

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. No.02/2022

Smt. Debjani Deb Sarkar, W/O.-Sri Amit Choudhury, R/O-Village-Indranagar, P.O.-Indranagar, P.S.-N.C.C, District-West Tripura, PIN-799006.

.....Appellant(s).

V E R S U S

1. The State of Tripura, To be represented by the Secretary, Health Department, Govt. of Tripura, New Secretariat Building, New Capital Complex, Agartala, West Tripura, PIN-799010.

2. The Director of Health Services, Govt. of Tripura, Agartala, West Tripura.

3. The Chairman (Executive Committee), District Health and Family welfare Society (Chief Medical Officer), West Tripura, Agartala.

4. The Chairman (Executive Committee), District Health and Family Welfare Society (Chief Medical Officer), Sepahijala District, Bishalgarh.

5. The Mission Director, National Rural Health Mission, Govt. of Tripura, Gorkhabasti, Agartala-799006.

..... Respondent(s).

For Appellant(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Samarjit Bhattacharjee, Advocate,
Mr. Kawsik Nath, Advocate.

For Respondent(s) : Mr. Debalay Bhattacharya, G.A.,
Mr. Soumyadeep Saha, Advocate,
Ms. N.C. Saha, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

Date of hearing and judgment: **26th April, 2023.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Samarjit Bhattacharjee, learned counsel appearing for the appellant and Mr. Debalay Bhattacharya, learned Government Advocate assisted by Mr. Soumyadeep Saha, learned counsel appearing for the respondents-State.

2. The learned Writ Court refused to interfere in the order of termination of the contractual engagement of the petitioner dated 03.02.2021 made effective from 03.03.2021 holding as under:

"25. Having appreciated the submission of the learned counsel for the petitioner, this court finds that no material has been taken into consideration against the petitioner which were not placed for the petitioner's response. Whether the petitioner was performing satisfactorily or not, will be decided by the employer. This court, yes, may lift the veil to find out whether any material has been taken mala fide against the petitioner for purpose of termination.

26. It may be stated here that lifting the veil is not the end of the matter. Only after lifting of the veil if it is seen that some materials were considered by the employer, which were not made known to the terminated employee or no opportunity was afforded to him/her for response and the employer was prompted by those to terminate the petitioner, in such circumstances the court may interfere.

27. But in the present case, the materials those are apparently utilized for assessment have been made known to the petitioner and placed for response. As such the competent authority was at liberty to take a decision on retention of the petitioner in the service.

28. Ms. Chakma (Saha), learned counsel has stated that the action of the respondent is not tainted by mala fide. Hence, this court does not find any infirmity in the order of termination. The said order of termination has been issued within the terms of the contract of engagement. No other premise subsists which may persuade this court to interfere with the order of termination. As consequence, this writ petition stands dismissed.

There shall be no order as to costs."

3. The petitioner was engaged as a Computer Assistant on contractual basis under the State Health and Family Welfare Society, Tripura initially on 27.02.2007 to which she joined on 02.03.2007. This engagement was for 11(eleven) months but was extended from time to time on the basis of satisfactory performance and continued till the impugned order of termination dated 03.02.2021. It is apparent from the enclosed annexures that the extension was made every time for 11 months and the last extension vide memorandum dated 03.02.2021 also contained the following clause:

"appointment is purely contractual and liable to be terminated at any time without any reason thereof with 1(one) month notice or 1(one) month salary from either side"

4. It is true that during the contractual term of the petitioner, certain notices were issued upon her for absence, such as the show-cause notice dated 31.08.2020 which she also replied to vide Annexure-25 on 02.09.2020. Writ petitioner had taken a plea which is reiterated here also that the precipitate action has actually been taken on alleged misconduct without a proper inquiry to enable her to defend herself. As such, it is stigmatic in nature and would ruin her future prospects also.

5. Mr. P. Roy Barman, learned senior counsel appearing for the appellant/petitioner, has drawn attention of this Court to the averments made in the counter affidavit which, according to him, also goes to show that the show-cause notice issued upon her contemplated appropriate disciplinary action for violation of one such transfer order dated 15.01.2019. Other instances referred to in the counter affidavit such as, the show-cause letter dated 31.08.2020 contemplated official action for some misconduct in late joining. The chronology of events leading up to the termination order would definitely give an impression that it is a colourable exercise of power to get rid of the petitioner without a proper inquiry and is stigmatic in nature. It is submitted that learned Writ Court failed to consider this aspect of the matter while dismissing the writ petition.

