

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)

Case No. – OA 1221 of 2015

TAPAN KUMAR ROY – VERSUS- THE STATE OF W.B. & ORS.

Serial No. and
Date of order

29
04.01.2024.

For the Applicant : Mr. S. Majumder, Ld. Advocate.

For the State respondent : Mr. S. Ghosh, Ld. Advocate.

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.

On consent of the learned counsels for the contesting parties, the case is taken up for consideration sitting singly.

The prayer in this application is for setting aside the impugned order dated 22.05.2013 which was the decision of the Finance Department for absorption of the applicant as proposed by the Department of PHE. As per the note, the Finance Department has observed that since the applicant was initially engaged as a part-time Farash and subsequently made a whole-time by the concerned department. The Finance Department has turned this as an irregular act of the department and violative of the Apex Court Judgment in "State of Karnataka v. Uma Devi". Now, challenging this impugned order, learned counsel refers to departmental correspondence exchanged during 2011 in which one particular correspondence dated 29.09.2011 addressed by the Superintending Engineer to the Chief Engineer mentions that due to "out of sight", the name of Tapan Kumar Roy was not taken into consideration at the time of preparation of list as per 100-Emp. for absorption into regular establishment.

Learned counsel also relies on a correspondence dated 02.07.2012 from the Superintending Engineer to the Chief Engineer in which it is stated that the services of the applicant, Tapan Kumar Roy was "utilised" as Peon against the sanctioned vacancy. Relying on the above reference, Mr. S. Majumder submits that the applicant having worked against a sanctioned vacancy as admitted by the respondent deserves to be absorbed in the post of Peon.

Submission of Mr. S. Ghosh, learned counsel for the State respondents is that the applicant whose monthly remuneration was fixed at Rs.2,600/- paid from the contingent fund. The applicant was never absorbed by the respondent authority, however, a proposal was submitted before the Finance Department which did not agree to the absorption of the applicant. Mr. Ghosh also relies on the Government Notification dated 15.11.1996 which gives references to some relevant Notifications of the Government for absorption of Casual Workers into regular establishment with certain conditions. Mr. Ghosh submits that the applicant is relying on these Notifications, but these Notifications have been declared ultra vires by the Hon'ble High Court at Calcutta in WPST 483 of 2009 and since the Apex Court Judgment in "State of Karnataka v. Uma Devi" case is in force, no Government authority can regularise

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any Casual Worker into permanent establishment in violation of the Apex Court Judgment in Uma Devi case. This proposal which was submitted before the Finance Department for regularisation was examined by the Finance Department and was found that the applicant was utilised by the respondent authority without valid approval of the Government and, therefore, the proposal was not agreed to by the Finance Department.

Mr. Majumder files a copy of judgment passed in the case of "State of Karnataka & Others v. M.L. Kesari & Others" reported in AIR 2010 SCC 2587. The relevant portion of the above judgment at para 8 is as under :

"The true effect of the direction is that all persons who have worked for more than ten years as on 10.4.2006 (the date of decision in Umadevi) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation."

Since the applicant had worked for more than ten years prior to the Umadevi judgment, therefore, this judgment is applicable to this applicant.

Let the matter be listed under the heading "Further Hearing" on 30th April, 2024.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

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