

**THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**WP(C) 166 OF 2011**

Smt. Sanchayeeta Deb,  
Wife of Shri Dipankar Das,  
Resident of 65/1, HGB Road, Melarmath,  
Opposite of SBI, Agartala,  
P.O.-Agartala, P.S. West Agartala,  
District-West Tripura.

..... **Petitioner.**

**- V e r s u s -**

1. The State of Tripura,  
Represented by the Secretary to the  
Government of Tripura,  
Rural Development Department,  
New Capital Complex, P.O.-Kunjaban,  
Agartala, West Tripura.
2. The District Programme Coordinator,  
(District Magistrate & Collector),  
P.O. Agartala, P.S. West Agartala,  
District West Tripura.
3. The Block Development Officer,  
Bishalgarh RD Block,  
P.O. & P.S. Bishalgarh,  
District-West Tripura.
4. The Executive Engineer,  
RD Western Division-I, Gurkhabasti,  
P.O. Kunjaban, P.S. West Agartala,  
District West Tripura.

..... **Respondents.**

**BEFORE**  
**HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**  
**HON'BLE MR. JUSTICE S.C. DAS**

|                           |                                                                                              |
|---------------------------|----------------------------------------------------------------------------------------------|
| For the petitioner        | : Mr. A.K. Bhowmik,<br>Sr. Advocate,<br>Mr. Raju Dutta, Advocate,<br>Ms. A. Banik, Advocate. |
| For the respondents       | : Ms. A.S. Lodh, Addl. G.A.                                                                  |
| Date of hearing           | : 22.09.2015.                                                                                |
| Date of judgment          | : 14.10.2015.                                                                                |
| Whether fit for reporting | : <b>YES.</b>                                                                                |

## **JUDGMENT & ORDER**

**(Deepak Gupta, C.J.)**

The petitioner by means of this writ petition has challenged the order dated 24-01-2011 terminating the services of the petitioner from the post of Technical Assistant w.e.f. 29-01-2011.

2. The undisputed facts are that the petitioner was appointed as Technical Assistant under the District Administration, West Tripura on contractual basis for a period of 2(two) years. The petitioner was to get fixed pay. She joined on 22-01-2009 and the period of 2(two) years was to expire on 21-01-2011. On 01-12-2010 a memo was issued to her in which it was alleged that on spot verification it was found that the petitioner had prepared a false estimate without making any spot verification on the worksite; it was also alleged that the petitioner had given a false completion report whereas the work had been completed only to the extent of 59%; it was also alleged that the statement given by the petitioner that 1616 number of unskilled person days have been done and the output is 80.43% is contrary to the Muster Roll statement. It was lastly alleged that petitioner had submitted false affidavits with an aim to misappropriate Government funds amounting to Rs.2,00,900/-.

3. The petitioner filed reply to this notice denying all the allegations and on 24-01-2011 a memo was issued wherein it was

found that the allegations made against the petitioner were correct and, therefore, the services of the petitioner were terminated.

4. On behalf of the petitioner, it is contended that the order of the termination is on the face of it stigmatic and, therefore, the termination is not in terms of the contract. It is also contended that no finding of misconduct could have been given against the petitioner without holding an inquiry in terms of the CCS (CCA) rules.

5. On behalf of the State, it is urged that the petitioner does not hold a civil post and the CCS (CCA) rules are not applicable to the petitioner. It is also urged that the services of the petitioner have been terminated in terms of the contract entered into between the parties and, therefore, the order of termination is legal and valid.

6. To appreciate the rival contentions of the parties, it would be appropriate to mention that the order appointing the petitioner clearly states that she has been appointed as Technical Assistant under District Administration, West Tripura District on fixed pay of Rs.6,000/- per month on purely temporary and contractual basis for a period of 2(two) years. Clause-3 of the appointment letter states that continuation beyond 2(two) years would be subject to satisfactory performance and continuation of NREGS. Clause-4 of the agreement with which we are mainly concerned reads as follows:-

*“4. The appointment may be terminated at any time by a month’s notice given by either side namely, the appointee or the appointing authority without assigning any reasons. The appointing authority, however, reserves the right to terminate the services of the appointee forthwith.”*

