

Item No.13

20.12.2021
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
(via video conference)

WPA 3491 of 2021
Dilruba Nasrin Aktar
v.
The State of West Bengal & Ors.

Mr. Md. Ashraful Huq
... for the petitioner.

Mr. Susanta Pal
Mr. Ananya Neogi
... for the State respondents.

The petitioner was engaged as additional para teacher under the Sarva Shiksha Abhiyan, District Primary Education Programme in the year 2005.

A contract was entered into by the petitioner and the respondent authority on November 26, 2005. The contract clearly mentioned that the engagement was purely temporarily on a consolidated pay for a period of one year from the date of joining. The service was automatically terminable without notice on completion of the said period. Her contract was renewed from time to time and she remained in service up to June 7, 2012. Her salary was paid upto June 2012. On and from June 8, 2012 she remained absent.

The petitioner by an intimation dated March 27, 2012 intimated the Sub-Inspector of Schools that she will not be able to attend her duties from June 8, 2012 to June 7, 2014, for two years. She sought for leave without pay for the aforesaid period of two years. The petitioner absented herself from the school without any further intimation and sought to rejoin on December 9, 2019.

A communication was made by the District Education Officer, SSM, Murshidabad on February 24, 2020 whereby the petitioner was directed to show cause as to why disciplinary proceeding shall not be initiated against her for long term absence for near about eight years. The petitioner replied to the show cause.

Being dissatisfied with the reply the District Education Officer appointed an Enquiry Officer to enquire the matter. The Enquiry Officer was appointed in compliance of the direction dated December 21, 2011 passed by this Court in WP 20418(W) of 2009 (Lutfar Rahman v. The State of West Bengal).

After the enquiry was conducted, the District Education Officer issued an order on October 16, 2020 whereby the service of the petitioner stood terminated.

The petitioner is aggrieved by the said order of termination and has filed the instant writ petition challenging the same.

According to the petitioner as there is no clear guideline with regard to the provision of leave applicable for additional para teachers, the application made by the petitioner prior to proceeding on leave ought to have been taken into consideration by the respondent authorities. Prayer has been made for treating the period during which she was absent as leave without pay and to permit her to resume duties.

The respondents submit that enquiry was conducted in accordance with the direction passed by the Court in the matter of Lutfar Rahaman (supra).

It appears from the submissions made on behalf of both the parties that the District Education Officer proceeded in the matter allegedly in compliance of the direction passed by this Court in the matter of Lutfar Rahaman (supra).

The Court in the matter of Lutfar Rahaman (supra) decided an issue where a contractual employee was terminated without following any procedure or without giving an opportunity of hearing.

The present case is not a case of termination or removal from service.

In the instant case the petitioner voluntarily went on leave on and from June 8, 2012 till December 9, 2019. Under the service rule guiding additional para

teachers there is no provision for obtaining leave for nearly eight years at a stretch.

The District Education Officer has come to a conclusion that the service of the petitioner was renewed upto 2012 and thereafter she remained absent without rendering her service till 2019.

It has been categorically recorded that her service was neither renewed nor extended. The service to the said post became discontinued automatically.

When an employee voluntarily refrains from joining duty for years together, the same cannot be treated as termination or removal from service.

The petitioner herself chose to remain absent for a continuous stretch of nearly eight years. All on a sudden she came up with an application praying for resumption of her duty. Her duty stood automatically discontinued from the period she voluntarily chose not to join service.

It appears that the order of termination which is under challenge is a very formal order. No order as such was required for terminating the service of the petitioner as her service stood automatically terminated on and from the day she voluntarily chose not to join her duty.

The impugned order does not call for any interference.

The writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)