

10.
25.01.2021.
Ct. No. 11.
F.B.

**FMA 1194 of 2018
with
IA No. CAN 1 of 2020**

**Smt. Sarmistha Dolui (Mondal)
-Vs.-
The State of West Bengal & Ors.**

**Mr. Prosenjit Mukherjee,
Mr. Saptarshi Chakraborty,
Mr. Arghya Kamal Das
..... For the Appellant.**

**Mr. Tapas Kumar Adhikari
..... For the State.**

The writ petitioner preferred the instant appeal against the order dated December 20, 2016 passed by Learned Single Judge in W.P. No. 19281 (W) of 2012. By virtue of the order impugned, the writ petition was dismissed.

Though this matter is appearing under the heading “Applications”, however the parties have argued on the merits of the instant appeal on points of law and, as such with the consent of the parties, the appeal is treated as on the day’s list and the same is taken up for consideration.

The writ petitioner/appellant herein was engaged as a Sahayika of a Sishu Shiksha Kendra. Some discrepancies in the fund were noted by the

authorities and the appellant admitted that having no other alternative she had taken the amount as loan and also claims to have deposited the said amount thereafter. The appellant also admitted her guilt subsequently. The Sub-Divisional Officer terminated the service of the appellant. Challenging the order of termination, the petitioner approached the Writ Court. The Learned Single Judge, by the order impugned, dismissed the writ petition. Aggrieved against the said order, the writ petitioner has preferred the instant appeal.

Mr. Mukherjee, the Learned Advocate appearing for the petitioner, submitted that the order impugned suffers from infirmity inasmuch as the Learned Single Judge failed in appreciating the fact that the authorities have terminated the service of the petitioner without initiating any criminal proceeding. According to him, the alleged offence is criminal in nature and, without initiating a criminal proceeding the petitioner's service could not have been terminated. Mr. Mukherjee further contended that the service of the petitioner was terminated without initiating any disciplinary proceeding either. According to him, no enquiry was conducted and the service of the petitioner was terminated straightaway without giving any opportunity to defend herself.

Mr. Adhikari, the Learned Advocate for the State, submits that the service of the petitioner was terminated on the ground that she had admitted her guilt and the petitioner was guilty of misconduct. According to him, an enquiry was initiated which culminated in an enquiry report. Thereafter the service of the petitioner was terminated.

We have heard the Learned Advocates for the parties and have perused the materials on record.

The appellant was engaged as a Sahayika of the concerned Sishu Shiksha Kendra. It appears from the Prospective Engagement Letter that such engagement was on contractual basis. The Engagement letter was issued according to the Memo dated 23.04.10 issued by the Department of Panchayats and Rural Development, Government of West Bengal. Clause 3 of the said Memo provides that such engagement will be terminable because of involvement in criminal case and /or misconduct and /or delinquency and /or incapacitation etc. The terms of engagement does not speak of the applicability of any Service Rules in the instant case.

The appellant submitted a series of written statements/ representations before the concerned authorities. In one of such representation she claims to have explained the reasons for withdrawing the

honorarium in the name of 3 cooks but paying honorarium to the only cook who was engaged for preparing the midday meal and utilising the balance amount withdrawn for her personal purpose. She further admitted that such explanation was given only after she was enquired of by her higher authority on such misappropriation of fund.

From the report submitted by the respondent no. 3 before the Learned Single Judge it appears that an enquiry was conducted by the Deputy Magistrate & Deputy Collector, Uluberia and the appellant confessed her offence before him. In a representation, submitted after such enquiry, the appellant also admitted that an enquiry was conducted. She also admitted her guilt therein.

The enquiry report was annexed to the report filed by the respondent no. 3 herein before the Learned Single Judge. The District Magistrate, Howrah & Executive Officer, Howrah Zilla Parishad recommended necessary action against the appellant for misappropriation of funds. Thereafter the Sub-Divisional Officer, being the appointing authority, by a letter dated August 29, 2012 terminated the service of the petitioner in terms of the memo dated April 23, 2010. It was stated in the letter of termination that the appellant herein was involved in misconduct,

misappropriation of funds of the honorarium of cook of mid-day meal which amounts to wrongful gain and misconduct and violation of the terms and conditions of engagement.

There is no doubt that the act committed by the appellant amounts to misconduct.

The expression “and/or” appearing in Clause 3 of the Memo dated 23.04.10 between the specific grounds for termination means that the engagement of a Sahayika may be terminated on one or more grounds mentioned in the said Clause. If this Court accepts the contention of Mr. Mukherjee that the said expression should be interpreted as conjunctive, then it will lead this Court to an absurd interpretation that unless all the grounds mentioned in the said clause are satisfied such engagement cannot be terminated. Such interpretation, as contended by Mr. Mukherjee, shall also frustrate the object for which such clause was inserted. Such an interpretation will also render the expression “/or” otiose which is also against the canons of interpretation.

Thus the engagement of the appellant herein as a Sahayika can be also terminated on the ground of misconduct or delinquency and it is not necessary that

a criminal proceeding has to be initiated against a person before terminating her engagement.

The act of misappropriation of fund committed by the appellant is, no doubt, a criminal offence. The authorities also had the option to initiate a criminal proceeding as well as other proceedings, but the authorities have chosen not to do so in the facts and circumstances of the instant case. For such action of the authorities, it is only the appellant who has been benefitted thereby. She should not feel aggrieved therefor after having reaped such benefit.

The Learned Advocate for the appellant, in course of hearing, could not demonstrate any rules applicable for terminating the engagement of a Sahayika excepting the said Memo dated 23.04.2010. In the instant case, an enquiry into the allegations was conducted and the appellant got ample opportunity to make representations at all stages, i.e. before, during and after such enquiry and defend herself prior to termination of her engagement as a Sahayika, which is contractual in nature.

The appellant herein repeatedly admitted that she has committed an act which amounts to misconduct and in view of such admissions there was no necessity of initiating any disciplinary proceeding as

contended by Mr. Mukherjee as an engagement of a Sahayika can be terminated on the ground of misconduct in terms of the said Memo.

The respondent no. 4 herein was thus, justified in terminating the engagement of the writ petitioner/appellant herein.

The Learned Single Judge assigned cogent reasons for dismissing the writ petition. The impugned order does not suffer from any infirmity warranting interference by us in an intra-court mandamus appeal.

Accordingly, **FMA 1194 of 2018** along with **CAN 1 of 2020** stand **dismissed** without, however, any order as to costs.

All parties to act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Hiranmay Bhattacharyya, J.) (Subrata Talukdar, J.)