

WP.CT. 113 of 2023

(Sri Sanjit Karmakar Vs. Union of India & Ors.)

**Mr. Saptarshi Roy
Mr. Siddhartha Roy
Ms. Kakali Das Chakraborty**

..... **For the petitioner**

**Mr. Kalyan Chakraborty
Ms. Rumana Sahin**

..... **For the respondents**

The present writ petition has been preferred challenging an order dated 2nd May, 2023 passed by the learned Tribunal in an original application being OA 350/00932/2016.

Shorn of unnecessary details the facts are that the applicant/writ petitioner herein was engaged as a substitute Bungalow Peon under one Mr. K. N. Biswas, Senior DCM/CKP, Chakradharpur against an existing vacancy by an order dated 31st December, 2012. Such appointment of the petitioner was co-terminus along with Mr. K. N. Biswas. However, K. N. Biswas was thereafter transferred to Kolkata as Deputy CCM (CP), Kolkata. Since allegedly there was no sanctioned post of Bungalow Peon attached to UTS/Kolkata, the petitioner was discharged by an order dated 4th September, 2013. The petitioner thus rendered service on and from 1st January, 2013 till 4th September, 2013. He thereafter submitted a representation dated 23rd September, 2013 with a prayer to appoint him either under his erstwhile officer or to

appoint him as Group-D staff in Kharagpur Division. As the said representation was not considered, the petitioner filed an original application being OA 350/00080/2015. The same was disposed of by an order dated 17th February, 2016 directing the competent authority to decide the representation within three months. Pursuant to such direction, the respondent no. 3 passed an order on 26th April, 2016 rejecting the petitioner's claim. Aggrieved thereby, the petitioner filed the original application being OA 350/00932/2016 which was dismissed by the order impugned in the present writ petition.

Mr. Roy, learned advocate appearing for the petitioner submits that it would be explicit from the order of discharge dated 4th September, 2013 that the petitioner was discharged placing reliance upon clause 3(c) of the circular dated 9th June, 2010. As per the said clause, if there is no provision of Bungalow Peon in the new assignment, three options are available to the employer - to regularize or to re-engage or to discharge the Bungalow Peon. However, neither in the order dated 4th September, 2013 nor in the order on 26th April, 2016, there is any indication as to why regularization or re-engagement was not considered when there was no fault on the part of the petitioner and though his engagement was co-terminus with the concerned officer. The respondents have also not considered the provision

towards inclusion of the petitioner's name in the reserve list, as provided under clause 3(d) of the circular dated 9th June, 2010. The learned Tribunal has glossed over the said issues and did not return any finding on the same.

Drawing our attention to clause 5(b) of the circular dated 9th June, 2010, Mr. Roy submits that the respondents were under an obligation to consider the issue of re-engagement or enlistment of his name in the reserve list under clauses 3(c) and 3(d) of the said circular. The order impugned in the original application does not reflect discharge of such obligation. The respondents have also not taken into consideration the provision of IREM which also speaks about maintenance of registers by all Divisions indicating the names of casual labours, substitutes and temporary workmen, who have rendered six months service either continuous or in promotion period. The petitioner admittedly has rendered service for more than seven months.

Per contra, Mr. Chakraborty, learned advocate appearing for the respondents submits that the petitioner did not complete one year of service. The provision towards incorporation of the petitioner's name in the reserve list does not occasion since Mr. K. N. Biswas was transferred within the jurisdiction of South Eastern Railway. The order passed by the learned Tribunal is a

reasoned one and as such no interference is called for in the present writ petition.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

Clause 3(c) of the circular dated 9th June, 2010 reads as follows:-

'3(c). Officers on transfer from one place to another on S.E. Railway system will have to get their Bungalow Peon transferred to their new place of posting, if provision of a post of Bungalow Peon exists in the new assignment. In such cases, the transfer of Bungalow Peon will be considered as transfer on administrative interest. If there is no provision of B/Peon in the new assignment regulation, re-engagement or discharge of the B/Peon shall be done as per extant rule.'

Clause 3(d) of the circular dated 9th June, 2010 reads as follows:-

'3(d). In respect of such B/Peons, who have completed 120 days of continuous and satisfactory service but less than 1 year probationary service and their services have been terminated due to transfer, retirement, death etc. of appointing officer, their names will be maintained in a Reserve List, to be centrally maintained in CPO'S office (Recruitment Section). Similar list may be maintained by respective Sr. DPO/DPO also. In the exigencies of administrative requirement, such persons can be re-engaged from the Reserve List, with G.M.'S personal prior approval as substitute, provided they fulfill the prescribed norms for such re-engagement. Those whose services were terminated due to unsatisfactory service/conduct/behavior shall not be re-engaged.'

