

Form No.

Case No. **OA 604 of 2022**

Vs.

The State of West Bengal & Ors.

“(i).....The casual/daily rated/contractual workers who have rendered 10 years of service continuously with at least 240 days attendance each year may remain engaged in the same status and capacity till their attaining the age of 60 years...”

In support of the applicant and relying on the above para, Mr. Roy argued that the applicant is very much eligible to receive benefits under Notification No. 9008-F(P) and thus benefits under this and other similar notifications.

Responding on behalf of the State respondents, Mr. Ghosh referred to para (x) and submits that the applicant was never engaged against any sanctioned post and therefore not entitled for any benefits under this Notification or other Notifications. The para (x) of the Notification 9008-F(P) is as under :-

“(x).....The provisions of this Order will not be applicable where contractual engagement has been made without any sanctioned post and for any specific project for a very temporary period upto a maximum 6(six) years orup of the project whichever is earlier. Thus in such cases steps will not be required to be initiated for filling up the posts through regular appointments as per the Recruitment Rues, since the posts are temporary by nature.....”

A close reading of the Notification No. 9008-F(P) dated 16th September, 2011 makes it clear that such benefits are not extended to any kind of workers / employees who were not appointed against a sanctioned post. Any employee / worker, no matter how long he has been working in such capacity cannot claim benefits under this notification if his engagement was not against any vacancy. It is also to be appreciated that the powers to appoint a person against a vacancy lies only with the competent authority, irrespective of a fact that his sub-ordinate officer may have recommended. In this case, the applicant's side by drawing attention to a vacancy position

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for the period of July, 1999 has presumed that he was appointed against such a vacancy. The Tribunal cannot accept such presumptions to be the fact of his appointment against a vacancy. It is a fact that by Memo. 7859 dated 09.09.2013, Director of Personnel & ex – Officio Chief Engineer, WRDD had recommended the applicant along with six other casual / daily rated workers to get benefits under Memo. 9008-F(P) dated 16th September, 2011. Such recommendations were addressed to the Secretary of the Department who in this case is the competent authority. However, such recommendation by the Director of Personnel & ex – Officio Chief Engineer, WRDD does not seem to have been accepted and no order passed favouring such benefits to the applicant. The Tribunal cannot accept a mere recommendation to be the final decision of the Department in extending such benefits to the applicant. Though the applicant may have served office for a long time but unless he was subsequently regularised against sanctioned vacancy, benefits of this Notification cannot be extended to him.

Therefore, the prayer in this application, being devoid of any merit, is disposed of without passing any orders.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

S.M.