

01.12.2020
DL-10
KS Ct.19

W.P.A. 5401 of 2020
With
I.A. No:CAN 1 of 2020 (Old No.CAN 4959 of 2020)

**Vaswar Nandi
Versus
State of West Bengal & Ors.**

Mr. Srijib Chakraborty,
Mr. Suryaneel Das ... for petitioner.

Mr. Samrat Sen,
Mr. Amitava Mitra for respondent nos.3 & 4

Petitioner has sought judicial review of decision to issue release order dated 1st May, 2020 made by Special Officer, Bhagirathi Co-operative Milk Producers Union Ltd.

Mr. Chakraborty, learned advocate appears on behalf of petitioner and argues, on affidavits having been filed. He draws attention to appointment order dated 27th April, 2017. It would be convenient to set out text of said letter as below:-

“In pursuance of the recommendation made by the Chairman, Recruitment Committee, vide Memo No.301-C/En. dated 22.04.2017, I, the undersigned, appoint you as the Managing Director of the Bhagirathi Cooperative Milk Producers’ Union Ltd., Feeder Dairy, Berhampore, Murshidabad, WB for 5 (five) years on yearly renewable basis at Rs.55,000/- per month

(inclusive of all) subject to satisfactory performance.

In addition to above you would be provided with rent-free residential quarter situated within the campus of the Feeder Dairy/Cattle Feed Plant, Berhampore, Murshidabad.

This appointment shall be governed by the Rules and Regulations of the Milk Union.

At the time of joining you should submit photocopy of the documents/certificates related to date of birth, qualification, experience etc. along with three passport size recent photograph (duly attested by a 1st class gazetted officer) & a medical fitness certificate to be obtained from the Government Hospital.

No travelling or other allowances will be provided for joining the post.

You are asked to join the Milk Union within 30 days from the date of issuance of this appointment letter and as a token of acceptance of this appointment letter you should sign and send the duplicate copy of the appointment letter, as early as possible.”

He submits, on expiry of five years there was renewal by letter dated 2nd /9th May, 2018. There was second renewal by letter dated 22nd April, 2019. Then came impugned release order issued on 1st May, 2020, issued before expiry

date of renewed contractual period, due to expire on 2nd May, 2020. Hence, impugned release order must be seen as order of termination of contract. He submits, his client is an employee and, therefore, looking at said facts, termination of contract simplicitor it is not.

He refers to section 10 in West Bengal Cooperative Societies Act, 2006. Said section provides that every officer of a cooperative society shall be deemed to be a public servant within the meaning of section 21 of Indian Penal Code, 1860.

On facts he demonstrates that on 27th November, 2019 appointing authority had addressed to him a letter enclosing Memo dated 22nd November, 2019 issued by Managing Director, West Bengal Cooperative Milk Producers Federation (WBCMPF) Ltd. for compliance by his client. He draws attention to the fact that a letter dated five days prior, was enclosed to his client for compliance. The authority having done so, then by letter of the next day, that is 28th November, 2019, required his client to show cause for non-compliance. His client duly showed cause. Nothing was done thereafter till impugned release order. Therefore, it should be seen as a termination because going by applicable rules and regulations of the Milk Union, by which his client's appointment is governed, the Board or Special Officer acting in place of the Board could only have suspended his client. He relies on judgment of Supreme Court in **Gridco**

Limited versus Sadananda Doloi reported in **(2011) 15 SCC 16**, paragraphs 38 and 39, which are reproduced below:-

“38. 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 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.

39. 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.”

He seeks interference.

Mr. Sen, learned senior advocate, Assistant Additional Advocate General appears on behalf of respondent nos.3, 4 and 5. He submits, it is well-settled that there can only be three exceptions for interference regarding specific performance of contract for personal service. Firstly, if the service is of a person covered by article 311 in the Constitution of India. Second exception relates to a worker, to whom is applicable Industrial Disputes Act, 1947. The third is in respect of a person, who is an employee under a statutory authority. Petitioner is none of the above. He was in contractual service. The contract expired on 2nd May, 2020 and has not been renewed. On the eve of expiry, there was issued release order to facilitate hand over of charge. The appointing

authority cannot be compelled to renew the contract. He relies on judgment of Supreme Court in **Vaish Degree College versus Lakshmi Narain** reported in **(1976) 2 SCC 58**, in particular paragraphs 10 and 18 of majority view in the judgment. He submits, law declared is that there is distinction as must be made between an institution, which is not created or under a statute but is governed by certain statutory provisions for the proper maintenance and administration of the institution. Applying that to petitioner would cause the distinction against petitioner inasmuch as petitioner's service was governed by rules and regulations of the Milk Union. This is insufficient to cause judicial review of administrative act of his client, to not renew the contract. He submits without prejudice to his above contention, in the affidavit in opposition, particulars of dereliction of duty by petitioner have been given.

Court notices that the facts brought out Mr. Chakraborty, regarding direction to comply with a requirement made a few days after a requisition was made and immediately thereafter issuance of show cause notice and reply, are there. Court is also aware that the concerned District Magistrate, holding additional responsibility as Special Officer, acted on notice of allegations made against petitioner. It appears, thereafter the contractual period was allowed to run its course. All that the authority did was to issue a release order,

releasing petitioner on its clear omission of intent to renew the contract on its expiry. This is a situation, to which petitioner agreed as a term of employment. Court does not find it to be an instance of termination of contract to give rise to an issue whether it will consider further, on following law declared in **Gridco Limited** (supra), to embark on judicial review.

As such, Court does not find reason to interfere. The writ petition (W.P.A. 5401 of 2020) is dismissed and connected application [I.A. No: CAN 1 of 2020 (Old No.CAN 4959 of 2020)], disposed of.

Mr. Chakraborty, had handed up his copy of affidavit in reply for being looked at by Court, since the original affidavit in reply appears to be missing. Mr. Chakraborty is requested to make a photocopy from his copy and make over the same to this Court's officer for being kept in the record.

(Arindam Sinha, J.)