7. Though the appointment may have been temporary, the contract stipulates that it can be terminated at any time by either side on giving one month’s notice without assigning any reasons. We are clearly of the view that the order of termination dated 24-01-2011 is on the face of it punitive and stigmatic in nature. Relevant portion of the order reads as follows:-

*“WHEREAS, Smt. Sanchayeeta Deb, Technical Assistant in connivance with the Implementing Officer, Sri Kanu Chakraborty, GRS had submitted false estimates with an aim to misappropriate Government money for an amount of Rs.2,00,900/-;*

*AND*

*WHEREAS, Smt. Sanchayeeta Deb, Technical Assistant under Bishalgarh R.D. Block was asked to explain vide memo No.F.4(70-A)/DWD/W/ MGNREGA/2010-11/6892-93 dated 01/12/2010 as to why administrative action should not be taken against her for misappropriation of Govt. fund, deliberate negligence of duty, indiscipline and false reporting by way of terminating her contractual services under MGNREGA in Bishalgarh R.D. Block;*

*AND*

*WHEREAS, the reply submitted by Smt. Sanchayeeta Deb, Technical Assistant on 6th December, 2010 was found to be unsatisfactory;*

*AND*

*WHEREAS, accordingly to the Para-4 of the agreement contract order No.F.4(1)P-II/DWD/W/NREGS/2007/7669-72 dated 19th January, 2009, it was categorically stated that the appointment may be terminated at any time by a month's notice given by either side namely, the appointment of the appointing authority assigning any reasons. The appointing authority, however, reserves the right to terminate the services of the appointee forthwith;*

8. The services of the petitioner have been terminated by resorting to the second part of Clause-4. No doubt, Clause-4 gives the power to the appointing authority to terminate the services of the petitioner forthwith. The question that arises is whether this power can be used when the order is being passed by way of penalty and the order on the face of it is stigmatic. A number of authorities have been cited before us by both the sides. Before making reference to the authorities, we may make reference to the Tripura Civil Services (Conduct) Rules, 1988. Rule 1(ii) reads as follows:-

*“1(ii). They shall apply to all employees of the Government of Tripura except persons appointed to any All India Services.”*

Rule 2(c) reads as follows:-

*“2(c). “Government Employee” means a person appointed to a service or post in connection with the affairs of the State;”*

9. Rule 1(ii) clearly mentions that it applies to all employees of the Government of Tripura except persons appointed

to any All India Services. This rule makes no distinction between temporary employees, permanent employees, contractual employees etc. Therefore, it is apparent that even a contractual employee is governed by the Tripura Civil Services (Conduct) Rules and is bound to maintain the standards of conduct expected under the said rules. Rule 2(c) again defines Government employee to mean a person appointed to a service or post in connection with the affairs of the State.

10. The petitioner was appointed as Technical Assistant to look after the National Rural Employment Guarantee Scheme. The funds of the scheme may come from the Central Government but it is the duty of the State to administer the scheme and any person appointed to administer the scheme would, in our opinion, be a person working in connection with the affairs of the State.

11. It is not disputed that the Government employees working under the State of Tripura who are governed by the Tripura Civil Services (Conduct) Rules, 1988, in matters of disciplinary proceedings are governed by the CCS (CCA) rules. Rule 3 of these rules reads as follows:-

**“3. Application:**

**(1)** *These rules shall apply to every Government servant including every civilian Government servant in the Defence Services, but shall not apply to—*

**(a)** *any Railway servant, as defined in Rule 102 of Volume-I of the Indian Railways Establishment Code,*

- (b) any member of the All India Services,*
- (c) any person in casual employment,*
- (d) any person subject to discharge from service on less than one month's notice,*
- (e) any person for whom special provision is made, in respect of matters covered by these rules, by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the President before or after the commencement of these rules, in regard to matters covered by such special provisions.*

*(2) Notwithstanding anything contained in sub-rule (1), the President may by order exclude any class of Government servants from the operation of all or any of these rules.*

