

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Raja Basu Chowdhury

**WPA 18203 of 2015
Sudip Adhikari & Ors.**

v.

North Bengal State Transport Corporation & Ors.

With

**WPA 19215 of 2015
Basudeb Hazra & Ors.**

v.

State of West Bengal & Ors.

With

**WPA 19367 of 2015
With
IA No. CAN 3 of 2024**

Subhash Ghosh & Ors.

v.

State of West Bengal & Ors.

With

**WPA 28597 of 2015
Sanat Guha & Ors.**

v.

State of West Bengal & Ors.

With

**WPA 4419 of 2014
Joy Gopal Saha & Ors.**

v.

**North Bengal State Transport
Corporation & Ors.**

With
WPA 4420 of 2014
Proditpa Ghosh & Ors.
v.
North Bengal State Transport
Corporation & Ors.

For the petitioner in all matters	:	Mr. Kamalesh Bhattacharya Mr. Rezaul Hossain Mr. Anirban Saha Mr. Parvez Hossain
For the State in all matters	:	Mr. Amal Kr. Sen, Ld. AAG
For the State in WPA 18203 (w) of 2015	:	Mrs. Tapati Samanta
For the NBSTC in all matters	:	Mr. Srijan Nayak Ms. Rituparna Maitra
Heard on	:	20.03.2026.
Judgment on	:	22nd June, 2026.

Raja Basu Chowdhury, J:

1. The questions involved in the above writ petitions are all similar. These writ petitions are pending for more than a decade and have been filed between the years 2014 and 2015. Records would reveal that there is an interim order subsisting. In the writ petitions, the petitioners have claimed for a declaration that the petitioners being the wards of the deceased employees of the North Bengal State Transport Corporation (in short, the "NBSTC") having fulfilled the criteria for appointment under died-in-harness scheme, the respondents are legally obliged to approve the

appointments of the petitioners against the respective contractual engagement and to regularize their service in the regular establishment. The petitioners, independent of such prayer have also sought for regularization of the services.

2. The above writ petitions have been assigned for hearing before this Court and have been accordingly taken up for consideration. Since the petitions raise a common issue, all the petitions are taken up for consideration together.
3. The petitioners claim to be wards/legal heirs of the deceased employees who were in the employment of the NBSTC.
4. According to the petitioners, their predecessor having died untimely death, the petitioners had applied for appointment on compassionate ground. Following the above, the Managing Director of the NBSTC by individual communications had called upon the petitioners to appear for interview along with necessary certificates/testimonials and valid conductor's licence, in original, in support of their qualification, at the time of interview. The petitioners having participated in such process by an order dated 10th December, 2008, the petitioners were appointed on contractual basis for one year from the date of joining on a consolidated remuneration of Rs. 4,000/- subject to the terms and conditions as appearing in such memorandum. Similar appointment orders were also issued in respect of some of the

other petitioners on 17th February, 2009, 19th August, 2009 and on 1st September, 2009. Pursuant to the aforesaid, the petitioners had joined the services.

5. Records would reveal that the contractual appointment of the petitioners effected vide office order dated 10th December, 2008, and then subsequently by an order dated 23rd December, 2009, stood extended for another term of one year. According to the petitioners, the extension had been granted from time to time until the year 2015. It is also the petitioners' case that in identical set of facts, WP 4419(w) of 2014 moved by similarly circumstanced workers had travelled up to the Division Bench whereupon the Division Bench of this Court by an order dated 7th August, 2014 had directed the Transport Secretary to formulate the scheme for regularization of the petitioners in such case against the existing vacant posts, if necessary, in a phased manner. When the matter was moved, a Co-ordinate Bench of this Court considering the peculiar facts by an order dated 11th July, 2016 had granted an interim order to the effect that the services of the petitioners shall not be disturbed till disposal of the writ petition. The petitioners are still continuing in services. From time to time, the pay package of the petitioners has been enhanced and presently the petitioners are being paid Rs. 13,500/-, as consolidated remuneration.

