

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Justice Soumitra Pal, Chairman.

Case No. –OA-1330 of 2014

Santosh Baroi and 14 Others. - Versus - The State of West Bengal & Others.

Serial No. and Date of order	For the Applicants	: Mr. D. K. Mukherjee, Advocate.
<u>37</u> 26.07.2022.	For the State Respondents	: Mr. S. K. Mondal, Advocate.

The matter is taken up by the single Bench pursuant to the order contained in the Notification No. 118-WBAT/1E-08/2003 (Pt.-II) dated 11th February, 2022 issued in exercise of the powers conferred under section 6 (5) of the Administrative Tribunals Act, 1985.

In the application, Santosh Baroi and 14 others – the applicants, who are engaged as Casual / Daily Rated Master Roll Workers since 1975 have prayed for certain reliefs, the relevant portion of which is as under :-

“i) An order directing the respondents, their agents, subordinates and successors to absorb and regularise the applicants in terms of Labour Deptt. Memorandum No. 1700-EMP dated 03-08-1979 and 1650-EMP dated 28-08-1980 in the same manner and procedure applied earlier in Cottage and Small Scale Industries. Order No. 3406-Cot(I) dated 14-06-1996 subject to certain changes occurred later on in pursuance of State Tribunals Order relating to leave facilities.”

It is submitted by Mr. D. K. Mukherjee, learned advocate that since the applicants have fulfilled the conditions laid down in memo no. 1700-EMP/30-26/78 dated 3rd August, 1979/16.8.79 and No. 1650-EMP/EMP/3C-5/80 dated 28th August, 1980, appropriate order may be passed directing absorption and regularisation of their service.

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Mr. S. K. Mondal, learned advocate appearing for the State respondents submits that since the memo no. 1700-EMP/30-26/78 dated 3rd August, 1979/16.8.79 and No. 1650-EMP/EMP/3C-5/80 dated 28th August, 1980 have been declared ultra vires to the Constitution by the Division Bench of the High Court in the judgement delivered on 24th August, 2009 passed in W.P.S.T. No. 483 of 2009 : Rabindra Nath Ghosh and others –Vs-The State of West Bengal and Others, no order may be passed.

Heard learned advocates for the parties. In Rabindra Nath Ghosh (Supra), the Division Bench of the High Court has held, inter alia, as under :

“Having regard to such, the regularisation order passed by the Tribunal and the absorption of the writ petitioners thereof, is set aside and quashed.

Regularisation circular letters, being No.1700-EMP/30-26/78 dated the 3rd August, 1979/16.8.79, No. 1650-EMP/EMP/3C-5/80 dated the 28th August, 1980 and No. 100-E.M.P./9M/17 dated the 13th March, 1996, are hereby declared as ultra vires to the Constitution of India due to direct breach of Article 14 and 16 of the Constitution of India. The Government and the concerned all Govt. Departments would not be entitled to follow those circular letters for regularisation of service of any candidate in the Government service. Secretary of the Government of West Bengal, Irrigation and Waterways Department is restrained from regularising the service of any candidates, the list of which was forwarded to him by the letter dated 17.8.2007 issued by Director of Personnel & Ex-Officio Chief Engineer, I & W Directorate annexed at page 38 of the writ petition.

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The writ application accordingly stands dismissed.

However, this order will not debar the petitioners if they are successful in any recruitment process if is initiated following the recruitment rule framed under Article 309 to have appointment prospectively in the service.”

In view of the law laid down by the Division Bench of the High Court, no order is passed on this application. The application is disposed of.

(SOUMITRA PAL)
CHAIRMAN

S.M.