*(3) Notwithstanding anything contained in sub-rule (1), or the Indian Railways Establishment Code, these rules shall apply to every Government servant temporarily transferred to a Service or post coming within Exception (a) or (e) in sub-rule (1), to whom, but for such transfer these rules would apply.”*

12. A bare perusal of this rule clearly shows that the CCS (CCA) rules are applicable to every civilian Government Servant except Railway Servants, members of All India Services, persons in casual employment and persons who can be discharged from service on less than one month's notice and lastly, persons in respect of whom special rules have been framed or there is a special agreement as contemplated to in Clause (e) of sub-rule (1) of Rule 3. The main question in this case is whether the petitioner could be said to be a person subject to discharge from service on

less than one month's notice. In our opinion, when we read Clause-4 of the appointment letter quoted hereinabove, the period of notice is one month and in exceptional circumstances, the Government has been empowered to terminate the contract of employment forthwith but this would also mean giving at least one month's pay in lieu of notice.

13. The main issue is as to whether the petitioner is a Government Servant or not. The basic authority on the point is a Constitutional Bench judgment of the Apex Court in ***The State of Assam and others v. Kanak Chandra Dutta, [AIR 1967 SC 884]***. Both sides have placed reliance on this judgment. Reference may be made to paras-9, 10 and 11 of the judgment which read as follows:-

*“9. The question is whether a Mauzadar is a person holding a civil post under the State within Art.311 of the Constitution. There is no formal definition of "post" and "civil post". The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Art. 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State, see marginal note to Art.311. In Art.311, a member of a civil service of the Union or an all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a*

*State is a person serving or employed under the State, see the marginal notes to Arts. 309, 310 and 311. The heading and the sub-heading of Part XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.*

**10.** *In the context of Arts. 309, 310 and 311, a post denotes an office. A person who holds a civil post under a State holds "office" during the pleasure of the Governor of the State, except as expressly provided by the Constitution. See Art. 310. A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post. Article 310(2) contemplates that a post may be abolished and a person holding a post may be required to vacate the post, and it emphasises the idea of a post existing apart from the holder of the post. A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual*

*labourer is not the holder of a post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed to the post.*

*11. Judged in this light, a Mauzadar in the Assam Valley is the holder of a civil post under the State. The State has the power and the right to select and appoint a Mauzadar and the power to suspend and dismiss him. He is a subordinate public servant working under the supervision and control of the Deputy Commissioner. He receives by way of remuneration a commission on his collections and sometimes a salary. There is a relationship of master and servant between the State and him. He holds an office on the revenue side of the administration to which specific and onerous duties in connection with the affairs of the State are attached, an office which falls vacant on the death or removal of the incumbent and which is filled up by successive appointments. He is a responsible officer exercising delegated powers of Government. Mauzadars in the Assam Valley are appointed Revenue Officers and ex officio Assistant Settlement Officers. Originally, a Mauzadar may have been a revenue farmer and an independent contractor. But having regard to the existing system of his recruitment, employment and functions, he is a servant and a holder of a civil post under the State.”*

14. A perusal of para-9 of the judgment quoted hereinabove clearly establishes that where there is a relationship of master and servant between the State and the person holding a

post under it, the person holds a civil post. If the State has the right to select and appoint the holder of the post; it has the right to control the manner and method of appointment; it has a right to suspend and dismiss the employee; it is the State which pays the wages, then the relationship of master and servant exists and a person would be holder of a civil post. On behalf of the State, reliance is placed on para-10 of the judgment quoted hereinabove wherein it has been held that every post is an employment but every employment is not a post. A casual labourer is not the holder of a post. However, in para-10 itself it is stated that a post under the State means a post under the administrative control of the State. Finally, in para-11 in the case of a Mauzadar it was held that the duty of a Mauzadar is not only to collect revenue. The Mauzadar is generally an influential and well-to-do resident of his area or mouja. He may be appointed and dismissed by the Deputy Commissioner and he is paid some remuneration. The Apex Court in para-11 held that he is a responsible officer exercising delegated powers of the Government and hence is the holder of a civil post.

