

**IV. COURT'S ORDER ON APPOINTMENT**

**Government of West Bengal  
Office of the Director of Land Records and Surveys  
and Joint Land Reforms Commissioner, West Bengal  
35, Gopalnagar Road, Alipore, Calcutta-700027**

Memorandum No. 598/1645/CS-SAT/97.,

dated Alipore, the 10.07.2000

To  
The District Land and Land Reforms officer, .....  
Birbhum.

Sub : T.A. No. 1079/97 Utpal Dey -vs- State of West Bengal

In drawing his attention to the above subject this is to inform him that the matter came up for hearing on 19.06.2000 before Hon'ble State Administrative Tribunal, W. B and Hon'ble Tribunal was pleased to pass an order dismissing the case.

A copy of Hon'ble Tribunal's order is sent herewith for favour of his information and taking necessary action if necessary.

Encl : as stated

A. Brahmachari  
for Director of Land Records and Surveys, and  
Joint Land Reforms Commissioners, W.B.

Memorandum No. 598/1645/CS-SAT/97.,

dated Alipore, the 18.07.2000

Copy along with a copy of Hon'ble Tribunal's order dated 19.06.2000 is forwarded herewith to District Land and Land Reforms Officer, ..... (except Birbhum) for favour of his information and guidance.

A. Brahmachari  
for Director of Land Records and Surveys, and  
joint Land Reforms Commissioners. W.B.

**ORDER SHEET- (Continuation)**

Case No. TA-1079/97

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Vs

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Serial No. and Date of Order	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary
17/19.6.2000	For the applicant: A.K. Mukherjee, Ld. Advocate For the respondent: A.K. Ghosh, Law Officer cum Deptt. Rep. Judgement delivered in open court as per separate sheet kept on record. Plain copy to both sides:	

**In The West Bengal Administrative Tribunal  
Bikash Bhavan  
Salt Lake City, Calcutta-700091  
Case No. TA-1079 of 1997**

U. Dey

..... Applicant

-VS-

State of West Bengal & Ors.

..... Respondents

For the Applicant:

Mr. A. K. Mukherjee, Ld. Advocate

For the Respondents:

Mr. A. K. Ghosh, Law-officer-cum-Departmental Representative.

The date of delivery of Judgement is .....

The petitioner of this case was engaged as a supplier of water in the office of the Respondents No. 5 (B. L. & L.R.O.), Rajnagar, Dist.- Birbhm in 1982 and he was working continuously without any break till the filing of the application on 15/9/92. He got his remuneration @ Rs. 60/- as consolidated amount p.m. The B.D.O., Rajnagar issued certificate to him stating that he was working under the L.R. Circle as water supplier from 1982 for whole time and got remuneration at the rate mentioned above. The petitioner claimed that in view of the long years of service put in by him he has obtained the status of permanent post, but he has not been paid his emoluments to which he is legally entitled. Through his Advocate, the applicant served a notice dated 30/9/91 upon the concerned authority for regularization of his service in the Gr. 'D' post and for payment of emoluments as per the Rules. The B.L. & L.R.O., Birbhum issued a letter No. 9309(2) dated Suri, 4/5<sup>th</sup> August, 1972 to the petitioner stating that he was not entitled to get the status of a permanent employee. The petitioner claimed that in view of Government Circular No. 6059-F dt. 25/6/79 of the Audit Branch, Finance Department, Government of West Bengal (Annexure 'II' to the petition), the Government decided that all posts created on temporary basis and continuing for more than 3 years on the date of the issue of the memo should be converted into permanent posts. The petitioner claimed that as he had already fulfilled the condition of 3 years continuous service, so he should be absorbed permanently in the capacity of water supplier in Gr. 'D' post of the State Government. The petitioner had also relied upon the Government order No. 1700-EMP dt. 3<sup>rd</sup> August, 1979 of the Labour Department, Government of West Bengal for regularization of his service. According to the petitioner, the Respondents No. 3 and 5 have violated the legal norms and principles of natural justice by not regularizing the service of the petitioner as a Gr. 'D' employee. Therefore, he has come before this Tribunal for the following among other reliefs:-

- (a) The writ of an order in the nature of Mandamus commanding the respondents to appoint the petitioner permanently as Gr. 'D' employee in the L & L. R. Department and further to pay arrears salary as admissible in law within a fixed time.

