

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

Hon'ble Justice Partha Sarathi Sen

W.P.A No. 15084 of 2021

Smt. Archana Chakraborty

-Versus-

State of West Bengal & Ors.

For the Petitioner : Mr.Nirmalya Dasgupta, Adv.

: Mr. R.L Mitra, Adv.

: Ms. Priyanka Dhar, Adv.

For the Respondent : Mr. Sandipan Banejee, Adv.

Nos. 3, 4 & 5 : Mr. Pinaki Ranjan Chakraborti, Adv.

: Ms. Utsa Dutta, Adv.

: Ms. Puja Banerjee, Adv.

For the State : Mr. Pantu Deb Roy, Adv.

: Mr. Subrata Guha Biswas, Adv.

Heard on: : 24.11.2022

Judgment on. : 28.11.2022

PARTHA SARATHI SEN, J. : –

1. In this present writ petition under Article 226 of the Constitution of India the writ petitioner has prayed for an order for not giving effect to the letter of termination dated 28.06.2021, as issued by the Commissioner of respondent no.3, Howrah Municipal Corporation (hereinafter referred to as the 'Corporation' in short) and at the same time she has prayed for an appropriate order to reinstate her at the post from where she was terminated.

2. The facts leading to filing of the instant writ petition in short is as under:-

- i. The petitioner was appointed by the Corporation by issuing an appointment letter dated 14.10.2015 as a music instructor at Howrah Sangeet O Nritya Academy on a temporary basis with effect from 15.10.2015.
- ii. The petitioner joined in such post on 17.10.2015.
- iii. Prior to her joining her erstwhile employer i.e President of Laskarpur Rabindra Bidyapith for Girls' (H.S) on 16.10.2015 granted her lien to join the aforementioned post.
- iv. The service of the writ petitioner was terminated by the respondent no.3/Corporation by issuing a letter dated 28.06.2021 which is impugned in this writ petition.

3. In support of the instant writ petition learned advocate for the writ petitioner submits that in the impugned letter of termination dated 28.06.2021 a filmsy reason has been assigned by the respondent no.3/Corporation that since the tenancy of the flat where the said academy was operating had come to an end, the said academy would cease to operate and function any further and accordingly the service of the writ petitioner was no more required. Drawing attention of this Court to the affidavit-in-opposition as filed on behalf of the respondent nos. 3, 4 and 5, it is argued that in the said affidavit-in-opposition of the Corporation it has been admitted that the said academy is still functioning at 14, Gopal Lal Chakraborty Lane, Bureau No. V. Placing his reliance upon the supplementary affidavit as filed by the petitioner, it is contended that the other staff who were attached to the academy had already

been accommodated to the other offices of the Corporation which would be evident from the Annexures to the said supplementary affidavit. It is thus argued that the respondent Corporation and its authorities had taken a double stand which is not permissible in the law. It is thus argued that appropriate orders may be passed in terms of the prayer of the writ petition.

4. In course of hearing learned advocate for the State/respondent no.1 has handed over a Letter bearing No.892(2)-ICA (N) dated 14.03.2022 as written by the Joint Secretary to the Govt. of West Bengal, Department of Information and Cultural Affairs addressed to the Ld. Additional Government Pleader and in the body of the said letter the following has been written:

“1. That this Department has never attached itself with the formation and activities of “Howrah Sangeet-Nritya Academy”

2.The Ld. Advocate of Howrah Municipal Corporation has admitted, as noted in para-4 of the order passed on 28.09.2022 by the Hon’ble Calcutta High Court that “the academy started as a temporary enterprise under the policy of the Government. The State Government did not approve such project and, as such, the music school ceased to exist.”;

It is submitted by him that the said academy started functioning on a temporary basis and the State Government did not approve such project and as such the said academy is now cease to exist.

5. Learned Advocate for the respondent nos. 3,4 and 5 i.e the Corporation and its authorities in course of his argument also draws attention of this Court to the appointment letter dated 14.10.2015 as issued by the Commissioner of the respondent no.3/Corporation. It is contended that from the said letter of appointment it would reveal that the appointment of the petitioner is purely on **temporary basis**. It is further contended that on

account of such temporary nature of appointment, the writ petitioner cannot claim any right of permanency and/or confirmation and/or continuation in the said service. It is argued further that since the Government of West Bengal has decided not to approve the aforesaid temporary project of academy any further as a policy decision, the instant writ petition must fail.

6. In considered view of this Court for effective adjudication of the instant writ petition a look to some of the reported decisions on the subject of the right of a temporary employee is very necessary.

7. In the reported decision of **Rabindra Kumar Mishra vs. U.P State Handloom Corporation of India and Another reported in (1987) Supp SCC 739** the Hon'ble Supreme Court while dealing with a case of temporary employee expressed the following view:-

“....

