# <u>ORDER SHEET</u> 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 604 of 2022

Ekteswar Adhikary -- VERSUS - The State of West Bengal & Others

Serial No. and Date of order	For the Applicant	: Mr. N. Dutta, Advocate.
$\frac{08}{10.01.2025}$	For the State Respondents	: Mr. S. Ghosh, 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 23<sup>rd</sup> November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

The applicant has prayed for setting aside the impugned reasoned order passed by the Principal Secretary, Water Resource Investigation and Development Department on 22.07.2022. Such a reasoned order was passed in terms of a direction of this Tribunal in OA 736 of 2021. By this reasoned order, the respondent decided that the applicant was not eligible for any benefit under memorandum 9008-F(P) dated 16.09.2011 and also such benefits under other Notifications like 1107-F(P) dated 25.02.2016 and 4011-F(P) dated 20.05.2013. The reasoned order also refers to a departmental communication and describes the applicant as a daily rated worker, who was not appointed against any sanctioned post. Mr. Roy, learned counsel for the applicant had referred to a document No. 314 dated 20.12.2018 in which the Assistant Engineer (A-M) informs the Executive Engineer (A-M) that it can be "presumed" that the applicant was engaged earlier as a helper against a vacant post. Such presumption is due to the fact that the post of helper was lying vacant at that point of time. Mr. Roy had also submitted that the applicant was originally engaged on contractual basis. Though it has been established that the applicant was appointed as a helper on contractual basis since February, 1998, but no proof was presented for any subsequent absorption into regular service against any existing sanctioned vacancy. Mr. Roy drew attention to para (i) of Memo 9008-F(P) dated 16th September, 2011, the relevant part which is as under :-



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"(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 or ....up 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 16<sup>th</sup> 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.