

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

**Before:
The Hon'ble Justice Lapita Banerji**

**RVW 111 of 2021
With
CAN 1 of 2021**

**The State of West Bengal & Ors.
Vs.
Mamun Shaikh**

For the State/Applicants : Mr. Arjun Ray Mukherjee, Adv.
Ms. Saheli Mukherjee, Adv.

For the Respondents : Mr. Indranil Roy, Adv.
Mr. Sunit Kumar Roy, Adv.

Heard On : 02.12.2022.

Judgment On : 21.12.2022.

Lapita Banerji, J.:- In this is a review petition the applicants have prayed

for reviewing a Judgment and Order passed by a Hon'ble Coordinate Bench on July 10, 2019. The Memorandum of Review was filed on September 15, 2021.

2. By the Judgment and Order dated July 10, 2019, the Hon'ble Coordinate Bench held that the Order of Termination to be a nullity/non-est in the eye of law and had set aside the same. The writ petitioner was directed to be reinstated in service within 72 hours from the date of communication of the Order.

3. The facts, which led the writ petitioner/respondent (in the Review Application) to initiate the writ proceedings, are briefly stated hereinbelow.

4. The writ petitioner applied for the post of Senior Treatment Supervisor pursuant to an Advertisement dated December 29, 2015 issued by the Secretary & Chief Medical Officer of Health, District Health and Family Welfare Samity. The eligibility criteria, inter alia, comprised of (i) Bachelor Degree **OR** Recognized Sanitary Inspector's Course; (ii) Certificate Course in computer operation (minimum 2 years); (iii) permanent two-wheeler driving license and to be able to drive two wheeler (with gear).

5. The Hon'ble Coordinate Bench held that the writ petitioner was either required to possess a Bachelor Degree **OR** a certificate in the recognized sanitary inspector's course. The respondent/State knew the meaning of the word **OR** as opposed to the word **AND**. The petitioner, who has been working on contractual basis since March, 2016, could not be terminated from service from July 18, 2018 on the ground that the petitioner's qualification of diploma in sanitary inspector's course was from an unrecognized institute. Since the petitioner possessed Bachelor Degree from a recognized university, the eligibility criteria was met as the two criteria have to be read disjunctively.

6. Furthermore, it was held that the Impugned Order of Termination was cryptic and the respondent authorities did not comply with the basic principles of Natural Justice by supplying reasons for the termination to the petitioner.

7. Mr. Ray Mukherjee, appearing on behalf of the state/review applicants, submitted that the Hon'ble Coordinate Bench failed to appreciate that the

eligibility criteria has to be read conjunctively with each other and not disjunctively. Therefore, a candidate was required to have a Bachelor Degree **and** also a certificate in a Recognized Sanitary Inspector's course. He argued that the word **OR** should have been read as **AND**. He relied on Clause 11 of the Advertisement dated December 29, 2015. Clause 11 of the Advertisement is set out hereinbelow:

“(11) The recruitment process for the different post will be done as per the relevant Terms of Reference (TOR) issued by the Competent Authority or the District Recruitment Committee (NHM) which is applicable for that particular post.”

8. He also referred to a Memorandum dated February 9, 2016 issued by the Secretary, District Health and Family Welfare Samity as proof of the fact that the applicants/candidates should at least have 50% marks as requisite qualification. Furthermore, he placed reliance on the Memorandum dated May 14, 2015 that was referred to in the Memorandum dated February 9, 2016 in support of his contention that the applicants should at least secure 50% marks in all requisite qualifications. The said Memo dated May 14, 2015 was issued by the Executive Director, West Bengal State Health and Family Welfare (WBSH&FW) Samity.

9. He contended that since the petitioner did not obtain 50% marks in his Bachelor Degree, the said qualification even though from a recognized university could not be considered. Since the petitioner's Sanitary Inspector's certificate was not from a recognized institute, the same also could not be considered even though the petitioner obtained more than 50% marks..

10. Furthermore, the petitioner's appointment was clearly contractual and no illegality has been committed by terminating the petitioner's services by a cryptic Order dated August 17, 2018. There was no requirement to give any reasons for petitioner's termination.

11. Mr. Roy, Learned Counsel appearing on behalf of the writ petitioner/respondent, submitted that the review petition has been filed at a much belated stage. Delay in filing the review petition has not been explained satisfactorily and, therefore, the said delay cannot be condoned.

12. He further submitted that all the documents were before the Hon'ble Single Judge apart from one document dated February 9, 2016, but, that document was merely a declaration that referred to the document dated May 14, 2015, which was taken into account by the Hon'ble Single Judge. The review applicants have sought to reopen the entire case on merits which is not permissible in law. The review applicants have not satisfied the grounds of review since the review is preferred from a Judgment and Order from which an appeal is permissible under the Law. A review could be preferred on discovery of new and important matters or evidence, which after exercise of due diligence was not within the knowledge of the applicants, could not be produced by them at the time when the decree/order was made. Such is not the case here. No averments are made to that effect.

13. This is also not a case of mistake/error apparent on the face of the records.

14. Having considered the rival submissions of the parties and the materials placed on record, this Court finds that:

(a) The delay in filing the Review Petition has not been sufficiently explained by the review applicants. The order under Review was passed on July 10, 2019 and the nationwide lockdown due to Covid-19 commenced from March 25, 2020. No explanation has been given as to why between July 10, 2019 and March, 2020 the applicants took no steps to prefer the application for review.

(b) The time stipulated for Review is 30 days under the Limitation Act, 1963. Even though the said timeframe is not strictly applicable to an application for Review of an order passed in a writ petition, still the delay has to be sufficiently/satisfactorily explained which the applicant failed to do, in this case.

(c) On merits, the review applicants have also failed to show the reason for not producing the Memorandum dated February 9, 2016 before the Hon'ble Single Judge since it was within their power and possession when the writ petition was heard.

(d) In any event, the said Memorandum is merely a declaration that relies on the guidelines dated May 14, 2015 passed by the Executive Director, West Bengal State Health and Family Welfare

Samity and the said guidelines have been taken into consideration by the Hon'ble Single Judge.

(e) There is neither an error apparent on the face of the records nor did the applicant discover any new or important matter or evidence which after exercise of due diligence was not within their knowledge or could not be produced by them at the time the Judgment dated July 10, 2019 was passed.

(f) No Appeal has been preferred from the Judgment and Order dated July 10, 2019. Here, the applicants have sought to reopen the case on merits, which is not permissible in a **Review** application.

15. In the light of the discussions above, review application being **RVW 111/2021 along with CAN 1 of 2021** are **dismissed** without any order as to costs.

16. All parties to act on server copy of this Order as downloaded from the official website of this Hon'ble Court.

17. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

(Lapita Banerji, J.)