5. It cannot be disputed that temporary service can be terminated by notice. The order of appointment in the appellant's case made it abundantly clear that with a month's notice or payment of salary in lieu of notice such termination could be effected by either side.

.....”

In another reported decision **State of U.P vs. Krishna Kumar Sharma repored in (1997) 11SC 437** the Hon'ble Apex Court while dealing with the right of a temporary employee expressed the following view:-

“....

2. in the context of the provisions contained in the Rules this Court in State of U.P vs. Kaushal Kishore Shukla has laid down :(SCC pp. 697-98, para 6 and 7)

Under the service jurisprudence a temporary employee has no right to hold the post and his services are liable to be terminated in accordance with the relevant service rules and the terms of contract of service. If on the perusal of the character roll entries or on the basis of preliminary inquiry on the allegations made against an employee, the competent authority is satisfied that the employee is not suitable for the service whereupon the services of

the temporary employee are terminated, no exception can be taken to such an order of termination.

A temporary government servant has no right to hold the post, the services are liable to be terminated by giving him one month's notice without assigning any reason either under the terms of the contract provided for such termination or under the relevant statutory rules regulating the terms and conditions of temporary government servants."

In that case an adverse entry had been awarded in the year 1977-78 that the work of the employee was poor and he should work hard and take interest in the work and there was report of a preliminary inquiry on a complaint with regard to unauthorized audit by the employee. This Court held that the termination of the services of the employee in those circumstances could not be held to be by way of punishment so as to attract Article 311(2) of the Constitution."

8. In another decision on **A.P State Federation of Coop. Spinning Mills Ltd. And Anr. Vs. P.V Swaminathan reported in (2001) 10 SCC 83** the view of Hon'ble Apex Court is reproduced herein in verbatim:-

"....

3. The legal position is fairly well settled that an order of termination of a temporary employee or a probationer or even a tenure employee, simpliciter without casting any stigma may not be interfered with by the court. But the court is not debarred from looking at the attendant circumstances, namely, the circumstances prior to the issuance of order of termination to find out whether the alleged inefficiency really was the motive for the order of termination or formed the foundation for the same order. If the court comes to a conclusion that the order was, in fact, the motive, then obviously the order would not be interfered with , but if the court comes to a conclusion that the so-called inefficiency was the real foundation for passing of order of termination, then obviously such an order would be held to be penal in nature must be interfered with since the appropriate procedure has not been followed.

....."

9. Keeping in mind the above propositions of law this court now proposes to look to the factual materials as placed before this Court. On perusal of the letter dated 14.10.2015, as issued by respondent no.3/Corporation it reveals that the present writ petitioner was temporarily appointed as a music instructor in the aforementioned academy at a monthly consolidated pay of

Rs.32,000/- . From the letter dated 28.06.2021 as issued by Personal Officer (acting) of the respondent no.3/Corporation it reveals that the said authority in its said letter has categorically expressed that since no affiliation of any recognized Board has been obtained for the curriculum of the academy, the respondent /Corporation has decided not to operate the said academy any more. It reveals further from the said letter dated 28.06.2021 that on account of the aforesaid situation, the present petitioner was informed that her service was no more required. Admittedly the decision of the respondent no.3/Corporation not to operate the academy any further is an administrative decision for which sufficient reason has been assigned and it appears to this Court that the respondent no.3 has got no other alternative but to take such decision in view of the decision of the respondent/State i.e. not to approve such project of the academy any further as has been communicated under the cover of letter dated 14.03.2022.

10. It also reveals from the letter of termination dated 28.06.2021 that the respondent no.3/Corporation has not put any stigma upon the petitioner while issuing such letter and thus it cannot be said that the termination of service of the petitioner in this case was by way of punishment which required compliance of the provisions of Article 311(2) of the Constitution.

11. In view of such this Court considers that the respondent no.3/ Authority as well as respondent no.1/State have assigned sufficient reason for discontinuation of the service of the writ petitioner. It further appears to this Court that since the writ petitioner is a **temporary employee**, as per the decisions of the Hon'ble Supreme Court as cited above, she cannot claim any

right over the said post because of her peculiar nature of appointment i.e. temporary appointment and thus the writ petitioner cannot be allowed to take a stand that her termination is not in accordance with law.

12. Some materials have been placed before this Court to substantiate that some staff members of the academy have been accommodated in other places but such decision of the respondent no.3 does not give any right to the present writ petitioner to be accommodated in any other post of the respondent no.3/ Corporation.

13. In view of the discussion made hereinabove this Court finds no merit in the instant writ petition. Accordingly the instant writ petition is dismissed.

14. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

(Partha Sarathi Sen, J.)