

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction
(Appellate Side)

F.M.A. 739 OF 2019

Chodhury Noore Asman

Vs.

The State of West Bengal & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Appellant : Mr. Sardar Amjad Ali, Ld. Sr. Adv.
Mr. Samirul Sardar, Adv.
Mr. Masum Ali Sardar, Adv.
Mr. Md. Abdul Alim, Adv.
Ms. Sucharita Ray, Adv.

For the State : Mr. Rezaul Hossain, Adv.

Heard on : 18.05.2022, 27.06.2022, 26.09.2022,
31.10.2022, 04.11.2022, 07.11.2022,
24.11.2022

CAV On : 24.11.2022

Judgment On : 20.12.2022

Arijit Banerjee, J. :-

1. A judgement and order dated August 9, 2018, whereby the appellant's writ petition being W.P. 6294(W) of 2008 was dismissed, is under challenge in this appeal.

2. The appellant approached the learned Single Judge contending that she had been engaged as a 'Sahayika' in the third post of Paikpara Seikhpara Sishu Siksha Kendra (in short 'the said SSK') under Nalhati-I Panchayet Samity for the period of 2002-03. Her engagement was initially for a period of one year. Her contract of service was extended from time to time till the year 2004-05. She received honorarium for the said period against service rendered. The service contract was not renewed after that. She complained of breach of the principles of natural justice. She said that she was never informed that her contract will not be renewed nor was she given a hearing by the authorities before they decided to discontinue her service.

3. It appears that previously the appellant had approached this Court by filing W.P. No. 26556(W) of 2006. In that writ petition her grievance was while discontinuing her service, the said SSK had renewed the service contract of another lady by the name of Muktara Begum in the 4th post of Sahayika. She complained that her representation made to the District Magistrate of Birbhum had not been considered.

4. By an order dated September 21, 2007, the said writ petition was disposed of by directing the District Magistrate, Birbhum "to take into

account the grounds made out by the petitioner for his (sic) consideration and after giving him (sic) an opportunity of hearing including such other affected parties pass a reasoned order communicating the same to the petitioner within a period of a fortnight from the date of communication of this order.”

5. Pursuant to the said order, the District Magistrate, Birbhum, heard the appellant herein as also a representative of the management of the said SSK. The District Magistrate held that the decision of the Managing Committee of the SSK not to renew the service contract could not be termed as illegal or improper. Regarding the appellant’s prayer that she should be given appointment against vacant post of Sahayika in the year 2006-07, the District Magistrate held that since the appellant was no more a Sahayika, she would have to go through the proper process, i.e., she would have to apply against advertisement and go through a proper selection process.

6. The said order of the District Magistrate was challenged by the appellant before the learned Single Judge in the present round of litigation.

7. By the judgment and order impugned in this appeal, the writ petition was dismissed. The material portion of the said order reads as follows:-

“The writ-petitioner was a contractual employee that was renewable at the exclusive discretion of the Gram Panchayat concerned. Hence the writ-petitioner cannot claim any right beyond a period of one year. The renewal of the writ-petitioner’s contract until the year 2005 was purely at the discretion of the Gram Panchayat concerned.

There are other reasons indicated in the order impugned passed by the District Magistrate, Birbhum on January 11, 2008.

The writ petitioner was found to be irregular in attendance, insincere and found to be always quarrelling with the other ‘Sahayikas’. This was affecting the quality of education in the Kendra. It is further recorded in the said impugned order that the SSK was running with four ‘Sahayikas’ despite having only 86 enrolled learners. The number of ‘Sahayikas’ was subsequently directed to be reduced in terms of the rules of the Government.

Even then for the purpose of consideration of the petitioner’s case, over that of the fourth ‘Sahayika’, the writ petitioner’s conduct ought to have been appropriate. Given the conduct of the writ-

petitioner, as indicated in the impugned order, she could not have claimed any right of renewal over and above the four 'Sahayika'.

