

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT :

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE RABINDRANATH SAMANTA**

MAT 987 of 2021

With

CAN 1 of 2022

**BARNALI PURKAIT (MONDAL)
VS.
THE STATE OF WEST BENGAL & ORS**

Mr. Pankaj Halder, Adv.
Ms. Rama Halder, Adv.
Mr. Sanatan Panja, Adv.
Mr. Tapas Manna, Adv.

..... for the Appellant.

Mr. SK Rejaul Alam, Adv.

..... for the Respondent No.2

Mr. Jahar Lal Dey, Adv.
Mr. Rezaul Hossain, Adv.

..... for the Respondent Nos. 3 to 6

Heard On : **08.04.2022**

Judgment On : **29.04.2022**

Rabindranath Samanta, J:-

1. This appeal has been preferred by the appellant Smt. Barnali Purkait (Mondal) against the order dated 13.08.2021 passed by a learned Single Judge in W.P.A. 6378 of 2016.
2. The appellant was engaged as Sahayika of Ramchandrapur Sishu Shiksha Kendra, village-Ramchandrapur, District- South 24 Parganas on 15.03.2010. By a memo dated 04.01.2011 the Block Development Officer, Mathurapur-I informed the Secretary and Mukhyasahayika of the said Sishu Siksha Kendra that approval of engagement of the appellant as Sahayika stood withdrawn. By an

another memo dated 04.01.2012 the Executive Officer, Mathurapur-I, Panchayat Samiti directed the Secretary, Ramchandrapur Shishu Shiksha Kendra to desist the appellant from doing any institutional work of the Siksha Kendra and restrain her from signing in daily attendance register. In the writ petition the appellant, inter alia, sought for the following reliefs:

“a) A writ or writs in the nature of Mandamus commanding the respondents, their men, agents, assigns, successors-in-office, representative and each of them to set aside the purported orders dated 04.01.2011 and 04.01.2012 passed by the Executive Officer, Mathurapur- I Block, District South 24- Parganas by taking into consideration that he has not power/authority to pass such orders after coming into force of the circular dated 23.04.2010 forthwith.

b) A writ or writs in the nature of Mandamus commanding the respondents, their men, agents, assigns, successors-in-office, representative and each of them to allow the petitioner to continue her services as Sahayika of Ramchandrapur Shishu Shiksha Kendra, P.O. Imaddipur, District: South 24-Parganas until she attains the age of sixty years in view of the present Govt. Circulars as well as law laid down by this Hon’ble High Court and to pay the monthly and arrear honorarium along with interest on monthly and arrear honorarium @ 18% per annum from the date of entitlement till such payment forthwith.”

3. By the order impugned the writ petition filed by the appellant has been dismissed.
4. The seminal question involved in this appeal for our consideration is as to whether the orders dated 04.01.2011 and 04.01.2012

passed by the respondent no. 4, the Executive Officer/Block Development Officer, Mathurapur-I, Panchayat Samiti are sustainable in law.

5. Shorn of details, the facts which are necessary for adjudication may be stated as under:

In the academic session of 2010-2011 more than 120 learners were admitted in Ramchandrapur Sishu Shiksha Kendra and as such another sahayika was required for the Kendra. For the purpose of engagement of a sahayika the school authority made an advertisement for calling the eligible candidates. The appellant having requisite qualifications applied for the post. On 31.10.2009 she appeared before the Selection Board. Ultimately, the Selection Board prepared the panel and submitted the panel to the Managing Committee of the said Sishu Shiksha Kendra for its approval. The appellant stood first in the said test and her name was empanelled as candidate no. 1. Thereafter, the managing committee forwarded the panel to the concerned gram panchayat. The gram panchayat, in turn, forwarded the panel to Sikhsha Sthayee Samiti for approval and the Samiti approved the panel vide resolution dated 09.02.2010. After the panel was approved by Sikhsha Sthayee Samiti, the concerned Block Development Officer vide Memo. dated 05.03.2010 issued engagement letter to the appellant and she was accordingly engaged as Sahayika of the said Shiksha Kendra on 15.03.2010. Since her engagement the appellant had been discharging her duties. But, despite discharging her duties, she was not given the monthly honorarium which was admissible to her. Finding no other alternative the appellant filed a writ petition being W.P no. 23474(W) of 2014 in this Court seeking disbursement of her honorarium. Disposing of the writ petition a learned Single Judge directed the authority concerned to take immediate steps for disbursement of the honorarium of the appellant. Since the authority concerned did not comply with the order passed by the learned Single Bench the appellant filed an application

