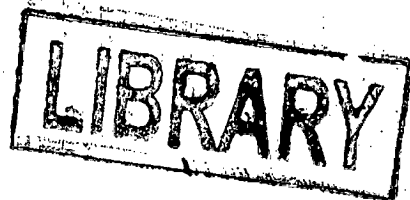


1

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH



No. O.A. 350/01533/2014

Date of order : 19.12.2016

Present : Hon'ble Mr. Justice Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

MD. ARIF HOSSAIN & ORS.

VS.

UNION OF INDIA & ORS. (ASI)

For the Applicants : Md. Golam Mastafa, Counsel
Mr. T. Samanta, Counsel

For the Respondents : Ms. M. Bhattacharyya, Counsel

ORDER (Oral)

Per Mr. Justice Vishnu Chandra Gupta, Judicial Member:

The applicants in this petition are claiming to be persons who have been engaged by the then Nawabs and their agents, who created a monument known as Murshidabad Motijhil Mosque & Cemetery. Being a place of historical importance the Government of India took a decision to declare the aforesaid ancient monument of national importance and kept the same for protection, conservation and preservation of the monument through Archaeological Survey of India.

2. The applicants is claiming the relief of their absorption as a permanent employee of Archaeological Survey of India. The case of the applicants is that the property is being managed actually by the Archaeological Survey of India and, as such, they being the persons employed by the persons, who created the trust, are entitled to be regularised in service. They made a representation. Their request was forwarded by the then SDO, Lalbagh, Murshidabad through District

Magistrate to the Central Government. When their request was not considered an Original Application was also filed in this Tribunal having Original Application No. 1340 of 2013 and in pursuance of an order passed therein on 14.8.2014, the decision has been taken by the Department of Archaeological Survey of India, Govt. of India with regard to grievance of the applicants vide order dated 4.9.2014 (annexed as Annexure "A-11" pages 60 & 61) which is extracted hereinbelow:-

F.NO.MNT/COURT/1340-2-14-2079
Government of India
Office of the Superintending Archaeologist
Archaeological Survey of India
Kolkata Circle, C.G.O. Complex (4th Floor)
Block-DF, Sector-1, Salt Lake City,
Kolkata – 700 064
Phone : (033) 2334-4389 (T.F.), 2334-3775
e.mail: circlekol.asi@gmail.com

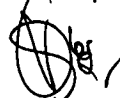
Dated: 14.9.2014

To
Md. Arif Hossain and 10 others,
Employees of Motijheel Mosque and Cemetery,
Lalbagh, Murshidabad.

Subject: Prayer for enhancement of Salary and allowances of the Employees of Motijheel Mosque and Cemetery, Lalbagh, Murshidabad, treating them as regular employees of the Archaeological Department, Government of India – reg.

Sir(s),

With reference to the above cited subject, I am to say that as per order of the Hon'ble High Court passed in W.P. No. 9436(W) of 2007 and as per sub-section (3) of Section 4 of the Ancient Monument and Archaeological Sites and Remains Act, 1958 (24 of 1958), the competent authority of the Respondent No. 2 i.e. Department of Culture, Archaeological Survey of India (ASI) declared the Motijheel Mosque and Cemetery is a Centrally Protected Monument. It is also mentioned here that after receiving the protection proposal, a meeting of the Committee of Directors constituted by the Director General, Archaeological Survey of India to take a view on the proposals submitted by the SA's of respective circles for protection of monuments/sites was held at 3:00 PM on 11.1.2008. The proposal for the protection of the Motijhil Mosque, Murshidabad, was reviewed by the committee. The committee had decided to recommend for its protection after examination of the proposal including the decision that ASI should not agree to the demand of local people to provide them



