

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. No.122/2023

Sri Dipankar Deb

..... Appellant(s).

V E R S U S

The State of Tripura & others

.....Respondent(s).

For Appellant(s) : Mr. B.N. Majumder, Sr. Advocate,
Mr. B. Paul, Advocate.

For Respondent(s) : Mr. Kohinoor N Bhattacharyya, G.A.

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

Order

13/12/2023

Heard Mr. B.N. Majumder, learned senior counsel assisted by Mr. B. Paul, learned counsel appearing for the appellant and Mr. Kohinoor N Bhattacharyya, learned Government Advocate, appearing for the respondents-State.

2. The writ petitioner is the appellant who is aggrieved by the impugned order dated 25.08.2023 passed in WP(C) No.971 of 2022 whereby the challenge to the order of termination of appointment of the petitioner dated 17.10.2022 has been declined, *inter alia*, holding as under:

"In view of above and after gone through material evidence on record, the present petition stands dismissed by upholding the termination order issued by the respondents. However, insofar as the termination is concerned, this Court is not inclined to express its opinion on the allegations made which are pending investigation and trial filed before the Court below vide West Agartala P.S. Case No.2022 WAG069 and about taking expeditious actions on the requisition placed by the West Agartala Police Station under Section-91 of Cr. P.C in relation to the criminal case registered against the petitioner. In that view of the matter, the present petition stands dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed."

3. Petitioner was a contractual employee appointed as a Logistic Specialist in the year 2011 initially for 11 months which were extended from time to time by the competent authority. However, on the charges of illegal gratification, an inquiry was conducted against him which indicted the petitioner. Based on the inquiry report (Annexure-6 to the writ petition), a show-cause was issued upon him on 13.07.2022. Petitioner denied the allegations vide his reply dated 30.09.2022. However, by the impugned order dated 17.10.2022, the contractual engagement of the petitioner was terminated invoking Clause-2 of the memorandum dated 31.12.2010 of his contractual engagement by giving one month's notice. Learned Writ Court, however, refused to interfere in the order of termination also taking into consideration that the investigation and trial of the Criminal Case being West Agartala P.S. case No.2022WAG069 is pending. The learned Court also took into consideration the purported statement of the petitioner before the committee admitting his guilt. However, Mr. B.N. Majumder, learned senior counsel for the petitioner, submits that even though the petitioner was a contractual employee, if his termination on the face of it is based upon charges, it is stigmatic in nature though the employer has wisely chosen to invoke the notice clause for terminating him. The stigma would continue to stare at him for the rest of his career in any future employment. He submits that if his contractual engagement has been terminated on allegations, proper opportunity to defend should have been accorded. Since the order of termination is based on invocation of the notice clause, petitioner is not able to properly defend himself in respect of the allegations made in order to exonerate himself from the alleged

charges. As such, the impugned order being stigmatic in nature having been passed without proper opportunity to defend, the same deserves to be set aside. Learned Writ Court, however, failed to consider this aspect of the matter. Therefore, petitioner is in appeal.

4. Mr. Kohinoor N Bhattacharyya, learned Government Advocate, has defended the order of termination but he is unable to overcome the legal plea raised by the writ petitioner that the termination order, on the face of it, is stigmatic in nature though the contractual engagement has been ended on one month's notice invoking Clause-2 of the memorandum dated 31.12.2020.

5. We have considered the submission of learned counsel for the parties and taken note of the relevant pleadings placed from the record. The chronology of relevant facts leading to the impugned termination order of the petitioner need not be repeated here. However, we are inclined to extract the order of termination dated 17.10.2022 hereunder as *ex facie* it is stigmatic in nature containing references to the allegations made and the report of the inquiry committee thereupon indicting the petitioner:

"No.F.3(5-4142)/FWPM/SHFWS/Procurement/Conf./2022/S-I
Government of Tripura
Health & Family Welfare Department
Office of the Mission Director
National Health Mission

Dated: 17.10.2022

MEMORANDUM

WHEREAS Sri Dipankar Deb was appointed to the post of Logistic Specialist under the State Health & Family Welfare Society on contractual basis vide Memorandum No. F.3(5-2023)-FWPM/SHFWS/2010, dated 31.12.2020;

AND

WHEREAS, a grave allegation of receiving illegal gratification from suppliers was received against Sri Deb, following which an enquiry committee

headed by Dr. Kamal Reang, Member Secretary of the State Health & Family Welfare Society, conducted a probe into the allegation;