6. Mr. Bhattacharyya, learned advocate representing the petitioners has highlighted by drawing attention of this Court to the affidavit-in-opposition filed by the respondent nos. 1 to 4 that a decision had been taken by the Government on 11th May, 2007 in a meeting held in office of the Additional Chief Secretary, Transport Department, Government of West Bengal with the Managing Director of CTC, CSTC, NBSTC, the Joint Secretary and Assistant Secretary, Transport Department, on the issue of appointment on compassionate ground in died-in-harness category. According to the statements made in the affidavit, it was decided in such meeting that since the applicants are suffering a lot for a long time for getting the desired relief, and considering the plight and the harassment, the decision of temporary engagement for those candidates in operational vacancies of drivers, conductor etc. as available was taken on the condition of they being found otherwise eligible. It has been thus, decided to engage them on contractual basis. According to such affidavit, a selection committee was put in place who had prepared a roster strictly on the basis of seniority in accordance with the date of death and in course thereof several persons were called for interview on 20th October, 2008 and 21st October, 2008. The committee during the course of interview rigidly assessed the financial condition of the candidates, age at the time of interview, aptitude etc. The

committee after careful consideration, had prepared a panel duly signed by all members of the committee which was displayed on the notice board for the qualifying and disqualifying candidates. Accordingly, all those candidates who qualified got contractual employment purely on temporary basis on the condition of yearly renewal. According to Mr. Bhattacharya, since the petitioners were engaged on the basis of a selection process conducted by the authorities, the appointment of the petitioners cannot be said to be irregular. He has drawn the attention of this Court to the Judgment delivered in the case of **Jaggo v. Union of India & Ors.**, neutral citation **2024 INSC 1034**, to *inter alia*, contend that the respondents cannot be permitted to utilize the services of the petitioners on temporary basis so as to deprive them of their legitimate right to be entitled to the minimum salary that is available to a regular employee. The employees who are discharging their duties as drivers and conductors are also entitled to equal pay for equal work.

7. Mr. Sen, learned Additional Advocate General representing the State on the other hand has submitted that the employment of the petitioners is purely contractual. It is his contention that in the instant case, no Scheme had been framed by the State Government and/or the respondents for providing employment to the wards of the deceased employees on compassionate ground.

Independent of the above, by drawing attention to the offer of appointment, it is submitted that the appointments are all contractual. Since the appointments are contractual and have not been made in accordance with the selection process, the petitioners do not have any right to seeks regularization.

8. This Hon'ble Court in the given facts ought not to allow the prayer for regularization since the appointment is not in respect of any sanctioned post. According to him, it is the prerogative of the employer either to fill up or not to fill up a particular post. For this Court to allow a prayer for regularization, the initial entry into service has to be against a sanctioned post. It is immaterial whether any subsequent vacancies arise, the same cannot adhere to the benefits of the petitioners. In support of his aforesaid contention, he has relied on the Judgment delivered in the case of ***State of Rajasthan & Ors. v. Daya Lal & Ors.***, reported in **(2011) 2 SCC 429**. According to him, for the Court to consider grant of relief on the ground of equal pay for equal work, diverse factors require consideration. In his view, the same is only possible through a specialized body. In support of his aforesaid contention, reliance has been placed on the Judgment delivered in the case of ***State of Bihar v. Bihar Secondary Teachers Struggle Committee, Munger & Ors.***, reported in **(2019) 18 SCC 301**. Mr. Sen has also relied on the Judgment delivered in

the case of ***State of West Bengal v. Debabrata Tiwari & Ors.***, reported in **(2025) 5 SCC 712** for the proposition that in absence of any scheme, the Court cannot allow the prayer for compassionate appointment.

9. Mr. Nayak, learned advocate appears on behalf of the NBSTC. According to him, the petitioners have no legal right to seek regularization. Under the peculiar facts noted in the affidavit filed by the State, the petitioners had been appointed. The petitioners were well aware that the appointment is contractual. If, the petitioners have chosen to accept the contractual appointment, the respondents cannot be compelled to regularize the same. By referring to the report filed on behalf of the NBSTC, he has once again clarified that no scheme as of now exists for absorbing the employees.
10. Heard, the learned advocates appearing for the respective parties and considered the materials on record. It is an admitted position that the predecessors of the petitioners had while in service of NBSTC died untimely death. Since, the petitioners had applied for compassionate appointment, the managing director of NBSTC by individual communications had called upon the petitioners to appear for interview along with their certificates, testimonials and requisite conductor's licence, for interview. The petitioners participated in such selection process before a

selection committee, and subsequently a panel was prepared. The persons from the panel were called for interview. The names of the successful candidates were published in the notice board and thereafter the individual petitioners having become successful in the appointment process were appointed on contractual basis against operational vacancy for one year from the date of joining on a consolidated remuneration of Rs. 4,000/- subject to the terms and conditions as appearing in the memoranda dated 10th December, 2008, 17th February 2009, 19th August 2009, 1st September 2009. As would appear from the aforesaid memoranda, and on the basis of specific disclosure made by NBSTC in its report affirmed in the form of an affidavit on 9th December 2014, a total of 339 appointments had been made. Out of the above, 335 appointments have been made for contractual conductors and 4 as contractual drivers.