for contempt of court being C.P.A.N no. 1 of 2015. By order dated 18.03.2016 the learned Single Bench directed the authority concerned to file affidavit-in-opposition within two weeks, reply, if any within one week and the matter to appear on 22.04.2016. However, in compliance with the direction of the learned Single Bench, the authority concerned disbursed the arrear honorarium which was payable to the appellant.

6. While the contempt application was pending, the representatives of the alleged contemnors visited the said Sikhsha Kendra and verbally told the mukhasahayika to communicate the orders dated 04.01.2011 and 04.01.2012 of the Block Development Officer/ the Executive Officer to the appellant by which the approval of her engagement was withdrawn and she was restrained from doing any institutional works. The appellant contends that the Block Development Officer has no power to cancel or withdraw the engagement of the appellant as a Sahayika of the Sikhsha Kendra. Before cancellation of the engagement or withdrawal of the approval of the engagement she was not given any opportunity of being heard. As such the orders of the Block Development Officer are bad in law. Under such circumstances, the appellant sought for the reliefs as stated above in the writ petition.

7. By the impugned order the learned Single Judge dismissed the writ petition on the premise that the appellant did not challenge the enquiry report prepared by the Block Development Officer relating to cancellation of engagement or withdrawal of approval of the engagement of the appellant as Sahayika.

8. What we find from the documents on record, the Block Development Officer, Mathurapur- I, South 24 Parganas by a letter dated 04.03.2010 informed the Secretary, Ramchandrapur Sishu Sikhsha Kendra that the proposal made by him for engagement of the appellant as Sahayika in the said Sikhsha Kendra has been approved by Siksha Sthayee Samiti vide a resolution dated

09.02.2010. Undisputedly, the appellant, thereafter, was engaged as Sahayika on 15.03.2010. As it appears from the case record, an agreement was entered into between the Secretary of Ramchandrapur Sishu Sikhsha Kendra and the appellant Smt. Barnali Purkait (Mondal) on 03.04.2010 which prescribes the duties and obligations of the Sahayika and the mode of payment of honorarium to her.

9. It is contended by the appellant that despite discharging her duties as Sahayika she was not paid the honorarium as admissible to her. After the concerned authority turned deaf ear to her repeated appeals to clear her arrear honorarium she filed a writ petition being W.P no. 23474(W) of 2014 in this Court. By order dated 21.08.2014 a learned Single Bench disposed of the writ petition by passing the following order:

“ The petitioner has been appointed as Siksha Samprasarak in the concerned Siksha Kendra with effect from 15th March, 2010. She is aggrieved because honorarium in lieu of due discharge of service has not been released in her favour. Mr. Mitra, learned advocate for the petitioner has prayed for a direction on the respondents to pay the petitioner her legitimate dues.

Mr. Sinha, learned advocate for the shiksha Kendra submits that the Managing Committee was in the process of being reconstituted for which the bills could not be raised. However, the Managing Committee has since been reconstituted and within a fortnight from date the bills shall be prepared and forwarded to the concerned B.D.O for releasing funds to pay the petitioner her legitimate dues.

In view thereof, nothing survives for decision on this writ petition.

