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29.07.
2021
Ct. No.17

WPA 16624 of 2019
With
IA No: CAN/1/2021
(File not here)

Unnati Mal
Vs
The State of West Bengal & Ors.

Mr. Rajendra Banerjee
.....For the Petitioner
Mr. Rezaul Hossain
.....For the State
Mr. Subhrangshu Panda
.....For the Private Respondent
Md. Sarwar Jahan
.....For the Respondent No.3

This matter relates to appointment and removal and reappointment of one Sahayika being the 4th Sahayika in the concerned Sishu Siksha Kendra (SSK) namely, Shyampur Sishu Siksha Kendra. The petitioner submits that she has been illegally terminated from the post of 4th Sahayika of the SSK and one Shelly Ghosh (Kabiraj) has been appointed in her place. In this writ application Shelly Ghosh (Kabiraj) is a private respondent being the respondent no.10 who has appeared before this court. Learned advocate for the said respondent has submitted that in the year 2019 she also filed one writ application being W. P. 18847 (W) of 2019 which is pending. He has shown from a copy of W.P. 18847 (W) of 2019 that the Executive Officer of the Sagardighi Panchayat

Samity wrote a letter dated 07.08.2019 to the Sahayak, Banneyeswar Gram Panchayat and Sahayika-in Charge, Shyampur SSK, (i.e. the SSK in question) the content of which is as follows:

“Sub: Reinstatement of Ex 4th Sahayika Smt. Shelly Ghosh (Kabiraj)

Whereas, Smt. Shelly Ghosh (Kabiraj) was replaced by Smt. Unnati Mal in 2007 in the post of 4th Sahayika of Shyampur SSK. As it was done by the then Managing Committee.

Whereas, Vide Memo no.4676/En/SB dated 31/10/2011 the then BDO, Sagardighi observed that the steps were not according to the guidelines of the Govt.

Whereas Vide Memo No.130/En/SB dated 17/01/2012 the then BDO, Sagardighi again described the said action as illegal.

Whereas, you were repeatedly directed to re-instate Smt. Shelly Ghosh (Kabiraj) in the post of 4th Sahayika of Shyampur SSK.

Now, this time, you are strictly directed to re-instate Smt. Shelly Ghosh (Kabiraj) without any delay”.

Therefore, I note that the direction of the Executive Officer is being flouted from 2011 to 2019 and I am told till date.

Learned advocate for the petitioner of the present application (WPA 16624 of 2019) has drawn my attention to some orders passed by the Block Development Officer (BDO). Such orders were passed in the year 2011 which is annexed to the other writ application (W.P. 18847 of 2019). The order is quoted below:

07.07.2011

“The petitioner Shelly Ghosh (Kabiraj), Purna Mal and Rafiqul Alam, the Secretary and the President of the Shyampur SSK respectively appeared before the undersigned for Hearing. Their signatures were taken in the attendance sheet which was kept in the office records along with service returns of the notice served upon them.

The allegation of the petitioner were read out before the o.p.s. i.e. Purna Mal and Rafiqul Alam who were asked to produce valid documents by dint of which they terminated the petitioner from the post of 4th Sahayika and engaged another one in place of her.

They failed to produce any document to contradict the allegation of the petitioner, only to state verbally that she was very irregular in discharging her duties. The

petitioner Shelly Ghosh (Kabiraj) produced the photo copies of the following documents in support of her statement.

1. Her representation dt. – 30.04.2007 to the Sub-Divisional Officer, Jangipur, Murshidabad and the Block Development Officer, Sagardighi, Murshidabad and the representation dt. 02.05.2007 to the District Magistrate making them aware of the Managing Committees' conspiracy to terminate her from the post of 4th Sahayika of Shyampur SSK illegally.