I find absolutely no infirmity in the impugned order. The same is comprehensive and with sound reasons.

Hence, the writ-petition being WP 6294(W) of 2008 is hereby dismissed. No order as to costs."

8. Hence this appeal.

9. Appearing for the appellant, Sardar Amjad Ali, learned Senior Advocate drew our attention to the concerned service contract which was in Bengali language, the relevant clauses whereof read as follows:-

“১) পাইকপাড়া সেখপাড়া শিশু শিক্ষা কেন্দ্র পরিচালনা সমিতি শ্রীমতী/শ্রী চৌধুরী নূরে আসমান কে অনধিক এক বছরের জন্য পাইকপাড়া সেখপাড়া শিশু শিক্ষা কেন্দ্রের পঠন পাঠনরত শিশুদের শিক্ষা দানের জন্য শিক্ষা সহায়িকা/সহায়ক হিসাবে কাজ করার দায়িত্ব অর্পণ করিলেন।

1. The managing Committee of Paikpara, Sheikhpura Child Education Center appoints Chowdhury Noore Asman as Sikha Shahayika of the Child Education Centre for a period not more than one year of the Child Education Centre.

৫) শিশু শিক্ষা কেন্দ্রে পরিচালনা সমিতি শিক্ষা গঠন পাঠনরত শিশুদের শিক্ষা সপ্তকীয় যে

কাজ সহায়িকা/সহায়ক অর্পণ করবেন, সেটি তিনি নিষ্ঠার সহিত পালন করিবেন।

5. She should perform her duties with sincerity in assisting the students in their education at pursuit.

৭) শিক্ষা কেন্দ্রের পঠন পাঠনের নির্দিষ্ট সময়ে তিনি বিনা অনুমতিতে অনুপস্থিত থাকতে

পারবেন না এবং ঐ সময়ে অন্য কোন চৌধুরী, ব্যবসা বা পেশায় নিযুক্ত হবেন না।

7. She will not remain absent or engaged in any other service business or profession without the permission of the Managing Committee.

৯) এই চুক্তি ২০০৩ সালের মে মাসের ২ তারিখে বলবৎ হবে এবং এর মেয়াদ ২০০৪

সালের এপ্রিল মাসের ৩০ (ত্রিশ) তারিখ পর্যন্ত থাকবে।

9. The agreement will be operative from 2nd May 2003 and continue up to 30th April, 2004.

১০) এই চুক্তিপত্রে বর্ণিত শর্তগুলি সত্ত্বেও পাইকপাড়া সেখ পাড়া শিশু শিক্ষা পরিচালনা

সমিতি শ্রীমতি/শ্রী চৌধুরী নূরে আসমান কে এক মাসের প্রত্যুতির সময় দিয়ে অথবা ঐই সময়ের

পরিবর্তে এক মাসের সান্মানিক দিয়ে এই চুক্তিপত্র বাতিল করতে পারেন। শ্রীমতি/শ্রী চৌধুরী
নূরে আসমান ও পরিচালন সমিতিতে পত্রাকারে এক মাসের সময় দিয়ে অথবা এক মাসের
সান্মানিকের অর্থ ফেরৎ দিয়ে পদত্যাগ করতে পারেন।

10. This agreement may be terminated by the Managing Committee
of Centre by giving her one months' notice or payment for a month.
Similarly she also can resign from her post either by giving one
month's notice or by surrendering on month's salary.

