

J U D G E M E N T

The instant application has been filed praying for the following reliefs :

- (a) **An order do issue directing the respondent authorities to absorb and/or regularize your applicant by the then prevailing circulars under the Office of the Director, Advance Planning Project Evaluation & Monitoring Cell, Irrigation & Waterways Directorate, as your applicant is rendering his service in the aforesaid establishment since 1992 against the sanctioned post of "Sweeper", and is still continuing the same.**
- (b) **An order do issue directing the respondent authorities to regularize the service of the applicant under the regular establishment without any further delay as the applicant is enjoying all benefits like other staff in a perennial type of jobs under regular establishment, moreover the services rendered by your applicant herein under the capacity of Night Guard was of essential nature and had to**

be retained throughout the year in the interest of public service.

(c) An order do issue directing the concerned respondent authorities to transmit all the records before this Hon'ble Tribunal in ends of justice.

(d) And to pass any other Order/Orders, Direction/Directions as this Hon'ble Tribunal deems fit and proper in the ends of justice.

2. (i) As per the applicant, he was initially appointed as a part time sweeper under contingent establishment vide order dated 16-03-1979(Annexure –A Collectively) and subsequently vide Memo dated 31-03-1990 was appointed as Night Guard under the Director, Advance Planning, Project Evaluation & Monitoring Cell, Irrigation & Waterways Directorate. As per the applicant, he is working against sanctioned post since 1992 (Annexure –A Collectively).

(ii) Thereafter, the respondent no. 3 vide Memo dated 26-05-1998 asked for absorption of the applicant from contingent establishment to regular establishment as the applicant was allowed to enjoy all benefits like other regular staff. In the said letter, respondent no. 3 had requested the Director of Personnel & Ex-officio Chief Engineer, Irrigation & Waterways Directorate

to consider the case of the applicant in the light of the Labour Department Circular No. 100-EMP Dated 13-03-1996 (Annexure – B).

(iii) In this respect, the applicant made several representations for regularization/absorption in the regular establishment. Subsequently, the respondent no. 3 vide Memo dated 05-12-2005 again requested the Director of Personnel & Ex-officio Chief Engineer, Irrigation & Waterways Directorate to consider the case of the applicant for regularization as per the different circulars issued by the government (Annexure – C).

It has been submitted by the applicant that admittedly, he was engaged through interview/proper selection process and G.P.F. account also opened and subscription was deposited in the said account. Moreover, he was also granted house building advance as well as his pay scale was fixed in accordance with the ROPA 1998 and ROPA 2009 and the applicant made representation in details before the authorities. Thereafter, the Director of Personnel & Ex-officio Chief Engineer by letter dated 23-10-2009 had again asked for approval of the Cabinet and Finance Department address to the Secretary, Government of West Bengal (Annexure – D).

In the mean time vide letter dated 14-08-2009, the Deputy Secretary to the Government of West Bengal had conveyed the decision of absorption/regularization of 167 persons for which the Cabinet as well as Finance Department had already conveyed their approval and as per the said

Communication, the Director of Personnel & Ex-officio Chief Engineer, Irrigation & Waterways Directorate vide his letter dated 11-09-2009 had requested the Director, Advance Planning, Project Evaluation & Monitoring Cell, Irrigation & Waterways Directorate to take necessary action for absorption of the Casual/Master Roll worker, wherein the name of the applicant was included (Annexure – E Collectively).

However, thereafter no action was taken to regularize him. The applicant again made a representation to the Director, Advance Planning, Project Evaluation & Monitoring Cell, Irrigation & Waterways Directorate vide letter dated 19-02-2013 followed by letter dated 17-05-2013. The Director of Personnel & Ex-officio Chief Engineer, Irrigation & Waterways Directorate wrote a letter to the Secretary, Government of West Bengal, Irrigation & Waterways Directorate to reconsider the case of the applicant. However, the Joint Secretary to the Government of West Bengal vide his letter dated 04-06-2005 had communicated the observation of the Finance Department dated 04-05-2015 by which the case of the applicant for regularization was rejected. Being aggrieved with, the applicant has filed the instant application.