A reply has been filed on behalf of the respondents No. 2, 3 & 5 to oppose the application. It has been stated that applicant has made a false statement that he has been working under the B.L & L.R.O since 1982, but the post of B.L & L. R. O has been introduced since 1/4/89 only. Before that date there was no existence of the said post. It has been further stated that the post of supplier of water is not a whole time casual worker's post. Water supplier is paid a consolidated sum of Rs. 60/- p.m and his duty is to work for ten or fifteen minutes in a day in the opening hours of the working day for fetching 2 or 3 buckets of water only. It has been categorically stated that the applicant is not a daily rated or casual worker. He does not come under the category of casual worker. According to the answering respondents, the application is not bonafide and should be rejected.

The applicant has filed a rejoinder to the reply filed by the respondents. The applicant had denied the allegations made in the reply and has re-iterated the stand taken by him in the original application.

The question which has been seriously disputed by the departmental representative is that the applicant is never a casual worker but only a contingency worker. He was never paid on daily wage basis as in the case of casual workers, but got his monthly remuneration at a fixed consolidated amount. The amount has been increased from time to time and the current amount is Rs. 800 plus p.m. The Ld. Advocate for the applicant has categorically submitted that his client is a casual worker and he is entitled to the benefits which are available to casual workers. In view of the several Government circulars starting with No. 6059-F dt. 25/06/79 and No. 1700-EMP dt. 03/08/79, the Ld. advocate for the applicant has also drawn the attention of this Tribunal to a copy of the judgement passed by the Hon'ble High Court, Calcutta in C.O. No. 8886-W of 1989 (Keshab Chandra Das – Vs – State of West Bengal & Ors.) dt. 05/04/90 (Copy marked annexure 'F' to the application). In that case the petitioner made an application before the Executive Officer, Rajnagar Panchayat Samiti praying for appointment of Night Guard on daily wage basis and he was appointed as a Night Guard and was paid @ Rs. 4 per hour and in discharging his duty for 12 hours a day. According to the petitioner, the local BDO wrote the D.M., Birbhum for sanction of a permanent post of Night Guard-cum-Darwan under Rajnagar Block. The petitioner was working for more than 3 years continuously and the nature of job was perennial. The respondents refused to allow his prayer. The Hon'ble Court after hearing both sides, disposed of the matter by passing the following order:-

“Having heard both sides and considering the pleadings made in the Affidavit, I am on the view, in view of the report submitted by the Assistant Labour Commissioner, the petitioner's job of Night Guard being perennial, this writ petition entitled to succeed and the respondents should be directed to consider the question of sanction of the post of Night Guard in terms of requisition made by the B.D.O. dated April 19, 1988 which is annexure 'H' to the writ petition, within a period of 2 months from this date and consider the question of absorption of the writ petitioner as rendered service of the Night Guard which is of perennial nature.”

“Such consideration of the candidature of the writ petitioner in the post of Night Guard should be made only upon sanction of the post of Night Guard and in accordance with law after passing necessary order.”

It is clear from the above decision that for regularization of the petitioner of that case a direction was made for consideration of the question of sanction of the post of Night Guard first and then a direction was given for consideration of question of absorption of the writ petitioner in the post of Night Guard. It was also stipulated that the consideration of the candidature of writ petitioner in the post of Night Guard should be made only upon sanction of the post of Night Guard. So it is clear that unless there is a sanctioned post, there is no question of absorption by way of regularization of a casual worker in terms of the relevant Government circulars.

The Ld. Advocate for the petitioner has referred to a decision of the Apex Court of Union of India –Vs- Subir Mukherjee (AIR 1998 SC 2247). In that case labourers who were Members of a Co-operative Society were working continuously and un-interruptedly for ten years and the nature of their works was perennial. It was held that they were entitled to be absorbed and regularized in Gr. 'D' category in terms of the Rules and Regulations framed by the Railway authority.

The Ld. Advocate has also referred to decision of the Apex Court in Secretary, Haryana State Electricity Board –Vs- Suresh & ors., 1993(3) Supreme 277. In that case it was held that there was no genuine contract labour system prevailing with the Haryana State Electricity Board. If it was the genuine contract system, it had to be regularized as per Section 10 of the Contract Labour Regulation and Abolition Act. However, on the facts of the case, it was found by the Labour Court and confirmed by the High Court that the so-called Contractor was a mere name lender and had procured labourers for the Board from the open market. He was almost a broker of the Board for that purpose. Under those circumstances, it was held that factually there was no genuine contract system prevailing at the relevant time. Nothing was shown to establish that the State Electricity at the relevant time was registered as Principal Employer under the Contract Labour Regulation and Abolition Act. Once the Board was not a Principal Employer and the so called contractor was not a licenced contractor, the in-

evitable conclusion that has got to be reached is to the effect that so-called contract system was a mere camouflage, smoke and screen and disguised in almost a transparent veil which could easily be pierced and the real contractual relationship between the Board and the employees would clearly be visualized and the workers are entitled to be regularized in service under the Board.

