IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present :
The Hon'ble Justice Sujoy Paul
&
The Hon'ble Justice Smita Das De

FMA 541 of 2020

MANOWARA MAJI & ORS.
VS
STATE OF WEST BENGAL & ORS.

WITH

FMA 546 of 2020

CHHAIRA BIBI & ORS.
VS
STATE OF WEST BENGAL & ORS.

For the appellants : Mr. Rabilal Maitra, Sr. Adv.
Mr. Debajyoti Deb
Ms. Somdyuti Parekh
Mr. H.K. Jha

For the State : Mr. Tapan Kr. Mukherjee, AGP
Mr. Rabindra Narayan Dutta
Mr. Somnath Naskar
Mr. Hare Krishna Haldar

Heard on : 16.09.2025

Judgment on : 22.09.2025

Sujoy Paul, J:

1. This *intra* court appeal assails the order passed by learned Single Judge in WP 7119 (W) of 2015 whereby their writ petition filed under Article 226 of the Constitution of India was dismissed.

2. This matter has a chequered history. The appellants initially filed WP 13850 (W) of 2012 which was disposed of on December 19, 2012, by directing the respondent no.1 therein to consider the representation of the appellants preferred on February 24, 2012 within the stipulated time. In turn, by rejection order dated December 19, 2012, the said representation of the appellants was rejected. The rejection is mainly for not satisfying twin conditions i.e. (i) the appellants have not completed 10 years of continuous service as on August 1, 2011; (ii) apart from this not completed 240 days engagement in each year. Being aggrieved, the appellants assailed the rejection order by filing WP 7119(W) of 2015.

3. The learned Single Judge, by the impugned order dated April 1, 2015, rejected the writ application. The present appeal assails the impugned order dated April 1, 2015.

4. Interestingly, the appellants filed another writ application being WP 8440 (W) of 2015 for the same relief. The said writ petition came to be dismissed on April 21, 2015 on the ground that it is hit by principle of *res* judicata. The appellants filed FMA 546 of 2020 challenging the order dated April 21, 2015 passed in WP 8440 (W) of 2015. However, since the delay was not condoned in filing FMA 546 of 2020, the said appeal was dismissed on October 3, 2018. Thus, adjudication is required only in FMA 541 of 2010.

Contention of the appellants:

5. Mr. Maitra, learned Senior Counsel representing the appellants submits that when WP 7119 (W) of 2015 was filed, the appellants did not have the relevant documents with them. The documents are - (i) the proceeding of the

meeting of the Enquiring Authority to enquire the casual daily-rated workers' engagement in Social Forestry Division of Sundarban Development Authority on February 21, 2011; and (ii) the document dated March 1, 2011 of Sundarban Unnayan Parshad, Sundarban Bishayak Daftar, Paschim Banga (page 175).

6. By placing heavy reliance on these two documents, it is submitted that if these documents are carefully perused, it will be clear that the aforesaid essential two conditions are fully satisfied. If those conditions are satisfied, the appellants will be entitled to get the benefit flowing from memorandum no. 9008-F(P) dated September 16, 2011 (Annexure 'P-3'). As per this memorandum, after having rendered certain years of service, the casual employees are entitled to get financial benefits. Thus, till such time the appellants continued with the department, they are entitled to get the difference of pay and benefits arising out of the said memorandum dated September 16, 2011.

7. It is strenuously contended that the department was custodian of these documents and they should have filed the same before the Single Bench. They should have considered these documents before rejecting the representation of the appellants. Thus, since these two documents clearly established the right of the appellants, they are entitled to enjoy the fruits of memorandum dated September 16, 2011.

Stand of the respondents:

8. Mr. Tapan Kumar Mukherjee, learned Additional Government Pleader, on the other hand, submits that no fault can be found in the order of the learned Single Judge dated April 1, 2015 because the crucial documents were

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not filed before him. As per the material available on record, the learned Single Judge rightly opined that the twin conditions of Memo dated September 16, 2011 are not satisfied and hence rightly dismissed the writ petition.

