

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.455 of 2022

Sri Badal Majumder

....Petitioner(s)

Versus

The State of Tripura and 2 Ors.

....Respondent(s)

For the Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate Mr. D. Paul, Advocate
For the Respondent(s)	:	Mrs. A. Chakraborty, Advocate

HON'BLE MR. JUSTICE ARINDAM LODH
Order

12/12/2023

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. D. Paul, learned counsel appearing for the petitioner. Also heard Mrs. A. Chakraborty, learned counsel appearing for the respondents-State.

It is admitted fact that the petitioner was engaged as Teacher under Sarva Shiksha Abhiyan(SSA) on contractual basis in the year 2007 for a period of one year. Time to time the contractual service of the petitioner was extended till 2019. In the year 2019 the petitioner was implicated with a criminal case which was lodged by a student of the school with the allegation of sexual harassment. There is no evidence or materials before this Court that the contractual period of the petitioner was extended after 2019. However, from the order dated 03.05.2021 it reveals that the contract service of the petitioner was put in suspension till disposal of the criminal case. The petitioner had faced criminal trials in connection with case no. *Special 17(POCSO) of 2021* titled as *State of Tripura vs. Sri Badal Majumder*. However, vide order dated 06.01.2022, the petitioner was acquitted from the charge levelled against him since there was no evidence to substantiate the charge. Thereafter, the petitioner had filed a representation to reinstate/resume his duties due to his acquittal from the criminal charge. The respondents under memo dated 09.03.2022 had rejected the prayer of the petitioner for resuming his duties for the reason that his period of absence was prolonged and the administration being unaware of his pedagogical competency level and

teaching ability. Thereafter, the petitioner again has filed another representation which was also rejected vide order dated 08.04.2022.

Mr. Roy Barman, learned senior counsel has submitted that there is no evidence that the respondents had taken any effort or endeavour to test the teaching ability of the petitioner. The petitioner has not given any reasonable opportunity to prove his ability before the concerned authority. As such, rejecting the prayer of the petitioner to allow him to resume his duty is violative of the principles of natural justice and is liable to be quashed. It is further submitted that the respondents are under legal obligation to reinstate the petitioner and allow him to resume his duty as contractual teacher under the SSA project.

On the other hand, Mrs. Chakraborty, learned counsel for the respondents-State has submitted that the petitioner has no right to claim reinstatement in the service since he was in contractual basis and he was not holding any civil post. Since the petitioner was not holding any civil post, he has no locus at all to file an application under Article 226 of the Constitution of India to seek a direction from this Court to issue a writ of Mandamus for reinstatement of the petitioner. Mrs. Chakraborty, learned counsel for the respondents-State has submitted that the petitioner is liable to be rejected from reinstatement. In support of her submission, Mrs. Chakraborty, learned counsel has placed a decision of this Court in **WP(C) No. 579 of 2020** titled as ***Santajoy Tripura vs. State of Tripura and 6 Ors..***

I have considered the rival contentions advanced by learned counsel appearing for the parties.

True it is, that the teaching ability test of the petitioner has not been conducted by the respondents at any point of time. It is equally true that the petitioner was in contractual period, and on each and every occasion his period of service was extended for one year and it continued up to 2019 till his suspension, as stated here-in-above. A contractual employee cannot claim continuation of his service however long he has served the organization.

Moreso, the petitioner was a teacher appointed under the SSA scheme. In the case of ***Santajoy Tripura(supra)***, learned Single Judge(S. Talapatra, J, as he then was) has rightly held that being the nature of engagement of the petitioner was contractual one, it did not tantamount to hold civil post and in this circumstance he has no right to the post.

I am in agreement with the learned Single Judge that the petitioner's engagement or re-instatement in service can only be decided by the respondents and this Court should not exercise its jurisdiction for directing the respondents for his reinstatement.

Considering the submissions of Mr. Roy Barman, learned senior counsel that the petitioner was not given a reasonable opportunity to test his teaching ability and it was violative of the principle of natural justice, in my considered view, the concerned authority may issue a show-cause notice upon the petitioner asking him to reply as to why his contractual service would not be further extended or continued.

With the aforesaid terms, the instant writ petition stands dismissed.

JUDGE



Snigdha

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by SAIKAT KAR
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