It appears from the decisions cited above that in Subir Mukherjee's case, the workers were entitled to be absorbed in terms of the Rules and Regulations framed by the authority and the Haryana State Electricity Board's, it was held that when the Board was the actual employer for more than 10 years in perennial job then the workers were entitled to be absorbed.

The departmental representative has in this connection relied upon two Division Bench decisions of this Tribunal. The first case is OA-827 of 1996 in which judgment was delivered on 10/1/97 and the second case is OA-1234 of 1997 in which judgment was delivered on 15/9/98. In the first case it was held that the petitioner was appointed on a monthly allowance of Rs. 30/- for some contractual works and hence it did not attract circular No. 1700-EMP dt. 3/8/79 of the Labour Deptt., Government of West Bengal. In the second case, the applicant filed an application for appointment under the regular establishment in terms of circular No. 1700-EMP dt. 3/8/79 as modified by the circular dt. 28/8/80. In that case it was held that no one engaged on monthly wages can be treated as casual worker within the purview of the said circular dt. 3/8/79.

It appears that no appeal was taken against those judgements and therefore, those decisions stand un-shaken. It is not proper for a single Bench of this Tribunal to take a view which is against the decision of a Division Bench of this Tribunal on the same point specially when those decisions stand un-shaken till this date. Following the above decisions of this Tribunal, it is held that the applicant cannot take advantage of circular No. 1700-EMP dt. 3/8/79 as stated above. As the notification as the State Govt. does not cover the case of the applicant, therefore, he cannot take advantage of the decisions cited by the ld. advocate for the applicant. The application cannot be entertained.

The case is, accordingly, dismissed. No word is made as to costs.

Plain copy of this judgment counter-signed by the authorised officer be furnished to the ld. advocates of both sides.

Sd/- Illegible  
Chairman

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**Government of West Bengal**  
**Office of the Director of Land Records & Surveys**  
**& Jt. Land Reforms Commissioner, West Bengal**  
**35, Gopal Nagar Road, Alipore, Kolkata-700027**

Memo. No. 2419/1579/CS-SAT/01

dated, Alipore, the 1<sup>st</sup> Nov, 2001.

To  
The Dist. Land & Land Reforms Officer, Midnapore.

Subject : O.A. No. 1689 of 2000, Sakti Sadhan Chowdhury and 2 others – Vs – State of West Bengal and others.

The aforesaid application has been moved before the Hon'ble West Bengal Administrative, Tribunal claiming inter alia promotion to the post of Gr-C on the basis of certificate of secondary school examination issued by National Open School, New Delhi, treating the same as equivalent to Madhyamik Examination, under West Bengal Board of Secondary Education, Govt. of West Bengal and also on the analogy that some employees having passed secondary school examination from National Open School, New Delhi have been given promotion to the posts of Gr-C. The matter came up for hearing on 1.10.2001 and the Hon'ble Tribunal has been pleased to adjourn the matter till 22.1.2002.

It is stated in this connection that the Asstt. Secretary Education Deptt., Govt. of West Bengal under memo No. 774-SE(A)/ 10M-46/2K dtd. 14.8.2000 intimated the Addl. Dist. Magistrate (General), Midnapur that certificate of National Open School, New Delhi may not be taken as equivalent to those of Madhyamik Examination of West Bengal Board of Secondary Education or its equivalent since it does not satisfy Govt. Order no. 376-SE(Apptt) dtd. 21.3.2000.

He is therefore, requested to please detect the cases of employees who were given promotion in terms of this Dte. Memo. No. 242/2052-2072/BI/95 dtd. 3.6.98, if any, at an early date and to withdraw such promotion after giving personal hearing to each of them. He is also requested to send a report of action taken from his end to this Directorate at the earliest.

This is extremely urgent.

D. Chaudhuri  
Director of Land Records & Surveys & Jt. Land  
Reforms Commissioner, West Bengal

Memo. No. 2419/1580-97/CS-SAT/01

dated, Alipur, the 1/11/01.

Copy to Dist. Land & Land Reforms Officer, \_\_\_\_\_ for information and necessary action.