The Secretary of the Managing Committee is directed to prepare the bills and to forward the same to the concerned B.D.O. Once

the B.D.O receives the bills he shall verify the same and take further lawful action for release of funds so that the petitioner is paid her current as well as arrear dues as early as possible but not later than two months from date of receipt of the bills by the B.D.O. If the other official respondents have any role to play in the matter of release of honorarium in favour of the petitioner, they shall also be bound to take appropriate action without unreasonable delay.

The writ petition stands disposed of.

There shall be no order for costs.

Urgent Photostat certified copy of this order, if applied for, be furnished expeditiously”.

10. Admittedly, no appeal was preferred by the State against the order dated 21.08.2014 passed by the learned Single Judge in the writ petition and thereby the order has attained finality. It is not in dispute that the authority concerned cleared the arrear honorarium to the appellant in compliance with the direction as above of the learned Single Bench.

11. What it is discerned, the appellant filed the writ petition being W.P no. 23474(W) of 2014 with an assertion that she was engaged as Sahayika of Ramchandrapur Sishu Sikhsha Kendra on 15.03.2010, but she was not being paid the honorarium which was admissible to her. No case was made out by the State authority in the aforesaid writ petition that the engagement of the appellant as Sahayika of the Sishu Siksha Kendra was illegal by not following the relevant rules of engagement.

12. Learned Counsel appearing for the appellant submits that since the State authority omitted to challenge the engagement of the appellant as a Sahayika in W.P no. 23474 (W) of 2014, the State is now estopped by principle of constructive res-judicata from raising

any such defence in the writ petition on hand. In this context, learned counsel has drawn our attention to explanation IV to Section 11 of the Code of Civil Procedure. To buttress his submission learned counsel has cited two decisions in the case of ***Bhanu Kumar Jain –Vs- Archana Kumar and another*** reported in ***(2005) 1 SCC 787*** and in the case of ***Indu Bhusan Jana-Vs- The Union of India(UOI) and Ors*** reported in ***(2009) 1 CHN 27***.

13.Per contra, learned counsel appearing for the state respondents submits that the very engagement of the appellant as Sahayika is illegal ab initio as the selection process did not adhere to all the fundamental requirements of the relevant statutory rules to engage a Sahayika. Learned counsel argues that the enquiry report prepared by the respondent no. 4 patently demonstrates the illegality of the engagement of the appellant as Sahayika. If the engagement from the very beginning is vitiated with illegalities, such engagement shall be deemed to be void at all time to come.

14. The order dated 21.08.2014 passed in W.P no. 23474(W) of 2014 as excerpted above reveals that though the engagement of the appellant as Sahayika was an issue in the writ petition, no submission was advanced on behalf of the State challenging the engagement.

15. It is trite to say that the principle of res-judicata under Section 11 of the Code of Civil Procedure is applicable to a writ petition. Section 11 of the Code of Civil Procedure provides that no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

16. In such context, it will be apposite to refer to explanation IV to Section 11 of the Code of Civil Procedure which reads as under :-

“Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit ”.

17. In the decision in the case of **Bhanu Kumar Jain-Vs- Archana Kumar and Anr** reported in **(2005) 1 SCC 787** the Hon’ble Apex Court has held at paragraphs 30 and 31 as follows :-

“ 30. Res-judicata debars a Court from exercising its jurisdiction to determine the lis if it has attained finality between the parties whereas the doctrine issue estoppel is invoked against the party. If such an issue is decided against him, he would be estopped from raising the same in the latter proceeding. The doctrine of res-judicata creates a different kind of estoppel viz. Estopper By Accord.

31. In case of this nature, however, the doctrine of ‘issue estoppel’ as also cause of action estoppels’ may arise. In Thorday (supra) Lord Diplock held ‘cause of action estoppel’ is that which prevents a party to an action from asserting or denying, as against the other party, the existence of a particular cause of action, the non-existence or existence of which has been determined by a Court of competent jurisdiction in previous litigation between the same parties. If the cause of action was determined to exist, i.e, judgment was given on it, it is said to be merged in the judgement...if it is determined not to exist, the unsuccessful plaintiff can no longer assert that it does; he is estopped per rem judicatam”.

