

APO NO.47 OF 2020
WPO NO.533 OF 2019
IA No.GA 1 of 2021
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

MD. HOSSAIN ALI
VERSUS
STATE OF WEST BENGAL & ORS.

BEFORE:

The Hon'ble JUSTICE HARISH TANDON

The Hon'ble JUSTICE RABINDRANATH SAMANTA

Date : 10th May, 2022

Appearance:

Mr. S. S. Arefin, Advocate

Ms. Nadira Abedin, Advocate

...for the appellant

Mr. T. M. Siddiqui, Advocate

Mr. P. Sinha, Advocate

Mr. N. Chatterjee, Advocate

..for the State

Mr. Gangadhar Das, Advocate

Mr. Ranmoy Chattopadhyay, Advocate

....for the respondent no.4

The Court: The instant appeal has been filed assailing an order dated 16th January, 2020 passed by the single Bench in WP No.533 of 2019 whereby and whereunder the writ petition was dismissed negating the claim of the appellant.

Admittedly, the appellant/petitioner was engaged as guest lecturer to take classes of geography subject in Samsi College on 16.12.2013. The remuneration for each class has been indicated thereunder with clear stipulation that the appellant shall not claim for permanent absorption and the said contractual service is terminable on one month's

notice. Indubitably, the appellant was permitted to take classes upto the month of January, 2017 and thereafter his engagement was discontinued. According to the college, after January, 2017 the appellant did not turn up nor took the class which would be evident from the college acquittance roll of the teachers maintained by the college. On the other hand, the appellant says that the Teacher In-Charge of the said college also notified, by issuing a letter, the schedule of classes to be taken up by the appellant and since thereafter no such intimation was made, the appellant, though willing to take classes, was precluded from taking classes on and from the month of February, 2017.

A plea has been taken by the appellant that the letter of appointment would evince that it is terminable on one month's notice. No notice of termination had ever been served, therefore, the engagement of the appellant would be treated to have been continued although no classes were allotted to him by the college authorities.

It is beyond capable to doubt that the engagement of the appellant is purely contractual. He was appointed as a guest lecturer to take classes of geography subject and was agreed to be paid remuneration for holding each class. There is no fixed monthly remuneration as it depends upon the number of classes taken by the guest lecturer, which would further be corroborated from the acquittance roll produced before us. Though the letter of engagement postulates the termination thereof by giving one month's notice but the Court cannot overlook the fact that since February, 2017 the appellant did not take any class. There is no iota of

evidence produced before this Court at the behest of the appellant that from February, 2017 till August, 2019 there was any correspondence exchanged between the parties raising the concern over non-allotment of schedule for holding the classes. The appellant was admittedly not engaged between February, 2017 till this day but his claim appears to have been led immediately after an order was issued by the Department of Higher Education, Government of West Bengal on 13.7.2019. The said order signed by the Joint Secretary creates an embargo in engagement of any guest lecturer in any description without the clearance from the department in the government-aided colleges. The moment the said order is made known to the appellant and sensing that the same would act as deterrent, the letter was caused on 26.8.2019 for the first time raising an issue that his service was continuous and, therefore, he should be immediately engaged as a guest lecturer in geography subject. Interestingly, employed the said letter manifests the intention of the appellant that his engagement was discontinued and he wanted to revive the said engagement by making a proposal to express “now I am agreed to continue in the said post as guest lecturer of geography”. Indicative of the intention of the appellant that such service was discontinued and the proposal to resurrect the same is made for the first time after such embargo was created and realizing that the guest lecturers who were continuously rendering the service need certain protection. The memo dated 3rd September, 2019 was issued by the Joint Secretary, Department of Higher Education, Government of West Bengal directing the Director of Public Instruction to request the Principals/Teacher

In-Charge of all the government-aided colleges to submit the details of the teachers in the prescribed format after proper examination and verification of the relied documents who were engaged upto 13.7.2019. The prescribed format attached to the said memo makes the intention more patent and apparent in clause 12 thereof which requires the copy of the acquittance roll and the bank statement highlighting the payment of the remuneration between the period from 14.7.2018 to 13.7.2019.

From the conjoint reading of the said memo and the prescribed format there is no hesitation in our mind that the engagement upto 13.7.2019 as a guest lecturer was the initial qualification but such engagement must be continuous otherwise there was no necessity of enclosing copy of the acquittance roll and the bank statement showing the payment of the remuneration between the period from 14.7.2018 to 13.7.2019. The date being 13.7.2019 assumes relevance for the ample reason that by virtue of an order of the even date the embargo was created on all the government-aided colleges not to engage guest lecturer in any description without obtaining clearance from the concerned department.

The aforesaid sequel of the events leads to an inescapable conclusion that the continuance in engagement must be preceding the date of the order creating embargo and does not include any person who at one point of time was engaged but later on voluntarily disassociated himself without raising any protest. The position would have been different if the appellant raises an objection and/or protest when no classes were allotted in the month of February, 2017 and/or thereafter, but there was a complete

silence till 26.8.2019 when the appellant issued such letter seeking a renewal of such engagement. The provision relating to the said notice has to be understood in such perspective and the intention is required to be gathered therefrom. It postulates the termination by the college authorities by giving one month's notice, but it does not create impediment on the part of the appellant to discontinue with such engagement taking a voluntary decision and for knowing the remuneration for holding the classes.

We, thus, do not find that the appellant was entitled to get a benefit in terms of the memo dated 3rd September, 2019 and, therefore, there was no illegality and/or infirmity on the part of the college in not forwarding the name of the appellant but was admittedly not engaging during the relevant period.

The appeal sans merit. The same is dismissed.

The connected application is also dismissed.

There will be no order as to cost.

(HARISH TANDON, J.)

(RABINDRANATH SAMANTA, J.)