15. The case of the petitioner is on a better footing. A Mauzadar is not a full time employee of the Government whereas the petitioner was a full time employee of the Government. The petitioner was working under the administrative control of the Government though on contractual basis. However, even as per the terms of the contract, the period of service could be continued even beyond the period of contract as long as the work and

conduct of the petitioner was satisfactory and the MNREGA scheme continued.

16. In ***Superintendent of Post Offices v. P.K. Rajamma, [AIR 1977 SC 1677]***, the Apex Court considered the issue whether extra departmental agent held a civil post and whether for his dismissal or removal the provisions of Article 311(2) of the Constitution were applicable. The Apex Court held that the extra departmental agent held a civil post and his dismissal or removal would be invalid if there was violation of the provisions of Article 311(2) of the Constitution. It was held that the extra departmental agent was not a casual worker but he held a post under the administrative control of the State and the relationship between the postal authorities and the extra departmental agent was that of a master and servant.

17. Reliance has also been placed on the judgment of the Agartala Bench of the Gauhati High Court in ***Shri Ranjit Ghosh and others v. The State of Tripura and others, [(1985) 1 GLR (NOC) 8]*** wherein it has been held that Home guards also hold a civil post. We make it clear that we are not dealing with this aspect of the matter because whether Home guards hold a civil post or not is a question which will have to be gone into greater detail. Therefore, we have not discussed in detail either this judgment or the judgment of the Apex Court in ***Home Guards Welfare Association v. State of Himachal Pradesh and others,***

**[(2015) 6 SCC 247]**. In fact, in the Supreme Court judgment, this question has not been decided.

18. Reliance has also been placed on the judgment of the Apex Court in **M.M.R. Khan and others v. Union of India and others, [AIR 1990 SC 937]** wherein the Apex Court held that even the employees working in Non-statutory Recognised Railway Canteens are entitled to be treated as railway employees.

19. In **State of U.P. v. Chandra Prakash Pandey, [AIR 2001 SC 1298]** the question before the Apex Court was whether a Kurk Amin appointed on commission basis for recovery of outstanding dues of Co-operative Societies is a Government Servant holding a civil post. The Apex Court held that though the Kurk Amins were not getting regular salary and were being paid on commission basis, they enjoyed and exercised power to arrest a person who is a defaulter and had the power to attach his property and as such, the Kurk Amins held civil posts.

20. On behalf of the State, reliance has been placed on the judgment of the Apex Court in **Union Public Service Commission v. Girish Jayanti Lal Vaghela and others, [AIR 2006 SC 1165]** where it was held that where the Government had appointed the respondent as Drugs Inspector on contract basis, the appointment was dehors the Rules and the respondent could not be said to be a Government servant. In that case, the Apex Court held that in addition to the criteria laid down in **State of Assam v.**

***Kanak Chandra Dutta [AIR 1967 SC 884]*** and ***State of Gujarat v. Raman Lal Keshav Lal Soni [AIR 1984 SC 161]***

case, other criteria should also be satisfied. The case before the Supreme Court was of a person who was appointed as Drugs Inspector for a period of 6(six) months totally on temporary basis till a regular candidate was selected by the UPSC. It was also clearly mentioned that even if the regular candidate did not join, the respondent would stand relieved from his duty on the expiry of six months. It was also found that the said person had been appointed without any public notice or advertisement under the relevant rules governing the conditions of service of Drugs Inspectors. Since the appointment was de hors the rules, the Court held that the respondent was not a Government Servant. This judgment, has no applicability to the facts of the present case. As far as the present case is concerned, the petitioner was appointed pursuant to a notice inviting applications from the public and it is not the case of the State that the appointment of the petitioner was against any rules.