18. In the decision in the case of **Indu Bhusan Jana-Vs- The Union of India and Ors** reported in **(2009) 1 CHN 27** this Court has held that upon an order attaining finality, it matters little as to whether it

is erroneous and a party aggrieved by an order has to work out his remedies within the legal framework. If an issue or the entire lis is concluded upon a finding being rendered and such finding remains unchallenged, it is no longer open to the party to undo the effect thereof at any subsequent stage or collaterally unless it is demonstrated that the finding was obtained by fraud or the Court lacked jurisdiction to pass the order.

19. As stated above, in the writ petition being W.P no. 23474(W) of 2014 the engagement of the appellant as a Sahayika was directly in issue, but no challenge or attack was made on the part of the State over such issue. That being so and in view of the principles of res-judicata as expounded in the decisions supra, the State respondents are now estopped from challenging the engagement of the appellant as Sahayika of Ramchandrapur Shishu Siksha Kendra.

20. The learned Single Bench by placing reliance on an enquiry report made by the respondent no. 4, BDO, Mathurapur-I has arrived at the decision that the engagement of the appellant as Sahayika was bad in law and the State authority was justified in withdrawing the approval of engagement of her.

21. However, looking from another angle, let us ponder over this aspect whether the order of withdrawal of the approval of engagement of the appellant is warranted by law.

22. As indicated above, the appellant was engaged as a Sahayika on 15.03.2010 after the proposal in that regard was approved by Shiksha Sthayee Samiti. As regards renewal of a contract or cancellation of the contract of a Sahayika a government order being Memo no. 2849/PN/0/I/O/06/2003 dated 26.06.2009 issued by Panchayats & Rural Development Department, Government of West Bengal occupies the field. The relevant portion of the Government Order may be excerpted as under:

“ It is hereby ordered that if a Managing Committee of an SSK or an MSK decided not to renew the contract or decides to cancel the contract of a Sahayika or a Samprasarak/Samprasarika, the Managing Committee of concerned SSK or the MSK will first send a proposal to concerned Panchayat Samiti stating clearly the reasons of refusal to renew the contract or cancel the contract. After getting the proposal the Executive Officer of the Panchayat Samiti will get the matter enquired by an officer of his office. The enquiring officer will hold enquiry during which one member of Shiksha, Sanskriti, Tathya-O-Krira Sthayee Samiti of the Panchayat Samiti and one member of Jana Swastha-O-Siksha UpaSamiti of concerned Gram Panchayat to be decided by the Sabhapati of the Panchayat Samiti and the Pradhan of the Gram Panchayat respectively will be invited to remain present. The Executive Officer of the Panchayat Samiti will place the enquiry report in the meeting of Siksha, Sanaskriti, tathya-O-Krira Sthayee Samiti of the Panchayat Samiti. The decision of the Sthayee Samiti will be communicated to the Managing Committee and to the Sahayak/Sahayika or Samprasarak/Samprasarika immediately by the Executive Officer of the Panchayat Samiti. No Managing Committee shall cancel the contract of a Sahayak/Sahayika or a Samprasarak/Samprasarika or remove them before taking approval of the concerned Panchayat Samiti. Panchayat Samiti shall not approve cancellation of the contract or removal till the process of appeal, as mentioned herein, is pending. If concerned Sahayak/Sahayika or Samprasark/Samprasarika is not satisfied with the decision of the Sthayee Samiti he or she may, within seven days after receiving the communication from the Executive Officer, inform in writing to the Executive Officer of the Panchayat Samiti and the Managing Committee that he or she is not satisfied with the decision taken by the Sthayee Samiti of the Panchayat Samiti and that he or she wants to

appeal against the decision. In this case concerned SDO will act as the Appellate authority and an appeal against the decision of the Sthayee Samiti will have to be filed in writing stating the reasons of dissatisfaction within fifteen days after getting communication from the Executive Officer. The SDO himself or any officer of his office not below the rank of a Deputy Magistrate duly authorized by SDO will dispose of the appeal within two months after receiving the appeal by giving reasonable opportunity of hearing to the appellant and the Panchayat Samiti and the Managing Committee. The decision of SDO will be the final and all concerned will have to abide by the decision of SDO. During pendency of the whole process, the Sahayak/Sahayika or Samprasarak/Samprasarika shall be allowed to continue by the Managing Committee and shall not start process of engagement /engaged fresh Sahayak/Sahayika or Samprasarak/Samprasarika.