9. The next submission of learned counsel for the State is that the said two documents have not been filed along with an application under Order XLI Rule 27 of the Civil Procedure Code, 1908. No reasons are also assigned as to why the said documents could not be filed before the learned Single Judge despite exercising due diligence. It is further argued that the judicial review of a case of this nature is limited. The departmental authorities have given a finding of fact in relation to working days and the capacity of the appellants. The factual findings cannot be disturbed by this Court.

10. This Court, by order dated July 3, 2024, directed to submit a report in relation to the said two new documents. In turn, the department filed the report and placed reliance on a notification of Government of West Bengal dated March 7, 1973. The notification is relied upon to buttress the submission that Schedule I deals with "function and powers of Sundarban Development Board" and Schedule II prescribes the "terms and conditions of the members of Sundarban Development Board". Paragraph 5 of Schedule II is heavily relied upon to submit that Gazetted and non-Gazetted staff of the Board can be appointed by the State Government. Thus, the question of granting benefit to the appellants is outside the purview of the respondent authorities, more so, when they were not authorized by the State Government to do the same and prepare the minutes dated February 21, 2011.

11. Lastly, Mr. Mukherjee submits that no appointment letter was ever issued to the appellants. They were not working against the sanctioned post. Thus, he supported the order of the learned Single Judge.

12. Learned Counsel for the appellants submits that the appellants were not working in any project which came to an end. They were working in the Forest Department and hence the Gazette Notification and the argument of the State Counsel has no force.

Analysis:

13. No other point is pressed by learned Counsel for the parties.

14. We have heard the parties at length and perused the records.

15. A plain reading of impugned order dated April 1, 2015 makes it clears that learned Single Judge examined the documents filed along with the writ petition and opined that twin conditions mentioned in Memorandum dated September 16, 2011 could not be satisfied. The twin conditions were that employee i.e. contractual/casual/daily rated worker must have completed 10 years of service and must have been engaged before April 1, 2010. Secondly, he must have worked for 240 days in every year. The learned Single Judge opined that petitioners could not establish that they have been engaged for 240 days in each of said 10 years. In absence of satisfying those conditions, the writ petition was dismissed.

16. The principal problem faced by appellants is that whether the two documents- 1. Minutes of meeting dated February 21, 2011 and 2. proceeding of Sundarban Unnayan Parshad dated March 1, 2011 can be considered for the first time in this *intra* court appeal. Admittedly, the appellant did not file those two documents before Writ Petition was dismissed.

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17. In our opinion, in order to pronounce a judgment on the question whether appellants are entitled to enjoy the benefit of OM dated September 16, 2011, the said documents are necessary. Hence, said documents can be taken into account.

18. In our opinion, for this consideration, analogy flowing from Clause (b) of Order 41 Rule 27 can be invoked. The Apex Court in ***(2015) 1 SCC 677 (Wadi vs. Amilal & Ors.)*** opined as under:

"5. If it feels that pronouncing a judgment in the absence of such evidence would result in a defective decision and to pronounce an effective judgment admission of such evidence is necessary, clause (b) enables it to adopt that course. Invocation of clause (b) does not depend upon the vigilance or negligence of the parties for it is not meant for them. It is for the appellant to resort to it when on a consideration of the material or record it feels that admission of additional evidence is necessary to pronounce a satisfactory judgment in the case."

(Emphasis Supplied)

It was further held :

"6. The document in question would throw light on the germane issue and is, therefore, necessary for pronouncing judgment in the case on the question whether remand of the case was justified."

(Emphasis Supplied)

In the light of this Judgment, we have no hesitation to consider the new documents for the purpose of pronouncing the judgment.

This judgment of the Supreme Court has been followed in the ***Surjit Singh vs. Gurwant Kaur, (2015) 1 SCC 665*** and ***State of Telengana vs. B. Rangawami, (2022) 16 SCC 264***.

