

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

The Hon'ble Smt. Urmita Datta (Sen)
Member (J)

J U D G M E N T

-of-

Case No. : O.A. 883 of 2016

Dulal Dutta and Others Applicants.

-Versus-

The State of West Bengal & Others. Respondents.

**For the Applicants : Smt. S. Agarwal,
Ld. Advocate.**

**For the State Respondent : Shri D. Kole,
Ld. Advocate.**

Judgment delivered on : 13th May, 2022.

**The Judgment of the Tribunal was delivered by :
The Hon'ble Smt. Urmita Datta (Sen), Member (J)**

J U D G M E N T

The instant application has been filed praying for following reliefs :

“ a) A mandatory order directing and commanding the respondent authorities to regularize the services of the applicants to their respective posts according to the circular issued by the Government and by considering the representations made by the applicants in that regard and to act in accordance with law and further directing the respondents to forthwith release the salaries which has fallen due since July, 2015 except two months salaries paid in December 2016.

b) An order directing the respondents to certify and transmit the records of this case to this Hon’ble Tribunal so that on perusal considerable justice may be administered by quashing adverse report if there be any.

c) Pass such other or further order on orders as to this Hon’ble Tribunal may seem fit and proper.

d) Leave may be granted to move this application jointly.”

2. As per the applicants, their names were sponsored by the Employment Exchange in connection with the recruitment to different posts such as Kitchen Attendant, Night Guard, Durwan, Sweeper, Peon, Cook etc. in Dudhkundi State Welfare Home, Paschim Medinipur. The District Mass Extension Officer, Paschim Medinipur vide different Memos dated 11.08.2008, requested the applicants to appear before the said authority for IQ/Reading-written examination in Bengali (Annexure-A).

3. Subsequently, the applicants were selected to their respective posts (Group-D) on the basis of interview and the authorities issued police verification roll vide Memo. dated 22.05.2009 and requested the applicants to furnish the same after duly filled in (Annexure-B). Vide another Memo. dated 22.05.2009, the Director of Mass Education Extension intimated the CMOH, Paschim Medinipur and had requested him to arrange for medical examination of the applicants and to send report at an early date (Annexure-3). Though the applicants were selected to their respective posts in the year 2009, however, they were appointed to the said post on 21.02.2013 (Annexure-D). It is further submitted that though the applicants were engaged on contractual basis as residence of the Social Welfare Home, however, their jobs were perennial in nature.

4. In the meantime, the Special Secretary, Government of West Bengal, Finance Department had issued Memorandum No. 8305-F dated

26.09.2005, wherein it has been stated that the Governor was pleased to decide that the employees, who were recruited on contractual basis following the norms, rules and methods as applicable to the relevant posts, may, if still continuing in contract service, be brought under regular establishment against the regular vacancies with the approval of ACC in consultation with the Finance Department.

5. Further, the Director of Mass Education and Ex-Officio Joint Secretary to the Government of West Bengal, MEE & LS Department, vide his Memo dated 15.09.2011, had referred the case of the applicants for granting appropriate scale of pay as per the Finance Department Order No. 8305-F dated 26.09.2005 (Annexure-E).

6. In the meantime, the appointment of the applicants were renewed from time to time and the Superintendent of the said Welfare Home vide Memo. dated 07.07.2015 (Annexure-G) requested the District Mass Education Extension Officer, Paschim Medinipur for extension of service period w.e.f. 01.08.2014. Though the applicants were still continuing with the same job, however, since July, 2015, they were not being paid with their remuneration but subsequently on 08.12.2015, the authorities paid two months salary to the applicants. Thereafter, the applicants made a representation before the respondent authorities on 30.03.2015 and 10.04.2015 for regularization of their engagement and also to make payment of due salaries (Annexure-K). However, they did not get any response. Thereafter also, they made repeated representations on 26.05.2015, 08.07.2015, 16.05.2015, 26.11.2015, 06.02.2016 (Annexure-L) and ultimately they have preferred this application before this Tribunal.

7. It has been submitted by the applicants that they were all engaged by a single order issued by the Director of Mass Education Extension Officer and said Haridas Kotal, the respondent no. 5, was also appointed by the same order along with all the applicants. However, he was appointed by the respondent authorities on substantive regular posts in appropriate pay band vide Memo dated 18.11.2009 (Annexure-J) depriving the applicants.

8. As per the applicants, when all of them were appointed following same procedure and by the same order, therefore, there is a clear discrimination on the part of the respondents not to regularize the services of the applicants against regular vacancies as has been mentioned in the Memo dated 15.09.2011. Therefore, they have prayed for a direction to the respondent authorities to regularize their services against the regular posts.

9. Though the application was filed in the year 2016, however, even after granting repeated opportunities, no reply has been filed till the final date of hearing. However, the counsel for the respondent on the basis of written instruction of O.S.D. & Ex-Officio Director of Mass Education Extension, has submitted that since the applicants were engaged on contractual basis as well as on the basis of the approval of Cabinet held on 27.09.2005 and since the applicants were actually joined on 26.02.2013, their services may not be regularized as per extant Government Orders. Further, under Clause 10 (1) of Rules of Business, no department shall, without previous consultation with the Finance Department, authorize any order, which either immediately or by their repercussion, will affect the finance of the State.

10. I have heard both the parties and perused the records as well as written instruction submitted by the counsel for the respondent. It is an admitted fact that the applicants, who were initially appointed on contractual basis, were selected through a proper formal selection process with the approval of ACC to the different posts of Group-D of Welfare Home. However, as per the applicants, one Shri Haridas Kotal, the Respondent No. 5, who was also appointed by the same order by which the applicants, was also appointed against the regular posts under regular establishment in the year 2009. However, the applicants were not considered for such regularisation and/or to put under the regular establishment as per the Memos dated 26.10.2005 and 15.09.2011. It is also noted that the applicants had made repeated representations to the respondents for consideration of their case as per the Memo No. 8305-F dated 26.09.2005. However, their representations are still pending with the authority for final decision. It is also observed that when the respondent no. 5, Shri Haridas Kotal was appointed along with the applicants by the same order and if he was put under regular establishment in the year 2009 vide Memo dated 18.11.2009, therefore, non-consideration of the case of the applicants amounts to discrimination.

11. Therefore, I direct the Secretary, Mass Education Extension and Library Services, Government of West Bengal to look into the claim of the applicants *vis-à-vis* taking into account the appointment of Shri Haridas Kotal as well as their Memos dated 26.10.2005 and 15.09.2011 and to take final decision and communicate the same by way of a reasoned and speaking order within a period of eight (8) weeks from the date of receipt of the order.

Urmita Datta (Sen)
Member (J)