AND

WHEREAS, from the report submitted by the enquiry committee vide no.F.3(5-4142)-FWPM/SHFWS/PROC CONF/2022, dated 20.04.2022, the allegation of receiving illegal gratification by Sri Deb appears to have been prima facie established;

AND

WHEREAS, a criminal case against Sri Deb U/S 406, 468 IPC and U/S 7 of the Prevention of Corruption Act was registered vide West Agartala P/S Case No.2022WAG069, dated 06.05.2022;

AND

WHEREAS, a letter was issued from the office of the Principal Accountant General (Audit), Tripura, vide no.POS/CA/NHM/2021-22/09, dated 12.07.2022, referring to the dubious remittances to the bank account of Sri Deb and another person (Sri Nayan Banik) stated to be a relative and close associate of Sri Deb, and about taking expeditious actions on the requisition placed by the West Agartala Police Station U/S 91 CrPC in relation to the criminal case registered against Sri Deb;

AND

WHEREAS, a show-cause notice was issued to Sri Deb vide no.F.3(5-4142)-FWPM/SHFWS/Procurement Conf./2022/S-I/4049-50, dated 13.07.2022, asking him to adduce reasons as to why his contractual service should not be discontinued/terminated;

AND

WHEREAS, the reply submitted by Sri Deb on 30.09.2022 to the show-cause notice has been carefully examined, and no cogent explanations appear to have been made out in the reply accounting for several dubious monetary remittances made to the bank accounts of Sri Deb and the person allegedly his relative and close associate/accomplice;

AND

WHEREAS, the alleged corrupt practices and illegal acceptance of gratification by Sri Deb had led to a host of adverse media reports, bringing in considerable disrepute to his employer;

AND

WHEREAS, it appears that unless stringent actions are taken against Sri Deb, it may set an alarming precedent and may encourage other officials to indulge in similar corrupt practices with impunity;

AND

WHEREAS, the Clause No.2 of the Memorandum No.F.3(5-2023)-FWPM/SHFWS/2010, dated 31.12.2010, whereby Sri Deb was appointed, clearly lays down that *"The appointment is purely on temporary and contractual basis and liable to be terminated at any time without assigning any reason thereof with 1(one) month's notice from either side"*;

AND

WHEREAS, after taking into consideration the gravity of the allegations subsisting against Sri Deb, and the totality of the circumstances as stated

hereinbefore, it appears that retaining Sri Deb in the contractual service has become entirely untenable;

NOW THEREFORE, in accordance with the Clause No.2 of the Memorandum No.F.3(5-2023)-FWPM/SHFWS/2010, dated 31.12.2010, Sri Dipankar Deb, Logistic Specialist, shall take notice that his contractual engagement under the State Health & Family Welfare Society shall stand terminated on elapse of 1(one) month from the day of the service of this Memorandum to him, without any further correspondence in this regard.

This is issued with the approval of the Health & FW Deptt., Govt. of Tripura, vide U.O. No.3333, dated 11.10.2022.

To

Sri Dipankar Deb, Logistic Specialist,
O/o the MD, NHM, Palace Compound, Agartala, Tripura.

Sd/- (17.10.2022)
(S. Das, TCS, SSG)
Mission Director
National Health Mission, Tripura
(Addl. Secretary, Health & FW Dept.)"

6. In case of a contractual engagement if the termination is based on allegations, the respondent-employer ought to have derived its decision on the outcome of the inquiry proceedings instead of invoking notice clause for his termination when the entire text of the termination order is otherwise stigmatic in nature. In such a situation, even though the termination appears to be innocent by invoking one month notice clause but the stigma attached to the termination would continue to operate against the employee in future.

7. As such, we are inclined to interfere in the impugned order of termination. The order dated 17.10.2022 is set aside. However, considering the gravity of the charges, the respondents are allowed liberty to pass a fresh order in accordance with law after due opportunity to the petitioner. We, however, make it clear that this exercise should be completed within a period of two months from the date of receipt of the copy of the order. The order does not

entail reinstatement of the petitioner during this time. However, in case the respondent-employer is inclined to take a view favourable to the petitioner after the outcome of the fresh exercise, petitioner would be entitled to consequential benefits.

8. The writ appeal stands allowed and disposed of in the aforesaid terms.

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

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ

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