

Dr. Sanjib Kumar Das
Vs.
The State of West Bengal & Ors.

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Mr. Sanjoy Mukherjee
... For the Petitioner

Mr. Joytosh Majumder, Ld. G.P
Mr. Raja Saha
Mr. Amit Kumar Ghosh
... For the State

The petitioner was engaged on fixed term contract of employment as Environment Specialist for a project in the District Project Management Unit, Nadia in November 2014. The contract was valid for a period of one year or till 31st October, 2015, whichever is earlier.

During the period of engagement the petitioner was entitled to take leave for 24 days on pro-rata basis per year and take leave for not more than 5 days at a time, except on medical ground. The service was terminable at the sole discretion of the authority at any point of time by giving one months' notice. The petitioner had a right to resign and leave the service by giving 30 days' notice in writing in advance. The service of the petitioner was transferrable from one project to the other.

The petitioner was transferred from Nadia to Jalpaiguri by an order dated 7th January, 2020. He was released from the establishment at Nadia on 14th February, 2020 with direction to report for duties at Jalpaiguri. He joined in Jalpaiguri on 17th February, 2020.

By a letter dated 16th March, 2020 the petitioner applied for leave on the ground that he

was suffering from fever and influenza. The petitioner thereafter returned to his home town at Nadia. In view of the lockdown imposed by the government on and from 23th March, 2020 he was not in a position to return to Jalpaiguri and report for duty.

The respondent authority in terms of the direction of the State Government directed the employees to attend as per roster and the petitioner was directed to attend office on 24th April, 2020. The petitioner expressed his inability to resume work as he was residing at his home town in Nadia district and due to non-availability of conveyance he was not in a position to join his duty at Jalpaiguri.

The petitioner wrote letters to the Executive Officer of the Project at Jalpaiguri over mail intimating that he was stuck up in his home town and could not return in view of the lockdown. He, however, mentioned that he was performing his duties online from his home.

By a letter dated 3rd July, 2020 the petitioner applied for transfer from Jalpaiguri to Nadia. The petitioner refers to an order dated 5th August, 2020 published by the office of the District Magistrate and District Collector, Nadia, wherefrom it appears that comprehensive lockdown has been declared in the district of Nadia on and from 7th August, 2020 till 14th August, 2020.

By an intimation letter dated 6th August 2020 the petitioner was directed to join office immediately at Jalpaiguri. In default, the intimation letter was to be treated as one months' notice from the date of issue of this letter, as per contract, before termination of contract.

The petitioner replied to the said intimation

letter and renewed his prayer for transfer. The petitioner at the same time challenged the contents of the intimation letter by filing a writ petition being WPA 6722 of 2020. The Court by an order dated 30th September, 2020 directed the respondents to file affidavits in the matter and the writ petition was made returnable after three weeks.

Presently, the petitioner is aggrieved by the notice dated 27th November, 2020 whereby the Project Director has invoked the provision of Clause-9 of the agreement of the letter of contract and the contract of the petitioner has been treated to be closed.

The petitioner submits that on account of the COVID-19 situation it was not possible for him to travel all the way from Nadia to Jalpaiguri. The train services were not available. The petitioner could not have gone to Jalpaiguri and got a residence over there to stay. The petitioner's parents are aged and ailing and it was not possible for him to leave them at Nadia and report to Jalpaiguri.

The petitioner prays for setting aside the order of cancellation of contract and for a direction upon the respondent authority to permit him to join service.

Learned Government Pleader appearing on behalf of the State respondents submits, upon instructions, that enough opportunity was given to the petitioner to join his service at Jalpaiguri. Several letters and reminders were given to the petitioner which he ignored. It has been contended that the train services has become normal and everybody is reporting to duty, except the petitioner.

It has further been submitted that the petitioner was a contractual employee and the

period of contract has expired on 31st December, 2020.

From the terms and conditions of the engagement letter it appears that the service of the petitioner was contractual and the same was terminable with a months' notice from either side. The petitioner in the instant case was duly given a months' notice to join his service, which the petitioner failed to comply.

Though the petitioner challenged the said notice by filing a writ petition and order was passed as far back on 30th September, 2020 directing the parties to file affidavits in the matter but there was no order staying operation of the transfer order that was challenged before the Court. Nothing prevented the petitioner to join office at Jalpaiguri during the pendency of the earlier writ petition.

The petitioner practically waited for the respondent authorities for invoking the provision of Clause-9 of the letter of contract. In the meantime, the contractual period of the petitioner has also expired. The writ petition was however filed on 9th December, 2020 when the contractual period of the petitioner was subsisting.

It is very clear from the letter terminating the contract that the same was issued as the petitioner was absent from his work for a considerable period of time. The petitioner has expressed his inability to join service.

The country is passing through a pandemic situation. In time of such crisis the respondent authorities, instead of adopting a very harsh stand can be a bit lenient in the case of the petitioner, only because he resides at a far place and give him one more opportunity to join service at Jalpaiguri.

As the sole allegation of cancelling the contract of the petitioner is his absence from work, the respondent authorities can reconsider the prayer of the petitioner for permitting him to join service. The authority will take note of the fact that the petitioner resides at a very far place from his place of work where he is presently posted and due to non-availability of proper conveyance it may not have been possible for the petitioner to join his service within the time given to him.

In view of the above, the instant writ petition is disposed of by directing the Project Director being the respondent no. 4 herein to reconsider the prayer of the petitioner for reinstatement in service.

The said respondent shall take note of the fact that the writ petition was filed when the period of contract of the petitioner was subsisting and will not insist on the ground that his contract has expired during the pendency of the writ petition.

The said respondent shall consider the prayer of the petitioner within a period of ten days from the date of communication of this order and shall pass a reasoned order and communicate the same to the petitioner immediately thereafter.

WPA 10369 of 2020 stands disposed of.

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

(Amrita Sinha, J.)