Clause 5(b) of the circular dated 9th June, 2010 reads as follows:-

'5(b). The services of Bungalow Peons who have not completed 120 days of

continuous/aggregate services should be terminated as per rules. In the event of transfer outside S.E. Railway of the officer, who engaged him/her and if he/she does not go with the officer, to the new assignment in the new Railway. In respect of those who have completed more than 120 days and upto 3 years provisions as at 3 (d) will apply'.

The proposition which can be culled out from the said three provisions, as quoted above, is that there is a provision towards consideration for regularization or for re-engagement or for discharge if the officer under whom the person was engaged as substitute Bungalow Peon had been transferred and where there is no provision towards engagement of Bungalow Peon in the new assignment. Clause 3(d) of the circular begins with a phrase that '*if the officer is transferred outside S.E. Railway*'. However, in the latter part of the said clause it has categorically been observed that '*in respect of such B/Peons, who have completed 120 days of continuous and satisfactory service but less than 1 year probationary service and their services have been terminated due to transfer, retirement, death etc. of appointing officer, their names will be maintained in a Reserve List, to be centrally maintained in CPO'S office (Recruitment Section). Similar list may be maintained by respective Sr. DPO/DPO also. In the exigencies of administrative requirement, such persons can be re-engaged from the Reserve List, with G.M.'S personal prior approval as substitute, provided they fulfill the prescribed norms for such re-engagement. Those*

whose services were terminated due to unsatisfactory service/conduct/behavior shall not be re-engaged'.

The petitioner has completed more than 120 days of service and it is not a case that he refused to accompany the officer who had been transferred to the new assignment and as such the first two criteria incorporated under clause 5(b) of the said circular are not applicable in respect of the petitioner. He comes under the third criterion in clause 5(b) which speaks that '*in respect of those who have completed more than 120 days and upto 3 years provisions as at 3(d) will apply*'.

The petitioner has not been discharged due to unsatisfactory service/conduct/behavior. He has been discharged alleging that there was no sanctioned post attached to Dy. CCM (Refunds & UTS) Kolkata. Such engagement was the sole source of the petitioner's livelihood. As a model employer the respondents must conduct themselves with high probity and candour and ensure that their employees do not succumb to any discriminatory practice in the procedural rigmarole, moreso when an employee's constitutional right to livelihood is at stake.

In the said conspectus, we are of the opinion that the competent authority ought to have considered the petitioner's claim in the light of the provisions of 3(c), 3(d) and 5(b) of the circular dated 9th June, 2010 together with the provisions of IREM for re-engagement or for

incorporation of his name in the reserve list wherefrom he may at least get an opportunity to be considered for engagement in the exigencies of administrative requirement.

The learned Tribunal had rejected the petitioner's claim and had affirmed the order dated 26th April, 2016 being oblivious of the provisions towards re-engagement and incorporation of the name of a substitute Bungalow Peon, as provided respectively under clauses 3(c) and 3(d) of the circular dated 9th June, 2010. Clause 5(b) of the said circular was also not considered by the learned Tribunal and the petitioner's claim was rejected primarily on the ground that he had rendered services for not more than one year. The order has been passed in a mechanical manner paraphrasing the contents of the order dated 26th April, 2016 and the same does not reflect any independent application of mind. Accordingly, the order dated 26th April, 2016 and the order dated 2nd May, 2023 passed by the learned Tribunal in the original application being OA 350/00932/2016 are set aside and quashed.

This Court directs the respondent no. 3 to consider the petitioner's claim afresh towards regularization or re-engagement or towards incorporation of his name in the reserve list as referred to under clause 3 (c) and 3(d) of the circular dated 9th June, 2010, moreso when the

petitioner's service was not terminated due to unsatisfactory service/conduct/behavior.

The writ petition being WP.CT. 114 of 2023 is, accordingly, disposed of directing the respondent no.3 to consider the petitioner's claim afresh in the light of the observations made in this order and to pass a reasoned order, upon granting an opportunity of hearing to the petitioner.

The above exercise shall be completed by the respondent no.3 within a period of six weeks from the date of communication of this order along with a copy of the original application.

There shall, however, be no order as to costs.

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

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)