During the course of the hearing the Counsel for the applicant has referred the judgements:-

(1) **(2014) 13 SCC 249**

Malathi Das and Others

-vs-

Suresh and Others

(2) Order dated 18-06-2008 in O.A. No. 600 of 2005.

Dr. Subhra Bhattacharyya & 13 Others

-Vs-

The State of West Bengal & Others

It has been further submitted that the Deputy Secretary to the Government of West Bengal vide his communication dated 14-08-2009 had clearly stated that in concurrence with the Finance Department Memo dated 16-03-2009 as well as approval of the Cabinet in their meeting dated 29-07-2009, 167 persons were directed to be regularized against vacant regular Group-D post, wherein the name of the applicant was included amongst the 167 person. However, without regularizing the applicant, the Joint Secretary to the Govt. of West Bengal vide his communication dated 04-06-2015 to the Director of Personnel and Ex-officio Chief Engineer had rejected the claim of regularization on the ground of observation made by the Finance Department dated 04-05-2015, however, in the said communication, there is no reference of any review and/or cancellation of the earlier order of the Cabinet. Therefore, the Finance Department cannot sit over the approval of the Cabinet and pass any contrary order. Therefore, the applicant has prayed for setting aside of the impugned order in support of his contention, he has also referred one order passed by this Tribunal dated 18-06-2018 passed in OA-600 of 2005.

3. The respondents have filed their reply wherein it has been stated that the applicant was appointed as Night Guard under contingent establishment on 31-03-1990. However, though the Director, Advance Planning Project Evaluation and Monitoring Cell, had recommended for his absorption as per the prevailing Rules and Regulations but the Finance Department did not acceded to such recommendation owing to some legal and administrative constraints. As per the respondents, the applicant was engaged to meet the

needs of the situation but, such engagement cannot give any right for absorption. However, the respondents have admitted that the applicant was granted other service benefit like GPF, CAS, Refixation of Pay Scale under ROPA 1998, second higher scale after completion of 20 years continuous satisfactory service from 01-04-1999 in terms of Finance Department Memo dated 30-01-1992 and other benefit like House Building Loan advance etc. but he cannot be absorbed.

4. The applicant by way of his rejoinder has denied and disputed the contention of the respondents. As per the applicant, he is discharging his duties in the capacity of night guard in a sanction post for more than 10 years prior to the judgement passed in the case of Uma Devi and also granted all the benefit of regular employee like CAS, GPF account etc. as has been admitted by the respondents.

5. We have heard the parties and perused the record as well as judgement placed by the parties. It is noted that the applicant was initially appointed as part time Sweeper in the year 1979. Thereafter, he was appointed as night guard on 31-03-1990. While working as night guard admittedly, he was also granted house building advance as well as pay scale benefit under ROPA 1981 and ROPA 2009 having GPF account in his name. Moreover, he made representation before the authorities for his regularization. Thereafter vide letter dated 14-08-2009 the Deputy Secretary, Govt. of West Bengal had conveyed the decision of regularization of 167 persons wherein the name of the applicant was also included wherein it is stated inter alia :-

“Sub : Absorption of 167 (One hundred Sixty Seven) no. of casual/master roll workers in Gr. D Post under regular establishment of I & W Directorate.

Ref. : His No. 2673-CIE & 2674-CIE both dated 17-08-2007 & no. 551-CIE dated 30-08-2008.

In reference to his above memos, the undersigned is directed to say that 167(One hundred Sixty Seven) no. of casual/master roll workers (list of names enclosed in separate sheets), who are all engaged in between 04-08-1979 and 31-12-1991 and still working under different offices of Irrigation & Waterways Directorate as reported by the concerned officers have prayed for absorption in Gr. D posts under regular establishment.

2. The matter was taken up with Labour Department where they agreed to grant necessary exemption from application of Act, 1999 (Appointment through Employment Exchange) subject to approval by the Finance Department and Cabinet in respect of those worker who have fulfilled the conditions laid down in Labour Department Circular No. 100-Emp dated 13-03-1996 read with their no. 1700-Emp dated 03-08-1979 & no. 1650-Emp dated 28-08-1980, vide their U/O No. 183-Emp dated 05-08-2008.

