

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Moushumi Bhattacharya

WPA 2280 of 2020

Soma Sarkar

Vs.

The State of West Bengal & Ors.

For the Petitioner : Ms. Papiya Chattopadhyay, Adv.

For the State : Mr. Lalit Mohan Mahata, Adv.
Mr. Prasanta Behari Mahato, Adv.

For the College : Mr. Shamim-Ul-Bari, Adv.
Mr. Atarul Haque Molla, Adv.

Last Heard on : 16.03.2022.

Judgment on : 23.03.2022.

Moushumi Bhattacharya, J.

1. The petitioner prays for setting aside the notice of termination of service issued on 27th January, 2020. By the impugned notice, issued by the Teacher-in-Charge of the concerned College, the petitioner was terminated

from service on the ground of misconduct pursuant to a meeting of the Governing Body of the College held on 20th January, 2020.

2. The petitioner complains that the impugned notice is in breach of the principles of natural justice and does not disclose any reason for terminating the service of the petitioner.

3. The petitioner was appointed as a Computer Technician by an appointment letter dated 12th April, 2012 and the letter indicates that the appointment was purely on a temporary basis. The letter also states the duties and benefits given to the petitioner and that the petitioner's appointment shall be valid till 28th February, 2013. According to learned counsel appearing for the petitioner, the petitioner wrote several letters to the college in 2018 and 2019 for appointment, increment of her salary and other benefits by reason of which the petitioner was terminated from her service without any notice. Counsel places notices issued by the Finance Department on the question of enhancement of monthly remuneration and certain other terminal benefits granted to casual / contractual workers which include the petitioner. Counsel submits that the petitioner did not receive any complaint or notice from the College prior to the termination letter.

4. Learned Counsel appearing for the College places at least three notices issued by the College to the petitioner as well as to all teaching and non-

teaching staff specifying the duty hours and other responsibilities. The two specific letters to the petitioner dated 2nd July, 2018 and 15th January, 2019 state that the petitioner has failed to perform her duties. Counsel places the Governing Body decision dated 20th January, 2020, which has been referred to in the termination notice and contains several allegations against the petitioner in respect of the petitioner failing to perform her duties in a proper manner. The Minutes of the Meeting show that the Governing Body unanimously agreed that the petitioner should be terminated from her service.

5. The issue in controversy is whether the impugned notice of termination dated 27th January, 2020 should be set aside on the facts as would be evident from the documents on record. The impugned notice is cryptic and does not disclose any reason for the termination except referring to a Governing Body meeting held on 20th January, 2020 which would have effect from 1st February, 2020. The notice ends with “this decision is not reversible”. The notice taken on a stand-alone basis suffers from a lack of reasons for taking a drastic step of termination. Therefore, what needs to be seen is whether the notice was issued in continuation or as a follow up of other letters issued to the petitioner which put the petitioner on notice of the possible reasons for which her service could be terminated. Although, at least two notices are alleged to have been issued to the petitioner in 2018

and 2019, there is no evidence that these notices were received by the petitioner. In addition to the petitioner disputing the receipt of such notices, there is also no reference to these notices in the impugned letter of termination. It is also surprising that the College waited for one year from the last notice of 15th January, 2019 before terminating the service of the petitioner on 27th January, 2020. The decision of the Governing Body dated 20th January, 2020 was also not served or shown to the petitioner prior to the notice of termination. The petitioner hence was not given any opportunity to answer to the charges made against her by the Governing Body which, admittedly, formed the basis of the petitioner's termination. It also appears that by a Resolution dated 20th March, 2020, the Governing Body reiterated their decision to terminate the service of the petitioner and made it known to the petitioner after nineteen months on 7th October, 2021.

6. The conduct of the College is more untenable in the attending facts; the College issued at least two certificates of good conduct and sincere work ethic on 7th September, 2018 and 16th November, 2018. These certificates are contrary to the notices issued to the petitioner about the same time on 2nd July, 2018 and 15th January, 2019 alleging inadequate performance. The primary issue however remains the petitioner not being served with the decision of the Governing Body taken at the meeting held on 20th January, 2020 or any other documents which would have put the petitioner on notice.

The College also failed to afford a reasonable opportunity to the petitioner to present her case before a drastic penalty of termination was taken against her. Even if it is assumed that the charge of inadequate performance is correct, natural justice demands that the petitioner be given a chance to respond to the charges. There is also no accepted definition of “misconduct” in the rules of the College or apparent from the decision of the Governing Body. The absence of any such definition assumes importance since the petitioner has been accused of such and has been terminated on that basis. It also appears from the documents that the petitioner’s repeated representations for payment of her salary as well as increment of her salary and other terminal benefits have not been addressed by the College despite two recommendations of the College and the Finance Department of the Govt. of West Bengal on 14th October, 2015 and 25th February, 2016 respectively. The petitioner raised specific questions by her letter dated 28th January, 2019 with regard to the daily wages payable to her and other statutory benefits which she is entitled to. The College has not come up with any documents to show that the petitioner’s questions were answered. The irrefutable conclusion is that the College took a summary decision to terminate the petitioner’s service by way of a cryptic and arbitrary letter without giving an opportunity of hearing to the petitioner.

7. W.P.A 2280 of 2020 is allowed in view of the above reasons, and disposed of in terms of prayer (a) and (b). The impugned notice of termination dated 27th January, 2020 is set aside and the College and the other material respondents are restrained from giving any further effect to the impugned notices in any manner whatsoever.

Urgent Photostat certified copies of this judgment, if applied for, be given to the respective parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J)