D. Chaudhuri  
Director of Land Records & Surveys & Jt. Land  
Reforms Commissioner, West Bengal

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**Government of West Bengal**  
**Office of the Director of Land Records & Surveys**  
**& Joint Land Reforms Commissioner, West Bengal**  
**35, Gopal Nagar Road, Alipore, Kolkata-700027**

Memo no. 746/1274-1351/CS-SAT/02

Dated: 26/6/02

To

1. The District Land & Land Reforms Officer, .....
2. The Sub-Divisional Land & Land Reforms Officer, .....

Sub: Order Dt. 1.3.2000 passed by Ld. Tribunal in O.A No. 121/98 with O.A no. 285/98, Tapan Kr. Nandi & Others – Vs – State of West Bengal & ors.

Question of offering promotion to an employee not having passed School Final or its equivalent was considered by the Govt. contained in circulars issued in different dates, viz: 133(52)-F dt. 12.1.1963, 175-F dt: 9.1.80 and 5874-F dt: 21.6.85. The contents of these circulars were brought to the notice of the Ld. Admn. Tribunal recently, in a case whether a Class-X pass certificate of erstwhile Higher Secondary Education can be treated as equivalent to School Final pass and the extent of its applicability.

After careful consideration of the circulars and its purport in its true perspective as they were issued by the Govt., the Ld. Tribunal has been pleased to hold that Class-X pass certificate of erstwhile Higher Secondary cannot always be treated as equivalent or at par with School Final pass in Madhyamik. It was held by the Ld. Tribunal that the Circular has its constraints to a limited application and it is confined to those only who sought for appointments to a post 'Gr-C' where minimum qualification is required to be School Final pass or its equivalent. So in case of appointment of 'Gr-D' posts, the question of such relaxation is not required at all, so the applicability of such relaxation at a subsequent stage is not warranted at all. (Copy of judgment appended for ready reference). The annexed judgment clarifies it through an example.

Two candidates 'A' & 'B' both reading in Class-XI of the earst-while Higher Secondary Education.

A- Opted for seeking appointment in Gr-'C' (Class-III post)

B- Opted for appointment in Gr-'D' (Class-IV) Post

A- Wanted to exercise the Govt. circular for treating his educational qualification at par/ equivalent with School Final.

B- Did not require the circular for the purpose of his appointment, because his passing in Class-VIII is considered only even he passed the S.F. or higher degree.

In case of promotion, candidate 'A' was allowed in terms of G.O.5874-F Dt: 21.6.85 but the candidate 'B' was not allowed until he passes the S.F.Examination. In case of candidate 'A', principles of promissory estoppel is attached in terms of saving clause of circular Dt: 21.6.85.

In the cited judgement, the cases of two Gr-D petitioners out of which one is related to this Deptt., joining after 1980, claiming relaxation of the circulars, was discussed, but Ld. Tribunal has been pleased to

reject their cases as they did not enter the services on the strength of those circulars and the claim for the benefit of relaxation as provided under Memo.No. 175-F Dt: 9.1.80 was rejected.

The judgement may prove to be helpful in dealing with similar question regarding promotion from Gr-'D' to Gr-'C' posts.

Encl: As stated.

D. K. Chaudhuri  
Director of Land Records & Surveys  
and Joint Land Reforms Commissioner, W. B.

<http://wbllroa.in>

**West Bengal Administrative Tribunal**  
**Bikash Bhavan, 3<sup>rd</sup> Floor, Salt Lake**  
**Calcutta-700091**

Case No.OA-121/98 with OA-285/98.

Shri Tapan Kumar Nandi & Ors.  
..... Petitioners.

-Vs-

State of West Bengal,  
Service through the Secretary,  
Food & Supplies Department,  
11A, Mirja Galib Street,  
Calcutta-700 087. & Ors  
..... Respondents.

For the Petitioner:

Mr. S. Sanyal  
Ld. Advocate.

For the Respondents:

Mr. A. K. Ghosh,  
Law Officer/Deptl. Reptv.  
Mr. S. Srimani  
Ld. Advocate

The date of delivery of judgement is 1.3.2000

**JUDGEMENT**

OA-121/98 and OA-285/98 have been heard analogously and disposed of by the same judgement as both the cases involve the same issue.

Shri Tapan Kumar Nandi is the petitioner in OA-121/98 and he joined as a Gr. 'D' employee on 26.11.80. Shri Sachin Roy, the petitioner in OA-285/98, is also a Gr, 'D' employee and joined on 9.10.80. Both the petitioners claimed the benefit of promotion in terms of Notification/ Memoranda dt. 12.1.63, 22.1.75, and 9.1.80. The grounds for such claim of promotion is the possession of-Class-X pass-certificate from the Higher Secondary School. Both the petitioners were in Class-XI in the year 1972.

