

D/L
Item No. 11
14.12.2022
KOLE

FMA 916 of 2021

Sundar Ali Sheikh
-Vs.-
The State of West Bengal & Ors.

Mr. Kollol Basu,
Mr. Suman Banerjee,

...for the appellant.

Mr. Sudip Kumar Bhattacharyya,
Mr. Suman Basu,

...for the Zilla Parishad.

By consent of the parties the appeal and the application are taken up for hearing together.

This appeal is directed against a judgment and order dated March 17, 2021, whereby the appellant's writ petition was dismissed by the learned Single Judge.

The appellant was engaged as a District Coordinator of SSK/MSK Cell under Hooghly Zilla Parishad on temporary and contractual basis. By a letter dated January 3, 2018, the appellant was informed by the office of the Hooghly Zilla Parishad that he has been selected for the post of District Coordinator of SSK/MSK Cell under Hooghly Zilla Parishad "on temporary and purely contractual basis". In the said letter it is also stated that "the contractual agreement will be initially for one year terms of contract may be considered for further renewal upon rules and norms applicable under the programme and the engagement may be terminated at any point of time with one month's notice from either side. This engagement period will be ended up to his completion of 65 years of age.....".

A formal agreement was executed on January 4, 2018. The said agreement also specifically mentioned that the engagement will be from January 4, 2018 till January 3, 2019. Clause 6 of the agreement was to the effect that if the appellant discharged his duties with dedication and honesty, his engagement may be renewed after one year.

The appellant approached the learned Single Judge with the grievance that after January 3, 2019, he was not allowed to continue to work by the Zilla Parishad Authorities. It appears that he had submitted a renewal agreement for approval by the Zilla Parishad. His primary prayer in the writ petition was as follows:-

“a. A writ of Mandamus or writ in the same nature thereof commanding the respondents more particularly the respondent nos. 4 and 5 to renew the agreement of the petitioner submitted on 24.12.2018 for one year with effect from 01.03.2019 and to disburse remuneration of the petitioner at the rate of Rs. 10,000/- per month from January, 2019 upto date and allow him to perform his duty in the post of District Coordinator SSK/MSK under Hooghly Zilla Parishad without any obstruction;”

The learned Judge came to the conclusion that the writ petitioner had been engaged on a temporary and purely contractual basis and had no right to insist on continuing in service after expiry of the initial period of one year. Accordingly, the learned Judge dismissed the writ petition. Hence this appeal.

Before the learned Single Judge and also before us, Mr. Basu learned Advocate appearing for the appellant/writ petitioner, strenuously argued that even beyond January 3, 2019, the appellant had rendered service in various capacities. Hence, for such period he should be paid admissible remuneration. Mr. Basu has drawn our attention to copies of various documents which are in the paper book to demonstrate that the appellant continued to work till February, 2021. Mr. Basu fairly conceded that the appellant may not have any legal right to continue in service after 65 years of age but since he has rendered service prior to attaining 65 years of age, he should be paid appropriate remuneration.

We have not called upon Mr. Bhattacharyya, learned Advocate, appearing for the Zilla Parishad.

There is absolutely no doubt that a person who has been engaged on a purely contractual basis for a period of one year, cannot have any legal right to continue in service. The learned Judge was absolutely right in coming to that conclusion. Since there is no such legal right in favour of the appellant, no mandamus can be issued.

In so far as the other contention of the appellant is concerned, we are unable to agree with him that he had a right to continue in service till he attained the age of 65 years. The memo dated August 28, 2009, relied upon by the appellant (page 21 of the paper book) cannot be interpreted in such manner. The effect of that memo, in our considered view, is that beyond the age of 65 years no District Coordinator can discharge his functions. But it does not

mean that this memo gives any right to a District Coordinator to continue in service till he attains the age of 65 years.

In so far as the claim for remuneration is concerned, we have considered the documents to which our attention has been drawn. These documents are not admitted by the Zilla Parishad. In particular, Mr. Basu draws our attention to the signature of one 'S. Ali' in several of the documents. Mr. Basu submitted that this would show that he has discharged his duty as Officer-in-Charge, Legal Cell, SDO Office till February, 2021. Whether or not the aforesaid signature is of the appellant, needs to be tested in a trial before a competent civil court. The writ court cannot act as a Trial Court.

We are unable to grant any relief to the appellant. Needless to say, the appellant may file appropriate civil suit before a competent forum. We also grant liberty to the appellant to make a comprehensive representation to the office of the concerned Sub-divisional Officer regarding his claim for remuneration as aforesaid. If such representation is made within three weeks from date, the concerned SDO shall consider such representation in accordance with law and applicable rules and regulations including pension rules, if any, and dispose of the same by a reasoned order within a period of eight weeks from the date of receipt of such representation, after granting an opportunity of hearing to the appellant or his authorized representative as also to the representative of the concerned Zilla Parishad. The decision so taken shall be communicated to the appellant within a

week from the date of the decision. Needless to say, if the concerned SDO finds merit in the appellant's claim, appropriate consequential orders will be passed so that the appellant receives his dues expeditiously. While arriving at the decision, the concerned SDO shall not be influenced by any observation either in this order or in the order of the learned Single Judge, which is under appeal.

The appeal is, thus, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)