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**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

WPA/11888/2025

BIMAL KUMAR PATRA
VS
THE STATE OF WEST BENGAL & ORS.

Mr. Soumen Kumar Dutta Advocate
Ms. Juthika Barman, Advocate

.....for the Petitioner

Mr. Piush Chaturvedi, Sr. Advocate
Mr. Rajdeep Mantha, Advocate

.....for the State

Mr. Nayan Chand Bihani, Sr. Advocate
Ms. Papiya Banerjee Bihani, Advocate

.....for the DSDA

1. The petitioner is a casual employee with the respondent nos. 4 and 5. The petitioner is aggrieved that he has not been given the benefits under various memos, emanating from the parent memo of September 16, 2011 being memo no. 9008-F(P) (in short, the said memo).
2. The petitioner has been in service since December 10, 2001 when he was selected as a peon to serve on a contractual basis under the Digha Shankarpur Development Authority. The petitioner has been in service for some time now.
3. The petitioner has made the following submissions:
 - i) *The petitioner is covered by the memo of September 16, 2011 and is thereby entitled to all benefits flowing therefrom as entailed therein and in subsequent memorandums of 2016 and thereafter.*
 - ii) *The petitioner has been in contractual service for 10 years and has served for 240 days in a year as a contractual employee, thereby bringing him within the domain of the said memo.*

- iii) *In view thereof, the petitioner ought to be given the benefits as entailed therein.*
4. He has placed reliance on a decision of this Hon'ble Court passed in **WPST/171/2023 (Hemanta Das Bairagya Vs. The State of West Bengal & Ors.)**.
5. Mr. Chaturvedi, learned senior Advocate appearing for the State, has made the following submissions:
- i) *The petitioner was appointed as a contractual employee not against any sanctioned vacant post.*
 - ii) *Thus, the petitioner's claim was rejected by the order of the Finance Department as entailed in the letter of September 26, 2018.*
 - iii) *The refusal of the State to extend the benefits to the petitioner was on the ground that the petitioner was not appointed or engaged against any sanctioned post.*
 - iv) *The benefits which have been given to the petitioner are within the internal management affairs of the respondent no. 4.*
 - v) *Thus, this does not entail a right on the petitioner, nor does it entail any corresponding liability on the State.*
 - vi) *Thus, the petitioner is not entitled to the benefits under the said memo or the clarificatory memos in consequence thereof.*
6. Mr. Bihani, learned senior Advocate appearing for the respondents 4 and 5, submits that the memo of September 16, 2011 may or may not be applicable to the petitioner. However, if it is applicable, the petitioner has to fulfill four criteria as entailed there-under. These criteria are:
- a) *The employee has to render 10 years of continuous service. The continuous service of 10 years should*

entail 240 working days in each of those years.

- b) He should have rendered at least 10 years of service as on August 1, 2011.*
 - c) He has to be attached to an establishment of the Government.*
 - d) For these to be applicable and enforceable, he should have a certificate from the designated authority certifying that he has served for 240 days in every one of those 10 years for which he has rendered service.*
7. Bereft of all of the aforesaid, the respondent nos. 4 and 5 in their magnanimity and their wisdom have extended and indeed enhanced the salary/wages of the petitioner over a period of time, without insisting on any of the aforesaid criteria. This cannot be construed as a right which has befallen the petitioner.
 8. The petitioner has not challenged the order of September 26, 2018 of the Finance Department, by which the petitioner was held to be beyond the purview of the said memo, not being engaged in sanctioned posts.
 9. I have heard the learned Advocates for the parties and considered the decisions and documents relied upon by them.
 10. The grievance of the petitioner that the benefits under the said memo have not been extended to him falls short of the memo that a person will be entitled to the benefits provided he has been appointed to a post which is sanctioned as well as vacant. As on September 26, 2018, this proposition was flawless, un-assailed, and applicable to every person who claimed a benefit under the said memo. Interestingly

enough, the order of September 26, 2018, of the Finance Department, Government of West Bengal has not been challenged in this writ petition. Whether this omission is inadvertent or by design is not of much relevance.

11. This much is true that the law has undergone a sea-change from September 26, 2018, till the present times. This sea-change has occurred by virtue of a judgment of the Hon'ble Division Bench of this Court passed in ***WPST/171/2023 (Hemanta Das Bairagya vs. State of West Bengal & Ors.)***.
12. The Hon'ble Division Bench has in no uncertain terms held that it is immaterial and indeed not the basis of the said memo that it would be applicable only to persons who were appointed against sanctioned posts in all cases. However, this judgment came to be delivered almost after a period of more than six years had lapsed since the order of September 26, 2018.
13. In the interregnum period between 2018, the date of refusal of the Finance Department to extend the benefits of the said memo to the petitioner, till filing of the writ-petition sometime in 2026, the petitioner has been given the benefit by the respondent nos. 4 and 5 on a humanitarian ground that since the petitioner had rendered service for a considerable period of time, his wages/salary should be brought to a reasonable quotient to allow him to lead a dignified life. This generosity of the respondents 4 and 5 to

enhance the salary of the petitioner cannot be treated as a right which has accrued to the petitioner.

14. However, what has accrued as a right is that the petitioner is entitled to be considered for extension of the benefits under the memo of September 16, 2011, by virtue of the judgment of the Hon'ble Division Bench, irrespective of the fact that the petitioner was appointed to a post which was neither sanctioned nor vacant.
15. It is in these circumstances that the petitioner at this stage cannot be granted the benefits of consequential memorandums as prayed for in the writ-petition, without considering his entitlement under the parent memo of September 16, 2011.
16. Thus, it would sub-serve the cause of justice to permit the petitioner to make a fresh representation to the concerned authorities, namely respondent no. 2, Secretary, Finance Department, Government of West Bengal, now armed with the judgment of the Division Bench in *Hemanta Das Bairagya (supra)* for a fresh consideration and to revisit the issue without insisting on the petitioner's appointment to a sanctioned vacant post.
17. The petitioner will make such a representation within a period of two weeks from date.
18. Upon receipt of such an application, the authorities concerned will consider and dispose of the same strictly in line with the decision rendered in *Hemanta Das Bairagya*

(*supra*) within a period of eight weeks thereafter.

19. The authorities will consider the case upon hearing the petitioner with adequate prior notice.
20. A reasoned order shall be passed by the authorities, which will be communicated to the petitioner within a week thereafter.
21. With the afore-stated directions, the writ petition is **disposed of**. No order as to costs.

(Reetobroto Kumar Mitra, J.)