11. Records would reveal that the contractual appointment of the petitioners were effected vide office order dated 10th December, 2008, and subsequently by an order dated 23rd December, 2009 the same stood extended for another term of one year. According to the petitioners, the extension had been granted from time to time until the year 2015. At present, as per the above report of NBSTC, these contractual employees are receiving a pay package of Rs.13,500/-. As per their designation, these contractual

employees are discharging their duties as conductors and drivers, apart from other duties as per the exigencies.

12. Though the learned Additional Advocate General representing the State has vehemently contended that in any event, absence of appointment of these employees in sanctioned posts, their appointments cannot be regularised, it is not in dispute that the petitioners are the wards/legal heirs of the deceased employees of the NBSTC. It is not the case of the NBSTC that the parents or the spouses of the petitioners who were in service during their respective lifetimes were not working against sanctioned posts. If, the petitioners are the wards of employees who had died in service, it is obvious that the posts held by those employees (now deceased), which were sanctioned posts, had fallen vacant on the death of such employees. Consequentially, the appointment of the petitioners which were against such operational vacancies, cannot be said to have been made against *ad hoc* posts, at least no such disclosure has been made. It is also not in dispute that the appointment of the petitioners was not made without holding a selection process. When an organ of the State has chosen to select candidates and appointed them against the posts of deceased employees which were originally sanctioned, it cannot be said that the appointment was illegal though the same, may be irregular and not strictly in accordance with the service rules. It

may also be noted that the above selection process had the concurrence of the State as would appear from the minutes of the meeting held on 11th May, 2007 in presence of the Joint-Secretary, Transport Department, Government of West Bengal. In this context, I find that the Hon'ble Supreme Court in the case of **Jaggo** (supra) has quoted a passage from the judgement delivered by the Hon'ble Supreme Court in the case of **Vinod Kumar & Ors. etc. v. Union of India & Ors.**, reported in [2024] 1 SCR 1230. In the above judgement, it has been observed that in the case of **Secretary, State of Karnataka & Ors. v. Umadevi & Ors.**, reported in (2006) 4 SCC 1, the Hon'ble Supreme Court has distinguished between irregular and illegal appointments, underscoring the importance of considering certain appointments, even if they were not made strictly in accordance with the prescribed rules and procedure. Such appointments cannot be said to be illegally made if they had followed the procedures of regular appointment, as in the present case. I find that the Hon'ble Supreme Court in the said case had also noted with approval that the International Labour Organization (in short, the "ILO") of which India is a founding member, has constantly advocated for employment stability and fair treatment of workers. The ILO's Multinational Enterprises Declaration encourages companies to provide stable employment and to observe

obligations concerning employment, stability and social international security. While seeking to explain the judgement delivered in the case of **Umadevi** (supra), the Hon'ble Court had observed that though the same seeks to curtail the practice of back door entries and ensure appointments adhered to constitutional principles, it is regrettable that the principles are misapplied to deny legitimate claim and though in such judgement, it has been held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than 10 years, should be considered for regularization as one time measure, however, the intent of the judgement is being subverted when institutions rely on its dicta to indiscriminately reject the claims of the employees, even in cases where appointments were not illegal, but mainly lack adherence to procedural formalities. It has also been observed in the above judgement that the Government department often rely on the judgement of **Umadevi** (supra) to argue that no vested right to regularisation exists for the temporary employees, overlooking the judgement's explicit acknowledgement of cases where regularisation is appropriate. This selective application distorts the judgement's spirit and purpose, thereby weaponising it against employees who had rendered indispensable service for decades. In the above

judgment, it has also been observed that it is imperative for the government department to lead by example in providing fair and stable employment. Employing workers on temporary basis for extended period, especially when their roles are integral to the organisation's function, is not only contravention of international labour standard, but also exposes the organisation to legal challenges and undermines employee's moral.

