

13-01-2021  
ct no. 13  
Sl.38  
sp

**WPA 714 of 2021**

Rashikul Islam

**-Versus-**

The State of West Bengal & Ors.

**Mr. Rabiul Islam,  
Ms. Pramita Banerjee,  
Mr. Arghya Chakraborty**

**...for the petitioner**

**Mr. Susanta Pal,  
Mr. Biswajit Dutta**

**...for the State**

The petitioner is a civic volunteer in a contractual employment. He has not been allowed to join duties since there is an FIR registered against the petitioner under Sections 498A/325/506 read with Section 34 of the Indian Penal Code in a domestic violence case.

Counsel for the State relies upon Clause 3(f) of the Home Department of the Government of West Bengal dated September 26, 2011 which prescribes that, to be eligible to be recruited as a civic volunteer, the applicants should not have any criminal record against them in any Police Station.

This Court finds that Clause 3(f) would apply at the time of recruitment. The petitioner has already been recruited and was working. The other Clause placed by the counsel for the State is Clause 6(d)(1). The said Clause deals with the grounds of termination of volunteer service. Clause 1 of 6(d) stipulates that involvement in any criminal case would be a ground to terminate the service of the said volunteer. It is further submitted that the post of Civic volunteer is a contractual post and hence the provisions of Article 311 of the Constitution of India do not have any application.

This Court has carefully considered the arguments of the petitioner and the State. This Court is of the view that only in case of a charge sheet having been filed or a case of conviction that would amount to “involvement in a criminal case”. The same interpretation must be given to Clause 3(f).

Since it is submitted by the counsel for the State on instructions given to him by the Inspector-in-Charge, Domkal Police Station, Murshidabad that a charge sheet has been filed against the petitioner vide Domkol PS C/S No-661/20 dated October 31, 2020 under Sections 498A/323/34 of the IPC, the petitioner can be deemed to have come within the purview of the

expression involvement as stipulated in paragraph 6(D)(1) and 3(f) of the aforesaid Circular dated September 26, 2011.

The aforesaid interpretation, according to this Court, is warranted more in view of the fact that the nature of employment is purely contractual.

In view of the above, the prayer for mandamus and certiorari cannot be entertained by this Court. Since charge sheet is pending trial, the Superintendent of Police, Murshidabad being respondent no.2 at his sole discretion may take a suitable decision on the representation dated 12.12.2020 made by the petitioner annexed to the writ application which may be re-submitted by the petitioner.

The Superintendent of Police, Murshidabad may take note of the observations made herein above by this Court. The S.P. may also consider that the offense against the petitioner is not arising out of service and purely domestic in nature.

The instructions dated 12.01.2021 received by the learned counsel for the State may be kept with the record.

With the aforesaid direction, the instant writ petition is disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all formalities.

**(Rajasekhar Mantha, J.)**