

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 921 OF 2016

GOPINATH BANERJEE & ORS. - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No.

and

Date of
order

For the Applicants

: Mr. S. Chatterjee,
Advocates

20
24.01.2024

For the Respondent Nos. 1 and 2

: Ms. Ruma Sarkar,
Mr. Saurav Deb Ray,
Ms. Anjana Bhattacharjee,
Mr. Raja Bag,
Departmental representatives

For the Respondent No.3 and 4

: Mr. Gautam Pathak Banerjee,
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 parties, the case is taken up for consideration sitting singly.

In this application, Gopinath Banerjee and 16 others, who have been working as casual workers in the establishment under the Land and Land Reforms Department (Board of Revenue), have prayed for a direction upon the respondents to absorb the applicants in the regular establishment on permanent basis. The District Magistrate and Collector, Birbhum vide his letter dated 20.07.2005 informed the Department that 18 (eighteen) nos. of casual workers were engaged between 04.08.1979 and 31.12.1991 but not regularized under the establishment of Birbhum Collectorate. In support of their claim, the learned counsel for the applicants submits the following judgements :

2009 SCC online Cal 2017 : Rabindra Nath Ghosh & Ors. versus The State of West Bengal & Ors., Civil Appeal No(s). 2795-2796 of 2018 : Ravi Verma & Ors. versus Union of India and Ors., 2019(2) CLJ (Cal) : The State of West Bengal & Ors. versus Tapas Chakraborty & Ors.

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It appears from the reply that the applicants have been working only as casual workers with their full consent and willingness since their first engagement and having been engaged on purely ad-hoc basis due to pressing administrative exigencies at various points without going through the standard procedures of open advertisement and selection on the basis of merit as is laid down in the Rules governing regular recruitment to Group D posts, they cannot be absorbed into regular employment as per extant laws of the land as well as specific directions of the Constitution Bench of Supreme Court in Secretary, Government of Karnataka & Ors. versus Uma Devi & Ors. in Civil Appeal 3595-3612 of 1999, Civil Appeal 1968 of 2006 as the said judgement is contrary to such imputations and claims of the applicants. Ms. Rumar Sarkar, Departmental Representative submits that Hon'ble Supreme Court of India in B.N. Nagarajan vs. State of Karnataka case [AIR 1979 SC 1676] categorically stated that "if the rules framed under Article 309 of the Constitution of India are in force, no regularization is permissible in exercise of the executive powers of the Government under Article 162 in contravention of the Rule." Any prayer contrary to such rule is barred by law laid down by the Hon'ble Apex Court.

Since another matter (OA-619 of 2019) where the same set of applicants have prayed for absorption in regular establishment and the matter has been placed before a larger Bench, let this matter be also heard by such a Bench on 11.09.2024 under the heading "Hearing".

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

SCN.