The writ petitioner should be regularised within four weeks from the date of communication of this order by a letter of the learned Advocate appearing for the petitioner. The writ petition is, thus, allowed. There would be no order as to costs.