3. The matter was further taken up with Finance Department and after careful consideration the Governor has been pleased to accord approval for absorption of all the aforesaid 167(One hundred Sixty Seven) workers against vacant regular Gr. D Post under Irrigation & Waterways Directorate w.e.f. the date of issue of this order.

4. This order issues with the concurrence of Finance Department vide their U/O No. 3220 Gr.P(Services) dated 16-03-2009.

5. This has also got the approval of the Cabinet in their meeting dated 29-07-2009”.

However though subsequently Director of Personnel & Ex-officio Chief Engineer, Irrigation & Waterways Directorate vide his letter dated 11-09-2009(Annexure-E Collectively) had requested the Director, Advance Planning Project Evaluation and Monitoring Cell (APPE & MC) to take necessary action for absorption of casual/master roll workers as per the order dated 14-08-2009 followed by another reminder letter dated 17-05-2013. The Joint Secretary to the Govt. of West Bengal vide his communication dated 04-06-2015 (Annexure-F Collectively) rejected the claim of regularization communicating inter alia :-

“With reference to the captioned subject and no., the undersigned is directed to say that the matter for regularization was taken up with the Finance Department and as per their observation dated 04-05-2015, there is no scope of regularization of service of Sri Gyani Ram, Nightguard, and Sri Panchanan Pramanick, Sweeper both under Contingent establishment of the office of the Director, Advance Planning, Project Evaluation and Monitoring Cell.

Hence the matter is regretted. The Service Books of Sri Gyani Ram (in original) and Sri Panchanan Pramanick (in duplicate) are returned herewith”.

It is observed from the above mentioned letters/communication that list of 167 casual/master roll workers was considered and approved by the Cabinet in their meeting dated 29-07-2009 in concurrence with the Finance Department communication dated 16-03-2009 and was forwarded for absorption/regularization of those workers, wherein the name of the applicant was there. The said fact was further reiterated in the communication dated 11-09-2009 and 17-05-2013. However, while rejecting the case of the applicant vide communication dated 04-06-2015, the claim of the applicant for regularization was rejected subsequently as per the observation of the Finance Department dated 04-05-2015. We have perused the judgement placed by the applicant passed by our coordinate bench in OA No. 600 of 2005 dated 18-06-2008, wherein it was held that inter alia :-

“We have already stated that this argument of the Ld. Adv. has no leg to stand and so also the reply of the State Respondents since the decision to regularize the petitioners from the date of their respective joining to their post was taken by a Cabinet and in the rules of business followed by the State, a Cabinet decision shall be final unless set aside by a competent Court or by a subsequent Cabinet decision.

Thus, it would be suffice to mention that State Respondents have no reason to challenge or call in question the earlier circular dated 4th July, 2003. We find that while the circular dated 4th July, 2003 gave the entire history of regularization and disclosed the date of regularization, by the subsequent circular issued by the Joint Secretary of 26th April, 2005 the benefit has been taken away and in our considered view, this is not possible unless the Cabinet again re-examines the matter and takes fresh decision.

Accordingly, we find sufficient merit in the present application and we reject the contention of the State

Respondents. Accordingly, this petition succeeds and the order dated 26th April 2005 is hereby quashed”.

In view of the above, we are of the opinion that the instant case is squarely covered by the aforesaid order dated 18-06-2008 as in the instant case also the respondents vide their communication dated 14-08-2009 had clearly communicated the approval of the Cabinet held on 29-07-2009 as well as Finance Department concurrence dated 16-03-2009. Therefore, unless and until the decision with regard to the applicant revisited and reverse by the Cabinet, the Finance Department observation dated 04-05-2005 cannot nullify the earlier decision by way of rejecting the claim of the applicant. Accordingly, we quash and set aside the communication dated 04-06-2015 and direct the respondent authorities to take necessary steps within a period of 3(three) months from the date of receipt of the order.

Accordingly, the O.A. is allowed with above observation and direction with no order as to costs.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA(SEN)
MEMBER(J)