21. Reliance has been placed on the judgment of the Apex Court in ***Gridco Ltd. and another v. Sadananda Doloi and others, [2012 AIR SCW 484]***. There also an appointment had been made on contract basis wherein it was clearly stated that the employment was terminable even during currency of tenure on three month's notice or on payment of three month's salary in lieu thereof. The services of the employee were terminated by an order

of termination simpliciter and the Apex Court after referring to a large number of judgments held as follows:-

*“26. A conspectus of the pronouncements of this court and the development of law over the past few decades thus show that there has been a notable shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/compensation. With the development of law relating to judicial review of administrative actions, a writ Court can now examine the validity of a termination order passed by public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review. A writ Court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. Having said that we must add that judicial review cannot extend to the Court acting as an appellate authority sitting in judgment over the decision. The Court cannot sit in the armchair of the Administrator to decide whether a more reasonable decision or course of action could have been taken in the circumstances. So long as the action taken by the authority is not shown to be vitiated by the infirmities referred to above and so long as the action is not demonstrably in outrageous defiance of*

*logic, the writ Court would do well to respect the decision under challenge.*

*27. Applying the above principles to the case at hand, we have no hesitation in saying that there is no material to show that there is any unreasonableness, unfairness, perversity or irrationality in the action taken by the Corporation. The Regulations governing the service conditions of the employees of the Corporation, make it clear that officers in the category above E-9 had to be appointed only on contractual basis.”*

22. There can be no quarrel with the proposition of law laid down but the issue that arises is whether the services of an employee even appointed on contractual basis can be terminated on punitive grounds by passing a stigmatic order without holding an inquiry under the CCS (CCA) rules. We have no doubt in our mind that if the order of termination had been an order of termination simpliciter relying upon the terms of the contract, then this Court would have been very reluctant to interfere in the matter. However, as far as the present case is concerned, the order is totally stigmatic and, therefore, we have no hesitation in holding that such an order could not have been passed without holding an inquiry contemplated under the CCS (CCA) rules.

23. Reliance placed by the State on the judgment of the Apex Court in ***Satish Chandra Anand v. The Union of India, [AIR 1953 SC 250]*** is misplaced because in that case it was held that Article 311 had no application because the termination of

service was neither a dismissal nor a removal from service nor a reduction in rank. It was held that since the termination of service was not a penalty, it was an ordinary case of a contract being terminated by notice under one of its clauses.

24. The Apex Court relied upon the then Rule 49 to the CCS (CCA) rules. This is comparable to Rule 11 of the CCS (CCA) rules now in existence. The explanation (viii) to Rule 11 reads as follows:-

*“EXPLANATION.—The following shall not amount to a penalty within the meaning of this rule, namely:-*

xxx                      xxx                      xxx

(viii) *termination of the services—*

(a) *of a Government servant appointed on probation, during or at the end of the period of his probation, in accordance with the terms of his appointment or the rules and orders governing such probation, or*

(b) *of a temporary Government servant in accordance with the provisions of sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965, or*

(c) *of a Government servant, employed under an agreement, in accordance with the terms of such agreement.”*

25. Therefore, the termination of the services of a Government Servant employed under an agreement in accordance with the terms of the agreement would not be a penalty. However,

where as in the present case the termination is punitive and stigmatic, the same on the face of it is a penalty and is, therefore, not permissible unless an inquiry has been conducted. Any violation of the same would amount to violating Article 311 of the Constitution of India.

26. Next comes the question as to what relief should be granted. Reliance by the State has been placed on ***U.P. State Textile Corporation Ltd. v. Suresh Kumar, [2011 AIR SCW 3954]*** wherein keeping in view the financial status of the employer, it was held that the payment of back-wages were not justified. In that case it was held that the respondent appointed for a fixed period could not be ordered to be reinstated. That judgment has no applicability because the persons junior to the petitioner continue in service and the scheme is also still in force.

27. As far as the present case is concerned, the period of 2(two) years had expired on 21-01-2011 and the termination order was passed after the period of two years had expired. It is not disputed that the scheme has continued and that persons appointed after the petitioner are continuing in job. Therefore, the petitioner would have continued in service. The State could, however, have passed an order removing the petitioner in terms of the contract without any stigma being imposed upon her.

28. We, therefore, direct the State to reinstate the petitioner and pay her back-wages by 31<sup>st</sup> December, 2015.

However, on or before 21-01-2016 the State can decide whether the services of the petitioner are to be retained or not in accordance with the contract.

29. The State is also at liberty to hold disciplinary proceedings against the petitioner and take action in accordance with law, if it so desires.

30. The writ petition is disposed of in the aforesaid terms.  
No costs.

**JUDGE**

**CHIEF JUSTICE**