government job (Annexure-1). Therefore, as per above decision, the department had no provision/policy to treat the local people as regular employees of existing members of the Mosque. The decision was conveyed to the petitioner of the W.P. No. 9436(W) of 2007 i.e. Secretary, Motijhil Jama Masjid Unnayan Committee. He had also replied that they had no demand or claim of any employment or absorption of any existing staff in Govt. service in case the Motijhil Mosque is declared to be a monument of National importance on 15.3.2005 (Annexure - 2). As per order of the Hon'ble High Court passed in W.P. No. 9436 (W) of 2007, the Department of Culture, Archaeological Survey of India published a preliminary notification No. S.O.1136(E) dated April, 2009 in the Gazette of India. In the mean time, a representation was received regarding prayer for enhancement of salary and allowances of the employees of Motijheel Mosque and Cemetery, Lalbagh, Murshidabad and treating them as regular employees of Archaeological Department, Government of India through Shri Abdul Khaleque, the then Joint Secretary to the Govt. of West Bengal. Then and there, this office informed him Government's decision that it is not possible to absorb the employees of Motijhil Mosque & Cemetery. However, the existing religious Status quo will be maintained if the Motijhil Mosque is declared as a Monument of National importance (Annexure-3). However, after the publication of preliminary Gazette Notification vide S.O. 1136(E) dated 30.4.2009, as no objection were raised by anyone, the S.A. Kolkata had approached to the competent authority for the Final Gazette Notification of the aforesaid monument on 4.12.2009. Then Final Notification No. S.O. 1496 (E), dated 28.6.2011 was published in the Gazette of India by the Department of Culture (Archaeological Survey of India). But, as per above notification, the Department has not taken over the management of the Motijhil Mosque & Cemetery. The Department has to take up the work of conservation, protection and preservation only. Therefore, the question of enhancement of salary and allowance of the employees of Motijhil Mosque and Cemetery, Murshidabad as well as treating them as regular employees of the Archaeological Survey of India, Govt. of India, does not arise.

Therefore, as per above circumstances and as per order dated 11.8.2014 of the Hon'ble Central Administrative Tribunal passed in O.A. No. 1340 of 2013, the respondent No. 2 i.e. the Head of this office hereby disposes of the representation dated 2.9.2013 annexed as Annexure A-9 at page 49 of the O.A. No. 1340 of 2013 as well as your representation dated 14.8.2014 received on 20.8.2014 is also hereby disposed off and this decision may please be treated as "Reasoned Order".

Yours faithfully,

Encl.: As stated

(A.K. Patel)
Superintendent of Archaeologist"

3. Aggrieved by the aforesaid order, the applicant filed the present

Original Application.



4. Reply has been filed by the respondents i.e. the Archaeological Survey of India and stating therein that the ASI is not managing the Mosque or the Cemetery. The ASI is only looking after the ancient monument and performing the work of conservation and protection of the monument. The mosque and cemetery is still being managed by others. The respondents Counsel supported the order passed by the authorities.

5. Rejoinder affidavit has also been filed by the applicants reiterating the pleadings earlier made.

6. We have heard the Ld. Counsel for the parties and perused the records.

7. A bare perusal of the impugned order reveals that the Government of India has taken a policy decision on the basis of the recommendations of the committee only to protect the monument in view of the demand raised by the local people. It has also been clarified that the Department of ASI had no provision/policy to treat the local people as regular employees of the department. The decision was conveyed to the petitioners of the Writ Petition in Writ Petition No. 9436(W) of 2007 (copy of the judgment has been annexed by the respondents as Annexure "R-5") when the Hon'ble High Court directed the Government to take a decision to declare the monument as ancient one and take up its protection work. It is also contained in the order of Hon'ble High Court that petitioners of Writ Petition were informed that they had no demand or claim of any employment or absorption of any existing staff in the Government service in case Motijheel Mosque is declared to be a monument of national importance. It was further mentioned in the impugned order that ASI as per notification dated 28.6.2011 has not taken over the management of the Motijheel mosque and cemetery and Department has to take up the work of protection,



conservation and preservation of the monument only. Hence, the Archaeological Survey of India is not the management body of the declared monument of national importance. Hence, the claim of absorption, enhancement of salary etc. could only be looked into by the body which manages the mosque and cemetery and not by Archaeological Survey of India or Government of India.

8. We, therefore, find no merit in this case and no interference is warranted in the impugned order.

9. In view of the above, the Original Application is liable to be dismissed and is dismissed accordingly. However, the rights of the petitioners if any exists in accordance with law with regard to their claim to be absorbed from the body which is in management of the ancient monument may be entertained before appropriate forum.


(Jaya Das Gupta)
Administrative Member


(Vishnu Chandra Gupta)
Judicial Member

SP