১১) যদি পরিচালনা সমিতি দেখেন যে তার আচরণ ঐ শিশু শিক্ষা কেন্দ্রের উদ্দেশ্যে ও
স্বার্থের পরিপন্থী, বিশেষতঃ নিম্ন বর্ণিত আচার আচরণগুলো কোন একটি বা একাধিক যদি তার
ক্ষেত্রে প্রযোজ্য হয় সেই ক্ষেত্রে পরিচালন সমিতি সংশ্লিষ্ট শিক্ষা সহায়িকা/সহায়ককে তার পক্ষে
বক্তব্য পেশ করার একটি সুযোগ দেবে। এবং এই বক্তব্যের উপর নির্ভর এই চুক্তি বাতিল
করা হবে।

১১.১ মাদকাসক্তি বা কোন ক্ষতিকর নেশার অভ্যাস।

১১.২ বিনা অনুমতিতে কাজে অনুপস্থিত।

১১.৩ ন্যস্ত দায়িত্ব নির্বাহে অবহেলা ও গাফিলতি।

১১.৪ পরিচালন সমিতির বিধিসম্মত আদেশ ও নির্দেশ অমান্য করা।

১১.৫ তহবিল তহরুপ বা শিক্ষা কেন্দ্রের সামগ্রী অপহরণ করা বা ইচ্ছাকৃতভাবে নষ্ট করা।

১১.৬ শিক্ষা কেন্দ্রে নিয়ম অমান্য করা।

১১.৭ এই চুক্তিপত্রের শর্তগুলি অমান্য করা।

11. In the event the Managing Committee observes that her conduct is not appropriate or any of the conditions here-in after referred, is applicable in her case, the Managing Committee shall be entitled to cancel the appointment by giving her an opportunity to place defence.

i) Be addicted to any kind of drug or any kind of injuries addictions.

ii) Remain absent on duty without permission.

iii) Negligence is the discharge of duties.

iv) Disobedience of the orders of the Managing Committee.

v) Defalcation of fund on stealing of any property of the Centre, or deliberately damaging such properties.

vi) Violation of the Centre's discipline.

vii) Disobeying any conditions of the agreement.”

10. Learned Senior Counsel submitted that the service conditions specifically envisage that if the management of the SSK decides to terminate the service contract of the appellant, they would have to afford an opportunity of hearing to the appellant. This is a basic requirement of the principles of natural justice. However, no such opportunity of hearing was offered to the appellant.

11. Learned Counsel further submitted that had the performance of the appellant not been good, her service contract would not have been renewed from time to time. Hence, there was no reason for the Managing Committee to discontinue with her service. He submitted that it is grossly irregular and indicative of nepotism that her service in the post of 3rd Sahayika was dispensed with but the service of Muktara Begum in the post of 4th Sahayika was continued. He submitted that if it was the case that the said SSK did not require four Sahayikas, logically speaking and in all fairness, the service of Muktara Begum in the post of 4th Sahayika should have been discontinued and the service contract of the appellant should have been renewed.

12. Learned Counsel relied on the following decisions of the Hon'ble Supreme Court: **Smt. Maneka Gandhi v. Union of India and Anr.**

Reported at AIR 1978 SC 597 and State of Maharashtra v. Veerappa R.

Saboji & Anr. Reported at AIR 1980 SC 42. Maneka Gandhi's case was relied upon for the proposition that even where there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual, which was likely to affect the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. The decision in the case of ***State of Maharashtra*** was relied upon for the proposition that when termination of service of a Government servant is not a termination simplicitor but attaches stigma to such person, he cannot be dismissed without complying with the provisions of Article 311(2) of the Constitution the material portion whereof reads as follows:- "No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges."

13. Appearing for the State, Mr. Hossain, learned Advocate, submitted that the engagement of the appellant as Sahayika was purely contractual, subject to renewal annually at the sole discretion of the management of the

SSK. Secondly, the appellant's service was not terminated. The appellant's service contract came to an end upon expiry of the 2004-2005 period. The contract was not renewed.

14. Learned Counsel submitted that the Managing Committee of the SSK had the power to evaluate the appellant's performance and if not found satisfactory, had the right not to renew her service contract. This is exactly what was done in the present case.