2. Her representations dt. – 17.05.2007, 12.02.2009 and 06.06.2011 to the Block Development Officer, Sagardighi.

It revealed from the above stated representation of the petitioner to the different appropriate authorities and this office records that:-

- 1) The term of engagement of the petitioners as 4th Sahayika remained valid up to 31/05/2007.*
- 2) The Managing Committee opened a new attendance register closing the previous one on 15/05/2007 i.e. on the day when she was driven out from the SSK forcibly by them.*

From the attendance register closed on 15/05/2007 it

is found that the petitioner as a 4th Sahayika along with other three Sahayikas of the SSK in questions put their signatures in it up to 14/05/2007; But in the new register the other three Sahayikas along with newly engage Sahayika Unnati Mal have been putting their signatures in it since 02/05/2007.

It is clear from the above stated documents that the Managing Committee with an eye to engage Unnati Mal tampered the attendance register and terminated petitioner from the post of 4th Sahayika without assigning reason. Had it been so they must have maintained the legal procedure as per existing rules and regulations of the Govt. against the petitioner if she was negligent to her duties. This act of the Managing Committee is not at all acceptable in the eye of law and the engagement of Unnati Mal in place of the petitioner was found to be illegal.

Hence this case is disposed of directing the O.P.S to take necessary arrangements for the re-instatement of Shelly Ghosh (Kabiraj) in the post of 4th Sahayika of Shyampur SSK".

It is found from the order passed by the BDO dated 7th July, 2011 that for depriving the respondent no.10 of the present writ application the presence

recorded in the original Attendance Register of the SSK has been tried to be suppressed wholly by the concerned committee of the SSK and a new Attendance Register was introduced to suppress the presence of the respondent no.10 in the SSK. From the letter of the Executive Officer dated 07.08.2019 quoted above it is found that the concerned BDO of Sagardighi Panchayat Samity issued two Memos dated 31st October, 2011 and 17th January, 2012 so that the respondent no.10 of the present application WPA 16624 of 2019 (Petitioner in W.P. 18847 (W) of 2019) can be reinstated in her post as 4th Sahayika.

After perusing the orders passed by the BDO and after seeing the above observations of the BDO as to how a new attendance register was introduced to commit a culpable illegality for removing the respondent No. 10 here. I have no doubt in my mind that Shelly Ghosh, the respondent no.10 here was removed most illegally and illegal appointment was given to the petitioner Unnati Mal.

Today the department has not supplied the file being WPA 16624 of 2019. I have taken a copy from the learned advocate for the petitioner. I have been also assisted by the learned advocate for the said respondent no.10 of the present application (Petitioner in W. P. 18847 (W) of 2019) A copy of the affidavit-in-opposition filed on behalf of the

respondent no.10 of the present application has been filed in court today which has been kept with the record along with a copy of the writ applications.

I dismiss the writ application as it is an endeavour to continue the illegal appointment of the petitioner depriving the Respondent No. 10 and I direct the SSK to reinstate Smt. Shelly Ghosh (Kabiraj) in the said SSK within a period of seven days from the date of communication of this order. It is made clear that if this is not done and it is reported to this court by way of mentioning by the learned advocate for the respondent no.10 of WPA 16624 of 2019, a Contempt Rule (Suo Motu) will be issued without any application for issuing Contempt Rule. The illegal removal of Respondent No. 10 from the post is not tolerable.

During the period for which the respondent no.10 was not allowed to work in the said SSK, her service shall be deemed to have been renewed from year to year for the entire period for which she was not allowed to work and now, I am told, the Rule has been changed as to the Sahayikas and they can work up to the age of 65 years and the respondent no.10 can work in the said post up to the age of 65 years from the date of his reinstatement in the said SSK and she shall be paid salary at the present scale of pay.

Learned advocate for the petitioner in WPA 16624 of 2019 submits, after passing of the order, that he has filed one application being CAN/1/2021 claiming release of her salary. The application is dismissed on the same grounds of dismissal of the writ application. She is not entitled to any further salary as I have held that her appointment was wholly illegal.

(Abhijit Gangopadhyay, J.)