

10.04.2023
DL-9
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 4202 of 2023

**Sujoy Dey & Anr.
Vs.
West Bengal Tourism Development
Corporation Limited & Ors.**

Mr. Debdutta Basu
.....for the petitioners.

Mr. Amal Kumar Sen,
Mr. Sabyasachi Mondal
.....for NBSTC.

Mr. Tapan Kumar Mukherjee,
Ms. Debdooti Dutta
.....for the State.

Affidavit of service filed in Court today is retained with the records.

The petitioners' claim is that by an order dated February 10, 2017 they were engaged on contractual basis by the West Bengal Tourism Development Corporation Limited (WBTDCL). The said engagement was extended from time to time. By a notification dated May 24, 2018, the Managing Director, North Bengal State Transport Corporation (NBSTC) intimated that an agreement was executed with WBTDCL for joint venture operation of Volvo buses by WBTDCL and NBSTC. The services of the crews already engaged by WBTDCL were shifted to NBSTC. The services of the crews were taken under the

control of NBSTC to operate the Volvo services as Driver/Attendant. The placement of the crews were purely on contractual basis for a period of one year. The liabilities of engagement were automatically shifted to WBTDCL from NBSTC after the said period or otherwise. The petitioners were directed to report on duty at NBSTC Depot. The said engagement was on May 24, 2018.

Mr. Basu, learned counsel appearing on behalf of the petitioners submits that during the contractual period the Depot-in-Charge, NBSTC released the petitioners from NBSTC, Ultadanga Depot and directed them to report to M/s. Ishika Traders with effect from March 14, 2019. He submits that NBSTC decided to engage M/s. Ishika Traders, a proprietorship concern as a full franchise operator for six months from March 15, 2019 to September 14, 2019 for operation of 5 Volvo buses in 3 NBSTC routes. The petitioners were unwilling to work for franchisee. Several representations have been made since March 28, 2019 to the Managing Director, WBTDCL with copies to the Managing Director, NBSTC. He submits that without any reason during the tenure of the contractual period the petitioners could not be disengaged and be required to join a franchise that was a private proprietorship concern.

He cites a judgment reported in (2022) 6 SCC 346 (**K. Ragupathi Vs. State of Uttar Pradesh & Ors.**) in support of his contention that contractual employees cannot be disengaged in breach of principles of natural justice without being given a hearing.

Mr. Sen, learned Additional Government Pleader appears on behalf of NBSTC and submits that the engagement was purely contractual and, therefore, the petitioners had no right of hearing. He submits that no representations have been made before the concerned authorities of NBSTC.

Considering the submissions of the parties and the materials placed on record, this Court directs the Special Officer, WBTDCL or any other authority directed by the respondent no.1 and also the Managing Director, NBSTC or any other authority directed by him to file reports on affidavit to show why the prayer of the petitioners for consideration for rejoining as drivers of WBTDCL was not considered and why during the period of contractual engagement the terms of engagement was unilaterally changed by the Depot-in-Charge, NBSTC. While filing such report the Memo dated May 24, 2018 issued by the Managing Director, NBSTC has to be considered whereby it was assured that the liabilities of engagement would automatically be shifted to

WBTDCL after the '*expiry of the agreement*' or '*otherwise*'.

Let such report on affidavit be filed by May 3, 2023. Exception, if any, by May 18, 2023.

Let the matter come up for further consideration under the same heading "**Motion**" on **June 5, 2023**.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

(Lapita Banerji, J.)