13. Similarly, in this case, as would appear from the nature of appointments, the appointments of the petitioners are integral to the functioning of the NBSTC. It has elaborately been discussed hereinabove that the appointment of the petitioners was through a selection process. As such, the appointments cannot be said to be illegal. They may at best be considered to be irregular. The respondents are paying a meagre amount of Rs. 13,500/- to the petitioners towards consolidated remuneration and are thereby exploiting the petitioners. The workforce of these employees is about 339. It is true that ordinarily, to equate the nature of work carried out by one set of employees with another set requires specialization, however, in the instant case, the fact that the petitioners discharge their duties as drivers and conductors requires no rocket science to appreciate that the petitioners are being exploited at the hands of the State.

14. The judgment delivered in the case of **Dayalal & Ors.** (supra) cannot be made applicable in the facts of the present case. In the said case, certain temporary appointments as Assistant Superintendents were made in aided hostels in 1985 and 1986. In 1996 the prefix "Assistant" was omitted and thereafter the concerned respondents were known as Superintendents. The matter also dealt with temporarily appointed superintendents. The writ petition was filed contending that the petitioners were employed on full-time basis and were discharging functions similar to those of superintendents in government hostels. They sought for regularization in the post of Hostel Superintendent and payment of salary at par with Hostel Superintendent of Class C Hostels of the Social Welfare Department. The State Government issued an order on 28th December, 1998 stopping the practice of appointing Class IV employees on consolidated wages and to remove any person appointed on that basis. Later by a circular dated 21st January, 1999, the District Social Welfare Officers were directed to remove part time chowkidars/cooks employed by the Department and replace them by ex-servicemen or widows of ex-servicemen. It is in those facts, the Hon'ble Supreme Court in paragraph 11 framed two several questions on the issue of regularisation and thereafter, had made the observations that the High Court shall not under Article 226 of the Constitution issue

directions for regularization unless, the employees seeking regularization have been appointed in pursuance to a regular employment in accordance with relevant rules, the other directions would also appear therefrom. Admittedly, the said case and the present case are different on facts. It is not in dispute that the appointment of the petitioners was made though on contractual basis, however, upon a selection committee being constituted with the concurrence of the State. The appointments were against operational vacancies, as available. Sanctioned posts had fallen vacant consequent upon death of the parents and/or spouses of the petitioners. The above judgment, in my view, is distinguishable on facts and does not assist the respondents' case.

15. The next judgment relied on by the Learned Additional Advocate General was the case of ***State of Bihar & Ors.*** (supra). The said case dealt with parity of pay. In the said case, in 1981 all non-governmental secondary schools were nationalised and the management was taken over by the State of Bihar. Consequently, all teaching and non-teaching staffs were given salaries and emoluments at the Government scale under various scheme like Sarva Shiksha Abhiyan. The State Government under the schemes inducted large number of teachers at Panchayat, Nagar Panchayat and Municipal levels, but were not given same salaries

and emoluments like the teachers who were paid at the Government scales. It is in that context, whether such teachers were discharging the same set of duties as that of a regular teacher, the Hon'ble Supreme Court observed that in order to consider the applicability of the doctrine of equal pay for equal work, one of the fundamental aspects to be considered is the nature of duty. In the said case, the selection of teachers was at local level, the selection of teachers was not through Bihar Public Service Commission. Having regard thereto, the Hon'ble Supreme Court in paragraph 96 had observed that the mode of recruitment/selection may be considered as one of the factors but the nature of duties performed must be identical, which evaluation must be left to the expert body. Such is not the case here. The employees are drivers and conductors. The aforesaid judgment is distinguishable on facts and does not assist the respondents, especially when it is not the case of the respondents that their employees are discharging any lesser duties than the drivers and conductors.

16. The next judgment relied on by the Learned Additional Advocate General is the case of ***State of West Bengal*** (supra). The said matter dealt with the issue of compassionate appointment. Since in the present case the petitioners have

already been given appointment, though on contractual basis, the above judgment does not assist the respondents.

17. In the light of the above, since, it is apparent and clear that the respondents have been enjoying service of the petitioners and have been benefited from the service to a large extent, I am of the view that the respondents cannot be permitted to exploit the petitioners. Thus, the petitioners are entitled to be regularised in regular appointment, especially when they are discharging duties, which are integral to the respondents' functioning, and since their initial appointment was not illegal, though, the same may be irregular.

18. Accordingly, the writ petition stands allowed by directing the respondents to regularize the petitioners in service from the date of filling of the writ petition. However, the regularisation from the date of filling of the writ petition shall only be for the purpose of computing notional benefits, actual benefits shall be disbursed in favour of the petitioners from the date of this judgement.

19. There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)