

05.10.2024
(Sl. No. 3)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(Via Video Conference)**

WPA No 12429 of 2023

Subrata Banik

Vs

Calcutta State Transport Corporation & Others

Ms. Susmita Dey (Basu) ... for the petitioner

Mr. Amal Kumar Sen,
Mr. Sabyasachi Mondal ... for the respondents

This is the third round of litigation which the petitioner has been constrained to file. The sole grievance of the petitioner pertains to the date of regularization of his services.

Briefly, despite the petitioner having been afforded compassionate appointment as far back as in 2000, following incapacitation of his father, his services had never been regularized.

In the first writ petition being WP 13128(W) of 2014, by an order dated 07 May, 2014, the Managing Director of the respondent Corporation was directed to consider the petitioner's representation for regularization. Thereafter, the petitioner was compelled to file a second writ petition being WP 3762(W) of 2016 challenging the decision of the Managing Director rejecting the prayer for regularization. By an order dated 29 July 2016, the decision of the Managing Director was set aside and the respondent Corporation was directed to

regularize the services of the petitioner. Being aggrieved by the said order dated 29 July 2016, the respondent Corporation had preferred an appeal which was dismissed on 16 August 2017 inter-alia, upholding the order dated 29 July 2016. In this background, the petitioner prays for regularization of his services either from 2003 i.e. the time from which his contemporaries who had also been appointed on compassionate grounds were regularized or from 2009 i.e. the date of the Notification dated 29 October 2009 wherein the services of 276 employees were regularized in relaxation of usual norms.

It is contended on behalf of the petitioner that he was provisionally selected as a trainee conductor-cum-helper on temporary basis on 1 March 2000. By Memo no 98/10/7B dated 15 April 2000, a list of trainee conductors who had completed their training and obtained a licence from the concerned Public Vehicle Department was published by the respondent Corporation which included the name of the petitioner.

In or about 2003, all the trainees whose names had appeared on the list were regularized save and except the writ petitioner. Subsequently, by Notification No. 4433-WT/TR/O/8B-35/09 dated 29 October 2009 issued by the Additional Chief Secretary, Transport Department, Government of West Bengal, the services of another 276 employees were regularized against vacant regular posts in relaxation of the usual norms in accordance with the then

extant Rules of the Corporation. However, even at this stage the respondent Corporation refused to regularize the services of the petitioner. As such, in view of the delay by the respondent authorities to regularize the services of the petitioner, the petitioner also became much junior to his contemporaries as well as the 276 individuals who had been appointed subsequent to the petitioner in 2009. Thus, it is contended that the petitioner's appointment should have been regularized with effect from 2003 considering the fact that sanctioned available posts had been lying vacant.

On behalf of the respondent authorities, it is contended that the 2009 Scheme had reached its finality long ago and that there is no scope to reopen the same in view of the principles of *res judicata*. Moreover, the order of the Division Bench dated 16 August 2017 to consider regularization directs that the petitioner may be regularized on and from any date prior to the order of the Hon'ble Division Bench and hence, the period from which the petitioner can claim such regularization is no longer *res integra*. It is also contended that after accepting the pay scale and other benefits in compliance with the order dated 16 August 2017, any prayer to give effect to such regularization from the date prior to the date of actual effective date of regularization is not available to the petitioner and the same is devoid of any merit.

Admittedly, the petitioner had been granted compassionate appointment in place and stead of his father Sunil Kumar Banik who has been compelled to leave service on the ground

of physical incapacitation. By a communication dated 1 March 2020, the petitioner was provisionally selected as trainee conductor-cum-helper on temporary basis and was offered employment. By a Memo dated 15 April 2000, a list was published by the respondent Corporation of trainee conductors who had completed training and also obtained a licence wherein the name of the petitioner was also published. Significantly, the said list consisted of names of persons who had sought for compassionate appointment and all these persons were regularized by 2003 save and except the petitioner. Thereafter, by a notification dated 29 October 2009 issued by the Additional Chief Secretary, Transport Department, Government of West Bengal, it was decided to regularize the services of 276 of employees who were working as casual or contractual workers and who were appointed on compassionate grounds against regular vacant posts in relaxation of usual norms in accordance with then prevalent Rules of the Corporation.

There is no merit in the objection of *res judicata* raised on behalf of the Corporation. The question of the date of regularization of the petitioner's services has not been adjudicated upon in any of the earlier proceedings and has been left open.

The prayer of the writ petitioner is for regularization of services from 2003 or at least from 2009. The contemporaries of the petitioner were regularized with effect from 2003. Once the question of compassionate appointment and

regularization of services has attained conclusiveness by virtue of orders of Court, there is a legitimate expectation in retrospective regularization of the petitioner. In the absence of any Rule, regularization of services of an employee whose employment is found to have been in accordance with law and approved by an authority having power and jurisdiction to do so would ordinarily relate back to the date of initial appointment. (*S. Sumnyan Vs. Limi Niri*, (2010) 6 SCC 79, *L. Chandrakishore Singh vs. State of Manipur*, (1999) 8 SCC 287).

However, admittedly the petitioner chose to remain absent from service for the period between 24 October 2003 till 10 May 2007. The Notification dated 29 October 2009 regularized the services of 276 employees who had been appointed on compassionate grounds against vacant regular posts in relaxation of usual norms. The case of the petitioner for regularization was not even considered at this stage. In view of the above, the petitioner is legitimately entitled to claim regularisation since 2009. To do otherwise, would have the effect of making the petitioner a junior not only to his contemporaries but even to his juniors who had been regularized in 2009. Admittedly, there is a huge gap of service between the petitioner's contemporaries and the petitioner. However, in view of the fact that the petitioner chose to remain deliberately absent from service from 24 October 2003 till 10 May, 2007, there is no question of regularization of his services from 2003.

In view of the above, WPA/12429/2023 stands allowed. The respondent authorities are directed to give effect to the regularization of the petitioner from the year 2009 in conformity with the Notification dated 29 October 2009. The aforesaid exercise is to be completed within eight weeks from the date of communication of this order.

(Ravi Krishan Kapur, J.)