Apart from this, if these documents are taken on record and considered it will not cause any prejudice to department for the simple reason that the coordinate bench by order dated July 3, 2024 permitted the State to file their response to these documents and we have considered their response in this judgment.

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19. The learned counsel for the appellants during the course of argument fairly submitted that the most of the appellants are no more in service. Therefore, prayer for their regularization or validity of termination is not the subject matter of this appeal. If they succeed, they will only get the enhanced remuneration as per memorandum dated September 16, 2011. If they succeed appropriate directions may be issued to calculate and quantify the remuneration as per memorandum dated September 16, 2011 for the period they remained in employment after rendering 10 years of service and difference thereof be directed to be paid to them within stipulated time.

20. We find substance in the said prayer. In the impugned order of rejection, it is nowhere mentioned that the appellants were employees of the project. Hence, in absence of any reason mentioned therein, appellants cannot be non-suited on the ground that they were employees of the project.

21. The Constitution Bench in the case of ***Mohinder Singh Gill vs. Chief Election Commr. ((1978) 1 SCC 405)*** opined that validity of an order of an authority must be tested on the reasons mentioned in the said order and it cannot be upheld on the ground which is not subject matter of the order passed by the authority. Thus, we find substance in the argument of learned counsel for the appellants that their rejection order was passed by the Forest Department and, therefore, their benefits cannot be denied on the ground that they were employees of any project which had a self-life.

22. In view of foregoing analysis, no fault can be found in the order of the learned Single Judge for the simple reason that as per the material on record, learned Single Judge rightly held that appellants could not produce the relevant document. However, they could place the documents at appellate

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stage and a careful reading of documents namely, minutes of meeting dated February 21, 2011 shows that the appellants have satisfied the condition of the relevant memorandum. The minutes of meeting dated February 21, 2011 shows that the daily rated workers were working in the social Forestry Division and they fulfill twin conditions of Memorandum dated September 16, 2011 and there is no material to show that their engagement was in a project which was running for a limited period. Thus, the argument based on life of project cannot be accepted.

23. Curiously, aforesaid minutes were sought to be discarded by the State on the solitary ground that the committee which gave such an opinion was not authorized to do so under the said notification. We do not see much merit in this objection for the simple reason that the finding of fact given by the Committee regarding working of the appellants is not doubted by the State. In other words, the factum of appellants' working during the relevant time as certified in the said minutes is not called in question. The objection is that as per the notification, the said committee members/authorities were not empowered to give finding. In order to do complete justice for low paid casual employees, such technical objection must be eschewed. Putting it differently, once on facts it is established that employees had rendered services which makes them entitled to enjoy the fruits of memorandum dated September 16, 2011, their claim cannot be thrown to winds on hyper-technical grounds. If we do so, in our humble opinion, it will amount to upholding the exploitation because employees after rendering services for stipulated period, became entitled to get fruits of it as per September 16, 2011 memorandum. Thus, this objection of State is hyper-technical in nature and employees have

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nothing to do with the empowerment or delegation of power by the State. If they have rendered services, they are certainly entitled to get the adequate remuneration arising thereto.

24. So far notification dated March 7, 1973 is concerned, suffice it to say that it talks about the Gazetted and non-Gazetted staff of the Board. The appellants were working with the Forest Department and, therefore, this notification will not improve the case of the respondents. As analyzed above, the appellants are entitled to get the benefit of memorandum dated September 16, 2011. Consequently, respondents are directed to calculate the remuneration/payment of appellants from due date as per memorandum dated September 16, 2011 and after deducting the amount of remuneration already paid to them, pay the remaining arrears to the appellant for the period they remained in employment from the date of their entitlement. The entire exercise of calculation and remuneration of payment be made within 120 days from date of production of copy of this judgment.

25. The appeal is **allowed** to the extent indicated above.

(Sujoy Paul, J.)

I agree.

(Smita Das De, J.)