

HIGH COURT OF TRIPURA
AGARTALA

WA No.134 of 2022

- The State of Tripura,**
Represented by the Secretary to the Government of Tripura, Department of School Education, Civil Secretariat, Capital Complex, P.O. Kunjaban, P.S. New Capital Complex, District West Tripura, 799006.
 - Director of School Education,**
Government of Tripura, Agartala, P.O. Agartala, 799001, District West Tripura.
 - State Project Director,**
Sarba @ Samagra Siksha Abhiyan, Tripura Rajya Mission, Government of Tripura, P.O. Agartala, 799001, District West Tripura.
 - Block Project Coordinator,**
Sarba @ Samagra Siksha Abhiyan (Inspector of Schools), Government of Tripura, Amarpur, P.O. & P.S. Amarpur, District Gomati Tripura.
- Appellant(s)

V E R S U S

- Sri Sanirai @ Sanayarai Koloi,**
Son of Suren Manik Koloi, resident of Baishyamani Para, Ompinagar, Amarpur, District Gomati, Tripura.
 - Union of India,**
Represented by the Secretary to the Ministry of Human Resource Development, Department of School Education and Literacy, Shastri Bhavan, Dr. Rajendra Prasad Road, New Delhi, 110001.
- Respondent(s)

For Appellant(s)	:	Mr. D. Sarma, Addl. G.A.				
For Respondent(s)	:	Mr. B. Majumder, Dy. SGI.				
Date of hearing & delivery of judgment	:	<i>2nd December, 2024.</i>				
		<table border="1"><tr><td>YES</td><td>NO</td></tr><tr><td></td><td>√</td></tr></table>	YES	NO		√
YES	NO					
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Whether fit for reporting	:					

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA

JUDGMENT & ORDER (ORAL)

Heard Mr. D. Sarma, learned counsel appearing for the appellants
and Mr. B. Majumder, Dy. SGI appearing for the respondent-Union of India.

Respondent-writ petitioner has appeared through Vakalatnama but he is not present today.

[2] Writ petitioner was a teacher in upper primary classes engaged on contractual basis under the Sarba Siksha Abhiyan scheme vide Memorandum dated 22.01.2011. The terms of appointment provide that the engagement is on purely contract basis for a period of one year which may be extended up to the project period of SSA depending upon their performance on duty and co-curricular activities. The writ petitioner was implicated in a criminal case i.e. ST 25 (GT/A) of 2017 (T-1) under Section 417/376(2)(n) of the IPC. He was convicted under the aforesaid provisions by the Court of learned Addl. Sessions Judge, Gomati Judicial District, Udaipur vide judgment and order of conviction and sentence respectively dated 03.08.2009 and 05.08.2009 and directed to suffer rigorous imprisonment for ten years with a fine of Rs.30,000/- and default sentence for commission of offence under Section 376(2)(n) of the IPC and further sentenced to undergo simple imprisonment for six months under Section 417 of the IPC. Later vide judgment 22.12.2020 passed in Crl.A.(J) No.50 of 2019 (Annexure 4), the learned Division Bench of this Court acquitted the writ petitioner of the charges. After his acquittal, he submitted an application for rejoining on 29.12.2020. Meanwhile, the respondent-State had issued show cause notices on 08.11.2019 followed by Memorandum dated 17.06.2020 as to why disciplinary action would not be taken against him for demonstrating negligence in discharge of duties. Writ petitioner had replied to the show cause Memorandum on 19.01.2021 that he was in jail custody and therefore, prevented from attending his duties as a contract teacher. The State Project Director, SSA rejected his prayer to resume duty vide order dated

28.06.2021 with an observation that his absence is of prolonged duration and the administration being unaware of his pedagogical competency level in teaching ability, his instant prayer could not be considered and is regretted.

[3] Being aggrieved, he approached the Writ Court in WP(C) No.663 of 2021 which was decided by the impugned judgment dated 11.05.2022. The learned Writ Court framed two issues for consideration.

(i) *Whether his absence from service on account of being in jail custody could be used against him when he was acquitted of the charges vide judgment dated 22.12.2020.*

(ii) *Whether his absence for prolonged duration had affected his pedagogical competency level or not.*

[4] The learned Writ Court proceeded to deal with the aforesaid issues and came to the conclusion that the petitioner was not afforded any substantive opportunity to meet those two points by following the principles of natural justice. Hence, the decision to not induct him in service as contractual teacher is vitiated. Accordingly, the impugned order passed by the State Project Director, SSA dated 28.06.2021 was set aside. The respondents were directed to take a decision on the issue of retention by issuing a proper show cause notice delineating the grounds so that the petitioner can occupy a position to give the reply. Being aggrieved, the State is in appeal.

[5] Mr. D. Sarma, learned Addl. G.A. appearing for the appellant-State submitted that petitioner being a contractual employee under the Sarba Siksha Abhiyan was not working on a civil post on a permanent substantive capacity. Therefore, he did not have any right to rejoin in post after prolonged absence. He has referred to the judgment rendered by the same Writ Court in identical circumstances in the case of *Santajoy Tripura vs. State of Tripura*

and others [WP(C) No.579 of 2020] decided on 09.02.2021 (Annexure R/7). It is submitted that the said petitioner was also working as a contractual teacher in primary classes under Sarba Siksha Abhiyan since 2006. He had been implicated in a case of serious offence under Section 394/326/307 of the IPC read with Section 27(1) of the Arms Act in Ambassa PS case No.36 of 2013. He was in custody in connection with the said case also till he was finally acquitted of the charges by the learned District & Sessions Judge, Ambassa in ST (T-1) 07 of 2015. It is submitted that the prayer for reinstatement of the said petitioner was not allowed by the same learned Writ Court on the ground that he did not have any right to the post since the contractual engagement did not tantamount to holding a civil post. It is submitted that the present petitioner stands on similar footing and therefore, in order to maintain consistency in the view of the Court, the impugned judgment deserves to be set aside. It is further submitted that since the petitioner remained in custody over a period of almost one and half years, he had no legal right to submit rejoining to the said post. The respondents had duly complied with the principles of natural justice by issuing him proper show cause notice to which he replied on 19.01.2021.

[6] We have considered the submission of learned counsel for the appellant-State and learned Dy.SGI. The private respondent is not represented.

[7] Petitioner apparently was holding a contractual post initially for a period of one year extendable up to project period under the Sarba Siksha Abhiyan. Evidently, he was not appointed to any substantive permanent post to have the protection under Article 311(2) of Constitution of India. Petitioner's engagement being contractual in nature and extendable from time to time did not clothe him with a legal right of permanence in service. His

continued absence for almost one and half year due to incarceration in jail custody could impliedly bring an end to his contractual engagement. Even then, the respondents issued him two show cause notices to which he replied also. It is only after his acquittal vide judgment dated 22.12.2020 that he informed the authority and sought reinstatement. This has been declined on the grounds of prolonged absence and question mark about his levels of pedagogical ability. The impugned decision of the State Project Director, SSA therefore, cannot be said to suffer on grounds of violation of principles of natural justice. Petitioner did not have a legal right to hold a substantive permanent post under the State as he was only a contractual employee. Therefore, he did not have any right to resume the post after such prolonged absence. In such circumstances, when on the one hand the learned Writ Court in the case of an identically situated person i.e. Santajoy Tripura held otherwise, there was no reason to interfere in the matter in similar set of facts. Therefore, we are satisfied that the appellant-State has made good grounds to interfere in the impugned judgment. Accordingly, the impugned judgment is set aside and the writ appeal is allowed.

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

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