15. Learned Counsel finally submitted that by Memorandum No. 2217-PN/O/I/O-1/2003 (Policy) dated April 23, 2010 issued by the department of Panchayats and Rural Development, Government of West Bengal, a new procedure for engagement of Sahayikas and new service conditions have been introduced. Accordingly, it is not possible to simply absorb the appellant in any vacant post of Sahayika in the SSK or elsewhere.

16. In reply learned Senior Counsel for the appellant drew our attention to a sentence in the District Magistrate's order dated January 11, 2008 which was challenged before the learned Single Judge. The said sentence reads thus;- "later on another meeting was held on 05/06/05 by the said Managing Committee where a decision for **terminating** the contract was taken." Learned Counsel submitted that this was therefore a case of

termination of the service contract without observing the principles of natural justice.

17. We have given our anxious consideration to the rival contentions of the parties.

18. The service of the appellant was purely contractual in nature. Her initial appointment was for one year. Her service contract was renewable entirely at the discretion of the SSK. Initially her service contract was renewed till the year 2005 and thereafter the Managing Committee of the SSK decided not to further renew her service contract. She had no vested right to have the contract of service renewed. Upon her approaching this Court in the previous round of litigation, the concerned District Magistrate was directed by this Court to look into the matter and pass a reasoned order. The District Magistrate heard the concerned parties including the appellant and passed a reasoned order dated January 11, 2008. Hence, the grievance of the appointment that she was not given an opportunity of hearing is baseless. As directed by this Court, the District Magistrate gave a full hearing to the appellant. There is no infraction of the principles of law laid down in the two decisions relied upon by learned Counsel for the appellant as referred to above.

19. The appellant's further contention was that opportunity of hearing should have been given to her by the management of the SSK prior to terminating her service. She relies on Clause 11 of the Contract of service which has been extracted above. This argument of the appellant is misconceived. Clause 11 contemplates premature termination of the service contract or premature cancellation of appointment on one or more of the grounds enumerated in that clause. Clause 11 will not be germane in the facts of the present case. The appellant's service contract came to an end by efflux of time and not by premature termination. Upon the expiry of the contract period, the management of the SSK resolved not to renew the appellant's service contract since the management did not find her service to be satisfactory. The management was perfectly within its right to do so. No opportunity of hearing was required to be given to the appellant before the management resolved not to renew the appellant's service contract, either under the terms of the contract of service or otherwise. Learned Counsel for the State rightly submitted that the Managing Committee of the concerned SSK was empowered and competent to assess the performance of the appellant and if not satisfied therewith, the Managing Committee could refuse to renew her service contract.

20. As regards the allegation of nepotism, we are not impressed with the same. It was an administrative decision of the Managing Committee of the concerned SSK not to renew the service contract of the appellant but to renew the service contract of Muktara Begum who held the post of the 4th Sahayika. It appears from the order of the District Magistrate that such decision was taken on the basis of the quality of performance of the said 2 Sahayikas. Nothing has been produced to show that the appellant was victimised or Muktara Begum was shown undue favour. The writ Court would be extremely slow to interfere with such a decision of a Managing Committee. It has not been demonstrated that the decision of the Managing Committee of the concerned SSK was arbitrary or mala fide or perverse in any sense.

21. The order of the District Magistrate was under challenge before the learned Single Judge. The learned Judge found no infirmity in the said order. We also do not find any illegality or procedural impropriety in the order of the District Magistrate. It is a speaking order containing cogent reasons. The order was passed observing the rules of natural justice. The writ Court while examining the legality of an administrative order in exercise of jurisdiction under Article 226 of the Constitution is concerned not so

much with the merits of the decision but with the manner in which the decision has been arrived at. The Court would be concerned with the decision making process. It would not act as an Appellate Court. In our considered view, in the present case, none of the grounds for judicial review of the District Magistrate's order was available to the appellant/writ petitioner. The learned Judge rightly refused to interfere. We affirm the order of the learned Judge assailed in this appeal.

22. The appeal fails and is dismissed without any order as to costs.

23. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)