

**IN THE WEST BENGAL ADMINISTRATIVE
TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

**The Hon'ble Smt. Urmita Datta (Sen)
Member (J)**

-AND-

**The Hon'ble P. Ramesh Kumar,
Member (A)**

J U D G M E N T

-of-

Case No. T.A. - 9 of 1999

Bhagirath DasApplicant

-Versus-

State of West Bengal & others....Respondents

**For the Applicant : - Mr. Asim Hati,
Advocate.**

**For the State Respondent:- Mr. Ruhul Amin Chowdhury,
Advocate.**

Judgment delivered on : 20.2. 2019

**The Judgment of the Tribunal was delivered by :-
The Hon'ble Smt. Urmita Datta (Sen), Member (J)**

Judgement

1. The instant application has been filed mainly praying for absorption of the applicant against the sanctioned vacancy on permanent basis.
2. As per the applicant, he was casually appointed as Night Guard under Block Development Officer, Mangalkote, Burdwan in the year 1985 and was working thereon. During the same period, another two persons viz. Amir Hossain, Gouranga Das were also appointed as peon and driver respectively. However, as per the applicant, the name of the other two persons were recommended and subsequently absorbed in their posts, whereas the case of the applicant was not considered. As per the applicant, as he was working for four years, he is covered by the Circular No. 126 M.W. dated 13.08.1982 (Annexure A). Moreover, as the similarly situated persons have already been absorbed he ought to be absorbed otherwise it would amount to discrimination. Therefore, he has prayed for extension of benefit of the following judgements:

“(i) State of Jharkhand and Others – Vs- Kamal Prasad and Others reported in (2014) SCC 223

(ii) State of Gujarat and Others –Vs- PWD Employees Union and Others reported in (2013) 12 SCC 417

(iii) U.P. State Electricity Board – Vs- Pooran Chandra Pandey and Others reported in (2007) 11 SCC 92

**(iv) Yashwant Arjun More and Others –Vs-
State of Maharashtra and Others reported in
(2014) 13 SCC 264”**

As he was not absorbed, being aggrieved with, he has filed one writ petition being C.O. No. 9268(W) of 1988.

3. The Hon’ble High Court vide their order dated 12.08.1988 had passed the following interim order:

“After hearing the learned Advocate for the petitioner and considering the urgency pleaded in paragraph 19 of the petition, requirement under Rule 27 of the Writ Rules is dispensed with.

Let this application come up for hearing on 19th August, 1988.

In the meantime there will an interim order of injunction to the effect that the status quo as regards the absorption as on date shall continue until 19th August, 1988 with liberty to apply for extension of the same on the selfsame application upon notice to the respondents.”

Subsequently, vide order dated 19.08.1988, the Hon’ble High Court had extended the interim order till further order. After establishment of this Tribunal, subsequently, the aforesaid writ petition was transferred to this Tribunal under T.A. No. 9 of 1999. Hence, the application is before us.

4. The respondents have filed their reply and have submitted that the application is suffering with non-joinder of parties as the concerned departments i.e. Social Welfare Department, Labour and Finance Department have not been impleaded. It has been further stated that the applicant was not appointed as Night Guard

under BDO, Mangalkote. But he was engaged as “Pankha Puller” on daily wages as well as no work no pay basis from March, 1985 to November, 1986 and was paid wages @ Rs. 12/- per day. Subsequently, the applicant was paid wages as Night Guard of I.C.D.S. godown from December, 1986 to March, 1987. It has been specifically submitted that the I.C.D.S. godown means a godown of BDO, Mangalkote where the BDO allowed to keep the I.C.D.S. material. However, it has no connection with the guard duty of the I.C.D.S. Project Office, whereas Shri Gouranga Chandra Das was engaged as Driver of the MCC i.e. “Mother and Child Care Project” from March, 1980 and Sk Amir Hossain was engaged as office Peon of MCC Project. Subsequently, vide G.O. No. 32283 dated 17.12.1984, twenty “Mother and Child Care Projects” were updated to the status of centrally sponsored ICDS Project (Mangalkote MCC Project) in pursuance to the aforesaid G.O. 30 posts of Driver of MCC Project was retained in the 30 upgraded ICDS Project. 7 MCC Helper cum Night Guards would be absorbed for the upgraded ICDS Project. Remaining 23 Night Guards should be recorded in this same manner as in the ICDS Scheme but as the applicant was neither attached with MCC Project nor he had come under any recruitment process of the department of Social Welfare, therefore, he was not absorbed.

5. Further the said Shri Gouranga Chandra Das and Sk Amir Hossain performed their duties for 2607 days and 1666 days respectively up to 30.11.1987. However, the applicant performed maximum 150 days i.e. from July, 1987 to November, 1987 in the said establishment. Therefore he is not similarly situated to the other two persons. He also denied that the applicant was ever acquired quasi judicial status. Therefore, the respondents have prayed for dismissal of the O.A.

6. The applicant has filed rejoinder wherein he has reiterated his earlier submission made in O.A. However, he has submitted that he was never appointed as “Pankha Puller”.
7. We have heard the parties and perused the records. It is noted that the applicant has basically prayed for absorption to the post of Night Guard whereas as per the respondents he worked for 150 days only during the period from July, 1986 to November, 1987 that too under B.D.O., Mangalkote to guard some materials under the custody of B.D.O. As per the applicant, since he is working for a long, he is entitled to get the benefit of the judgement placed by him in support of his contention. However, it is observed that though the applicant is claiming being appointed since 1985 as Night Guard, but in support of his contention he could not place any piece of paper to substantiate his claim. Further even if, the contention of the applicant has to be accepted that he is working since 1985, but it is an admitted fact that he is continuing by the order of the Court till date.
8. Therefore in our considered opinion, he is not entitled to get any benefit of the **Uma Devi case supra** as the Hon’ble Apex Court in the case of Uma Devi has specifically stipulated that who have worked 10 years or more in duly sanctioned post but not under cover of orders of the Court’s or Tribunal’s for those one time measure for consideration for regularization may be taken, but in the instant case, as per the applicant himself is working as per the interim order of the Hon’ble High Court and prior to that also he did not fulfill the criteria stipulated in the case of Uma Devi (Supra). Further he is not covered by the other aforesaid judgements as those judgements are distinguishable in the fact of the case. Thus, we do not find any merit to entertain the instant

application. Accordingly, the O.A. is dismissed with no order as to cost.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)