Ld. Advocates for the petitioners submit that as both the petitioners possess the requisite certificates of Class-X pass from Higher Secondary School, they are eligible to be promoted in terms of Memorandum No. 3161, dt. 22.1.75 read with No.133(52)-F/F2M-100/62, dt. 12 January, 1963. Ld. Advocate for the petitioner has also drawn our the attention to para. 1 of Memorandum No.175-F,dt.9 January,1980.

Mr. A. K. Ghosh, Law Officer/Departmental Representative appeared in 285/98 and Mr. S Srimani Ld. Advocate appeared in OA-121/98. They refuted the claim of the petitioners and also used reply in both the cases. In Case No.OA-285/98, no rejoinder has been filed. It is submitted by Shri Ghosh, Law Officer/Deptl. Rep. that the petitioners cannot claim the benefit of promotion on the grounds of:- firstly, the petitioners did not enter into service in terms of Memorandum No. 133(52)-F/F2M-100/62,dt.12 January 1963 and they also can not claim the benefit of Memorandum No.175-F, dt.9 January, 1980, specially para. 1. It has been submitted by Mr. Ghosh that both the petitioners have joined service after 9<sup>th</sup> January, 1980 as Shri Tapan Kumar Nandi, the petitioner in OA-121/98, joined on 26.11.80 and Shri Sachin Kumar Roy joined on 9.10.80. Secondly, in case of Shri Tapan Kumar Nandi, the authority concerned considered the case for promotion but could not accommodate as his name appeared at serial No.50 and the promotion was given upto serial No. 37 of the approved list of the eligible candidates.

Considered the submissions of Ld. Advocates of the petitioners and also the submission made by Mr. A. K. Ghosh Departmental Representative/ Law Officer and Mr. S. Srimani Ld. Advocate. Also

considered the reply and rejoinder and perused the order issued by the respondents in respect of Shri Tapan Kumar Nandi in OA-121/98 being Annexure 'H' at pg. 43. Admittedly both the petitioners have the requisite qualification, ie. Class-X pass certificate from Higher Secondary School and both were eligible to be considered for promotion in terms of Memo.No.316-F, dt. 22<sup>nd</sup> January, 1975. As both the candidates entered into service in the closing month of 1980 and as in terms of amendment of promotion prospect of Gr. 'D' employees Rules 1974, the preference shall be given in the matter of promotion to those who have rendered not less than five (5) years continuous service as permanent status, quasi permanent or temporary Govt. Service in the Office (pg.8 in OA-285/98), the petitioners can not claim preference. It is further found that Shri Tapan Kumar Nandi was considered for promotion in the year 1985, but he could not be accommodated for promotion in the year 1985, for serial at which the name of the applicant, i.e. Shri Tapan Kumar Nandi could not be reached. When next time promotion was given in the year 1993, the Finance Department withdrew the benefit of recognizing Class-X pass certificate of Higher Secondary School equivalent to School Final or Madhyamik vide G.O. No.5874-F, dt. 21.6.85 and hence he was denied the benefit. It is thus found that the benefit of promotion taking into consideration of Class-X pass certificate was introduced vide Memo No. 316-F, dt. 22 January, 1975 and it remained in force till 21 June 1985 as contained in No. 5874-F, of the Finance Dept. As both the petitioners entered into service after issuance of Memo No. 175-F, dt. 9<sup>th</sup> January, 1980, the benefit of para.1 as contained in the Memo. cannot be extended to them as they were out in service at all. The relaxation given in the concluding para in Memo No. 5874-F, dt. 21 June 1985 is also not attracted as in the same para it has been mentioned that "this will not, however, affect those who are already in service on the strength of the Finance Department order No.133(52)-F, dt.12.1.63, read with No.175-F, dt.9.1.80". It has been made clear in the G.O. that who are already in service on the strength of the Finance Deptt's, order as mentioned above, the relaxation will be available to them. But the petitioners entered into Gr. 'D' post on the basis of the requisite qualification of Class-VIII pass certificate and they did not enter into service on the strength of Class-X pass certificate from Higher Secondary School. From discussion above, it is found that there is no infirmity in No. 4578/FS/O/Sectt./DP/9A-16/97, dt. 8 December, 1997, and the petitioner in OA-285/98 also can not claim the benefit of relaxation as provided in Memo No. 175-F, dt. 9 January, 1980, specially para. 1.

We, therefore, have no hasitation to hold that the petitions do not deserve any consideration and hence these are dismissed. In the facts and circumstances of the case, no order is made as to costs.

Sd/- M.M. Mandal  
Member(A)

Sd/- N.N.B  
Chairman

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