

MAT 104 of 2020
With
CAN 1 of 2020 (Old No. CAN 1722 of 2020)

Dipak Dasgupta
-Vs-
The State of West Bengal & others
(Via Video Conference)

Mr. K. Poddar
... for the appellant

Mr. Indranil Nandi
Mr. Sayak Konar
... for the State

The appellant challenges the order impugned of the Hon'ble Single Bench dated 4th December, 2019 in the writ petition.

By the said impugned order dated 4th December, 2019, the Hon'ble Single Bench was pleased, *inter alia*, to notice that the appellant was appointed purely on a temporary basis as *Darwan*/caretaker of the premises in question under the control of the Administrator General and Official Trustee, Government of West Bengal.

The appointment was on a consolidated salary and was terminable on one month's notice without assigning any reason therefor.

The appellant, being aggrieved by the letter of termination dated 14th March, 2019 issued by the Administrator General and Official Trustee of West Bengal

cancelling his appointment, argued before the Hon'ble Single Bench that there has been a violation of natural justice inasmuch as the appellant was not given one month's notice prior to termination of his service.

It was argued that the provision of giving one month's notice has been stated in the letter of appointment issued to the appellant on the 19th of May, 1975.

The Hon'ble Single Bench was of the view that the principles of natural justice, not being in the nature of a straightjacket formula, the requirement of one month's notice prior to termination of service can be met by paying the appellant/the writ petitioner his consolidated salary for the month corresponding to the notice period.

Accordingly, it was directed that the appellant be paid one month's salary for the month of March, 2019.

The letter of termination was thus upheld.

Mr. Poddar, Learned Counsel appearing for the appellant, submits that the requirement of the notice period of one month cannot be waived by substituting such requirement with the payment of a month's salary in lieu of notice.

Relying on the authority of **(2020) 14 SCC 449**, Learned Counsel for the appellant submits that any order of removal of an employee not being in accordance with law shall entitle the Court to direct reinstatement of the employee.

Per contra, Mr. Nandi, Learned Counsel for the respondents/AGOT, West Bengal relying on paragraph 97 of **(2012) 5 SCC 370, In Re: Maria Margarida Sequeira Fernandes v. Erasmo Jack De Sequeira**, submits that

the nature of appointment conferred on the appellant is gratuitous and hence the Caretaker/*Darwan* must give possession forthwith on demand.

For the benefit of this discussion, Paragraph 97 is set forth below:

“97. *Principles of law which emerge in this case are crystallised as under:*

- (1) No one acquires title to the property if he or she was allowed to stay in the premises gratuitously. Even by long possession of years or decades such person would not acquire any right or interest in the said property.*
- (2) Caretaker, watchman or servant can never acquire interest in the property irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.*
- (3) The courts are not justified in protecting the possession of a caretaker, servant or any person who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.*
- (4) The protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or licence agreement in his favour.*
- (5) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property irrespective of his long stay or possession.”*

It is submitted on behalf of the respondents/AGOT that the letter of appointment issued to the appellant is terminable without assigning any reason.

It is pointed out that the view of the Hon'ble Apex Court ***In Re: Maria Margarida Sequeira Fernandes*** (*supra*) was upheld by this Court in APOT 393 of 2014 with GA 2375 of 2014 *vide* its order dated 13th November, 2014.

Having heard the parties and considering the materials placed as well as the facts and circumstances of this case, this Court does not find any infraction of natural justice connected to the intimation of termination of service of the appellant as communicated by the respondents/AGOT.

This Court also finds substance in the view of the Hon'ble Single Bench that the requirement of one month's notice can be met by paying one month's salary in lieu of such notice.

This Court is of the further view that the principle enshrined in Paragraph 97 ***In Re: Maria Margarida Sequeira Fernandes*** applies squarely to the facts of this case.

In the light of the above discussion, this appeal is found to be without merit.

MAT 104 of 2020 along with **CAN 1 of 2020 (Old NO. CAN 1722 of 2020)** stand thus **dismissed**.

Interim order, if any, stands vacated.

The personal appearance of the AGOT, West Bengal Mr. Biplab Roy, stands dispensed with.

All parties to act on a server copy of this order duly obtained from the official website of the Hon'ble High

Court, Calcutta.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

(Krishna Rao, J.)

(Subrata Talukdar,J.)