

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson and Administrative Member

Case No. – OA - 194 of 2024

DIPALI HARIJAN - Vs - The State of West Bengal & Ors.

Serial No. For the Applicant : None
and
Date of For the State Respondents : Mr. S.N. Ray,
order Advocate

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13.12.2024

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No.638-WBAT/2J-15/2016 (Pt.-II) dated 23rd November, 2022 issued in exercise of the powers conferred under section 5(6) of the Administrative Tribunals Act, 1985.

Despite advance notice and several calls, none has appeared today on behalf of the applicant.

By filing this application, the applicant has prayed for reinstatement of her services as a Sweeper and to release all her arrear remuneration. In terms of a direction of this Tribunal in OA-202 of 2021. The Director of Public Instruction had passed the reasoned order on 20.02.2024. By this reasoned order, the respondent authority declined to reinstate the applicant in the post of Sweeper as well as not to extend financial benefits under Notification No. 9008-F (P) dated 16.09.2011.

From the submissions of the learned counsels and the records, it has become clear that the applicant, working on temporary daily rated basis in the post of Sweeper at A.B.N. Seal College, Cooch Behar, was terminated. The reasoned order recorded that her termination was due to filling up of a post by a permanent staff. Since the post was filled by a regular candidate, her services were no longer required. Mr. Maji, learned counsel had disagreed with the reasons given by the respondent authority and drew attention to copy of an order dated 03.08.1999 and a certificate dated 16.09.2003. His contention was that, as evident from these records, the applicant has been performing her duties as a Sweeper on daily rated basis at A.B.N. Seal College, Cooch Behar and was terminated by an oral order. She was not given any opportunity to be heard and without any written notice, she

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has been terminated.

Mr. Ray, learned counsel, responding to Mr. Maji's argument, had submitted that the applicant was aware of the fact that her engagement was on a condition that when the post of Sweeper will be filled up with a regular staff, her services will not be required thereafter. Hence, when Lalan Bansfore was appointed as a permanent Sweeper, her service was terminated w.e.f. 31.07.2017. Mr. Ray further submits that on the date the Notification dated 01.04.2010 came into force, the applicant having joined on 21.06.2004, but not completed the required ten years of service as on 01.06.2010, the date when Notification No. 2906-F(P) dated 23.04.2010 came into force. Similarly, the applicant had not completed the required length of services in terms of Notification 9008-F(P) which came into force on 16.09.2011. Having completed only seven years and two months services, she did not qualify in any of these Notifications which required a minimum of ten years of service to be eligible to receive the benefits.

The dispute regarding the date of her joining has been made clear from a copy of Memo 269 dated 18.06.2004 annexed with this application by the applicant herself. By an order dated 18.06.2004, Dr. D.K. Naha, the Principal of the College issued an appointment letter to the applicant, Dipali Harijan in the post of Sweeper "purely on temporary daily rated and no work no pay basis". Attention is also drawn to a certificate, issued by the same Principal dated 16.09.2003, by which it was certified that the applicant has been serving as a part time Sweeper since last nine years. From this certificate, it is also clear that the applicant has been serving in the post of Sweeper since 1994. However, only by an order dated 18.06.2004, the Principal issued her a formal appointment letter for the post of Sweeper on temporary basis. The question now before the Tribunal is whether to accept the formal appointment letter counting her services from 18.06.2004 or when she was informally engaged since 1994. It is not in dispute that the applicant was engaged by a formal engagement order. But, the certificate issued by the same Principal on 16.09.2003 is a clear indication to the fact that the applicant has been working even

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without a formal order in the post of Sweeper since 1994.

From the above observation, the Tribunal has come to this conclusion that Dipali Harjan, though engaged by a regular order since 18.06.2014, had been working in the same post since 1994 as evident from a certificate to this effect stated clearly by the Principal of the College. Thus, from the records it is evident that she has worked since 1994 till her termination on 31.07.2017, having served for 23 years. It is also not in doubt that she had been working more than 240 days in a year as admitted by the respondent authority in their reasoned order. Therefore, the Tribunal comes to the clear conclusion that the applicant had rendered more than ten years of service as on 01.04.2010 and in terms of notification No.2966-F(P) dated 23.04.2010, she is entitled to receive the benefits as stipulated in this notification and subsequent notifications viz. No.4011-F(P) dated 20.05.2013 and No. 11794-F(P) dated 22.12.2010 . The respondent authority has to accept the fact that she had been engaged and working, though without a formal official engagement order since 1994 as certified by the Principal of the College himself. The respondent authorities cannot ignore this fact and deprive her the financial benefits which are her rightful claims.

Hence, the Tribunal directs the respondent authorities to grant her remuneration since 1994 as per above notification along with back wages and arrears within 3 (three) months from the date of communication of this Order.

The Tribunal, however, does not want to interfere into her prayer "B" which is for reinstatement to her daily rated work as a Sweeper. The Tribunal is satisfied that after due process of selection, the post of part time Sweeper has been filled up by another person. Therefore, her claim for reinstatement in the same post cannot be accepted as she does not have any legal right for such claim.

The application is disposed of.

SCN.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON
and MEMBER (A)