

Court No. 22  
**30.8.2022**  
(Item No. 1)  
(AB)

**IN THE HIGH COURT AT CALCUTTA**  
**Constitutional Writ Jurisdiction**  
**Appellate Side**

**W.P.A. 9711 of 2016**  
+  
**CAN 1 of 2016 (not in file)**  
+  
**CAN 2 of 2022**

Sukdeb Karmakar  
VS  
State of West Bengal & Ors.

Mr. Tarapada Das  
Ms. Soma Chakraborty  
..... for the petitioner  
Mr. Sadhan Kumar Halder  
..... For the State  
Mr. Siva Prosad Ghose  
Ms. Debjani Ghosh  
Mr. S. Mondal  
.... For respondent No. 10

This writ petition was filed assailing the impugned order dated April 20, 2016, **Annexure R-4 to the affidavit-in-opposition** filed on behalf of the seventh respondent affirmed on July 28, 2022 and the consequential impugned communication dated April 27, 2016, **Annexure P-11 to the writ petition** issued by the seventh respondent intimating the petitioner as to the termination of his contractual employment at the post of **Gram Rojgar Sevak**.

Pursuant to the advertisement notice dated October 28, 2014, **Annexure P-5 to the writ petition** the petitioner applied for the said **Gram Rojgar Sevak (for short, the said GRS)** on purely one year contractual basis under **MGNREGA** for

implementation of the **MGNREGA** at Gram Panchayat level under the **Bandwan Development Block** on the terms and conditions mentioned in the said advertisement notice. The educational qualification mentioned in the said advertisement notice is reproduced herein below:

**“Educational Qualification : 1) Passed Higher Secondary examination (Science Stream) with at least 50% marks from any recognized board/university (Candidates from General/ Vocational stream having both Physics & Mathematics may be considered) AND 2) The candidates must have at least six months training on Computer Application from any recognized institute.”**

On November 27, 2014 the necessary engagement letter was issued by the seventh respondent in favour of the petitioner, intimating that he was selected for the said GRS on contractual basis in the district of Purulia. The appointment was purely temporary at a fixed remuneration of Rs.7,000/- per month and was for a period of one year only. Following the said engagement letter the necessary **Agreement for Engagement (for short, the said Agreement) dated December 1, 2015** was executed by and between the petitioner and the ninth respondent and on the basis of the stipulations mentioned in the said agreement, the petitioner’s employment was renewed from time to time and the same had subsisted till November 30, 2016.

The private respondent No. 10 challenged the appointment of the petitioner by way of a writ petition being **WPA 14271 of 2015**, when by an order dated September 10, 2015 a co-ordinate bench disposed of the said writ petition directing the District Magistrate, Purulia being the second respondent herein to consider the representation of the petitioner by giving hearing to all the interested parties and to pass a reasoned order.

In terms of the said direction of the co-ordinate bench, the third respondent passed the impugned order dated April 20, 2016. The relevant observations made by the third respondent in the said impugned order are reproduced herein below:

***“Now as per clarification issued by Department of Panchayats & Rural Development, Government of West Bengal vide No. 6561-RD(NREGA)/18S-03/2009 dated 07.10.2009, candidates passing Vocational course (X+2 level) with Physics and Mathematics as Compulsory subject are only eligible for the post of GRS. Hence, it is crystal clear that Sri Karmakar was not eligible for the post of GRS from the very beginning!***

***Sri Karmakar, when he was informed of his ineligibility for getting engaged in the post of GRS and the fact that his order of engagement would be directed to be terminated after his hearing if he could not bring out any new information/argument, chose to remain silent.***

***Hence, BDO Bandwan is directed to terminate the engagement of Sri Sukdeb***

***Karmakar in the contractual post of GRS in Kuilapal GP of Bandwan block immediately after receipt of this order. BDO, Bandwan is also directed to arrange for payment to Sri Karmakar as per norm till the date of his termination.”***

Referring to the said advertisement notice Mr. Tarapada Das, learned advocate appearing for the writ petitioner submitted that, the educational qualification that was required to receive such contractual appointment for a candidate to pass Higher Secondary Examination (Science Stream) with at least 50% marks from any recognized Board/University (candidates from General/Vocational stream having both Physics and Mathematics may be considered). He then referred to the Annual Examination Mark sheet for class XI of the petitioner, ***Annexure P-2 to the writ petition*** and submitted that, he had Physics as an additional subject and he secured 72.83% marks in aggregate. He then referred to the Annual Examination mark sheet for class-XII and the final marks of (X+II) level, Higher Secondary (Vocational) Stream courses of the petitioner, ***Annexure P-3 to the writ petition*** and submitted that, he had mathematics as additional subject and had secured 77.67% in aggregate. He submitted that, the educational qualification mentioned in the said advertisement notice only specified that the candidate must have Physics and Mathematics while passing the Higher Secondary

Examination in the Science Stream including in the vocational courses but such clause did not qualify whether Physics and Mathematics would be the compulsory subjects or additional subjects.