6. Mr. Debalay Bhattacharya, learned Government Advocate appearing for the respondents-State, submits that the petitioner's engagement was on contractual basis renewed from time to time for a period of 11 months on each occasion and with a termination clause of one month notice or salary in lieu thereof from either side. The order of termination dated 03.02.2021 read as a whole in no way creates an impression that it is in the nature of a stigma. It is also submitted that the petitioner being a contractual employee cannot claim permanence in service and protection available under the provisions of Article 311 of the Constitution of India or the service laws before the termination of the contract is brought about.

Therefore, the impugned judgment does not require any interference.

7. We have taken note of the chronology of facts and the relevant documents placed on record. It is not in dispute that the petitioner was a contractual employee engaged since 2007 who continued up to 03.03.2021 till her contract was terminated with a one month notice by the impugned memorandum dated 03.02.2021. Each term consisted of 11 months and there is no dispute about the contractual nature of the engagement of the petitioner. Indeed, show-cause notice to explain her absence has been issued on one or the other occasion which the petitioner also has replied. In the

counter affidavit also, such instances have been referred to by the respondents but we may not lose sight of the legal position that the petitioner being a contractual employee did not have a legal right to continue in service on the basis of her engagement renewed every 11 months and that too, with a termination clause of one month notice or one month salary in lieu thereof.

The memorandum dated 03.02.2021 is extracted hereunder:

"No.F.3(5-407)-FWPM/SHFWS/2007
State Health & Family Welfare Society
National Health Mission: Tripura
Palace Compound, Agartala-799001, Tripura (West)

3rd February, 2021

MEMORANDUM

Smt. Debjani Debsarkar was appointed on contractual basis under State Health & Family Welfare Society (National Health Mission), Tripura for 11 (eleven) months as Computer Assistant and was posted at Chief Medical Officer, Dhalai vide No.F.3(5-163)-FWPM/SHFWS/2005 dated 27th February, 2007 and she first joined on 2nd March, 2007.

As per the last en-mass continuation of contractual staff working under NHM, Tripura issued vide Memorandum No. F.3(5-3782) FWPM/ SHFWS/ 2019/09-42 dated 1st April, 2020 Smt. Debsarkar got continuation upto 31/03/2021 along with all other staffs of SHFWS. Now, the appropriate authority has decided to terminate/discontinue her service under NHM Tripura after 03/03/2021. As per terms of the appointment i.e., the 'appointment is purely contractual and liable to be terminated at any time without any reason thereof with 1(one) month notice or 1(one) month salary from either side' as per Column. No.5 of the table below:

Sl No.	Name of the staff	Designation	Place of posting	Date of expiry of present service/continuation
1	2	3	4	5
1	Smt. Debjani Debsarkar	Computer Assistant (Immunization)	Chief Medical Officer, Sepahijala	3 rd March, 2021

Sd/-(03.03.2021)

(Dr. Siddharth Shiv Jaiswal, IAS)

Mission Director, National Health Mission
Government of Tripura."

8. A mere perusal of the termination notice does not create any impression that it is actuated by *mala fides* or is stigmatic in nature. The impugned notice also is not an immediate consequence of the last show-cause notice issued upon the petitioner for absence on 23.11.2020. The employer in such a case is entitled to have an assessment of the suitability of an employee to continue in contractual engagement. If the termination of contract is made by invoking the notice period, it in itself does not mean that it is actuated by any motives or *mala fides*. The learned Writ Court after taking note of the relevant facts and circumstances including the show-cause notices issued upon her earlier and the impugned memorandum dated 03.02.2021 finally opined that the order of termination has been issued within the terms of the contract of engagement. Accordingly, it refused to interfere in the matter.

9. We upon hearing the learned counsel for the parties and having scrutinized the relevant Writ records do not find any error in the impugned judgment calling for our interference in appeal. By way of an abundance, we further make it clear that the order of termination should not be read as stigmatic in nature in any future employment of the petitioner/appellant.

10. The writ appeal is dismissed.

Pending application(s), if any, also stands disposed of.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ

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