If any Managing Committee fails to comply any of the provisions of this order, the Executive Officer of concerned Panchayat Samiti will have the power to dissolve the Managing Committee and the power and functions of the Managing Committee will be vested on the Executive Officer of the Panchayat Samiti. The Executive Officer will discharge the function of day to day management of the SSK or the MSK including disbursement of honorarium to Sahayikas or Samprasaraks through a duly authorized officer under him and will arrange for the election of the Managing Committee within two months.

Provisions regarding cancellation or renewal of contract of Sahayikas of SSKs or Samprasaraks of MSKs, as contained in the guidelines of SSK or in the guidelines of MSKs or in any subsequent order stands amended to the effect as described in this order. This order will take immediate effect.”

23. From the government order as quoted above it is axiomatic that the proposal for cancellation of contract/engagement of a Sahayika shall firstly be mooted from the concerned Panchayat Samiti stating clearly the reasons of cancellation of the contract/engagement and after getting the proposal the executive officer of Panchayat Samiti will get the matter enquired by an Officer of his office. The enquiring officer will hold enquiry and during such enquiry the members of some government bodies as spelt in the government order shall be invited to remain present. Thereafter, the executive officer will place the enquiry report in the meeting of Shiksha, Sanskriti, Tathya-O-Krira Sthayee Samiti of the Panchayat Samiti and the decision of Sthayee Samity will be communicated to the Managing Committee of the concerned Shishu Siksha Kendra and the Sahayak/ Sahayika. No Managing Committee shall cancel the contract/engagement of a Sahayak/Sahayika or remove them before taking approval of the concerned Panchayat Samiti and Panchayat Samiti shall not approve cancellation of the contract/engagement till the process of appeal as enumerated in the order is pending.

24. Indisputedly and as the stand of the State authorities demonstrates, the executive officer i.e. the concerned Block Development Officer himself conducted the enquiry and on the enquiry report prepared by him inflicted the order in question by which the approval of engagement of the appellant as Sahayika was withdrawn. The procedure adopted by the executive officer to hold the enquiry himself is totally contrary to the direction as contained in the aforesaid government order having statutory force. The aforesaid government order does not spell any clause by which the approval of proposal for engagement of a Sahayika may be withdrawn by the executive officer.

25. Therefore, the enquiry conducted by the said officer and the enquiry report submitted by him are vitiated with illegalities. Consequently, the impugned orders dated 04.01.2011 and 04.01.2012

passed by the executive officer/Block Development Officer are liable to be quashed.

26. In view of the above, the question as posed for consideration is answered in the negative and the instant appeal merits success.

27. Accordingly, the appeal is allowed on contest. The impugned order dated 13.08.2021 passed by learned Single Judge in W.P.A. 6378 of 2016 is set aside. The orders dated 04.01.2011 and 04.01.2012 passed by the Executive Officer, Mathurapur – I Panchayat Samiti /Block Development Officer, South 24 Parganas are hereby quashed.

28. The concerned respondents are directed to allow the appellant to join her duties as Sahayika of Ramchandrapur Sishu Shiksha Kendra within fifteen days from date treating her service as a continuing service since her engagement as Sahayika since 15.03.2010. The concerned respondents are directed to pay all the arrear honorarium to the appellant which are admissible to her within two months from date.

29. Thus the appeal and the connected application stand disposed of.

30. No order as to costs.

31. Urgent website copies of the judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)

I agree,

(Harish Tandon,J.)