Mr. Das submitted that since the academic qualification did not specifically mentioned that, Physics and Mathematics should be the compulsory subjects of a candidate, the petitioner was eligible to receive the appointment having Physics and Mathematics as additional subjects. He submitted that, the appointing authority also understood the same and on the basis of such understanding appointed the petitioner and allowed him to enter into the said contractual service. He submitted that, the impugned order passed by the third respondent on the basis of the clarification issued by the Department of Panchayat and Rural Development, Government of West Bengal dated October 7, 2007 was wholly illegal, arbitrary and wrongful in terminating the service of the petitioner.

Mr. Sadhan Kumar Halder, learned State counsel referring to the academic qualification clause from the said advertisement notice submitted that, Physics and Mathematics should have been the compulsory subjects otherwise the said qualification should have been mentioned as Physics and Mathematics as additional one. He submitted that, the additional subjects can never be taken and

understood as compulsory subjects when an academic qualification criteria is fixed. He submitted that from the documents disclosed in the writ petition itself, namely, the Mark Sheet of the petitioner it would be evident that the petitioner did not have Physics and Mathematics as compulsory subjects and thus the impugned order passed by the third respondent was lawful, justified and proper. Resultantly, he submitted that the termination of the service of the petitioner was just and lawful.

Mr. Halder, learned State counsel further submitted that it was purely a contractual appointment. Contractual appointment would not give any right to the petitioner to come before a Writ Court to enforce the same.

Mr. Siva Prasad Ghose, learned advocate appearing for the private respondent No. 10 relying upon ***Annexure R-3 to the affidavit-in-opposition*** filed by the tenth respondent affirmed on April 28, 2017 submitted that, the petitioner in writing informed the seventh respondent that he had only Mathematics as one of the subjects at the Higher Secondary level and not Physics. He also requested the seventh respondent to cancel his application form for the said post.

Referring to ***Annexure R-13 to the affidavit-in-opposition*** filed by the private respondent No. 10 he submitted that, the seventh respondent made a

factual finding dated September 30, 2015. On a scrutiny of the same it appeared that the petitioner did not have Physics as his subject in Higher Secondary level while the private respondent had both Physics and Mathematics in the Higher Secondary Examination and it was found that the candidature of the petitioner was devoid of criteria requirement. Attention of this Court was also drawn to another factual observation from this document that the petitioner was acquainted with his criteria deficiency and consequentially applied for cancellation of his candidature. Referring to ***Annexure R-10 to the said affidavit*** which was a communication came from the Deputy Secretary, Government of West Bengal dated March 22, 2017, he submitted that, it was mentioned that in Class XII if Mathematics and Physics both are there then only one candidate would become eligible for the post of GRS.

Mr. Das, learned counsel for the petitioner in reply denied and disputed the submissions made on behalf of the private respondent No. 10. He submitted that even if, it is a contractual employment since the termination was made by an Article 12 authority, namely, the District Magistrate, the writ petition was maintainable.

The parties had filed and exchanged their affidavits, which are on record.

After considering the submissions made on behalf of the parties and upon perusal the materials on record, it appears to this Court that, the subject employment of the petitioner was purely contractual in nature. The academic qualification fixed for the employment as mentioned in the said advertisement notice has already been quoted above and on a meaningful reading thereof, this Court is of the considered opinion that, Physics and Mathematics were the compulsory subjects and not an additional one for a candidate to become eligible to receive the appointment for the post of GRS. From the Mark Sheets and documents, as discussed above, disclosed by the petitioner it is evident that he had Physics and Mathematics both as additional subjects and not compulsory. On the basis of such qualification, this Court is of the considered view that, the petitioner could not and did not qualify the educational qualification in terms of the said advertisement notice.

In absence of any mentioning that Physics and Mathematics may be additional subjects it would clearly mean that Physics and Mathematics were compulsory subjects, as the qualification fixed for the appointment of the post. The contention of the petitioner as noted above is thus rejected.

In as much as, the employment of the petitioner was purely contractual in nature, for a temporary period and with a contractual

remuneration. The right of the petitioner in so far as his employment is concerned had flown from such contract. The contract under which the petitioner was employed therein was not a statutory contract. The right to receive employment or to regain such employment after termination also flown from such contractual right. The termination even if, is taken to be wholly illegal and wrongful, the same should be in breach of such contract, for which the petitioner cannot enforce such contractual right by way of a writ petition. The remedy of the petitioner lies otherwise in accordance with law.

In as much as, in exercise of its high prerogative writ jurisdiction, the authority of this Court in judicial review is very limited only to scrutinize the decision making process of the second respondent while passing the said impugned order.

From a close scrutiny of the said impugned order dated April 20, 2016 passed by the second respondent it appears that, the foundation of the said impugned order taking the academic qualification being Physics and Mathematics as compulsory subjects in to account, appears to this Court to be, just, proper and correct. Hence, the said impugned order does not suffer from any infirmity both on fact or on law.

In view of the foregoing discussions and reasons, the said impugned order dated April 20,

2016 passed by the second respondent is not interfered with and the same stands affirmed. Consequently, the communication of the seventh respondent dated April 27, 2016, ***Annexure P-11*** to the writ petition is also not interfered with.

In view of the above, this writ petition being **W.P.A. 9711 of 2016** stands dismissed.

Consequently, **C.A.N. 1 of 2016** and **C.A.N. 2 of 2022** are accordingly disposed of.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

**(Aniruddha Roy, J.)**