

07.07.2023

Item No.1

Ct. No.7

PG

W.P.A. 756 of 2022

Prafulla Kumar Bera

Versus

The State of West Bengal & Ors.

Mr. Shuvro Prokash Lahiri

Md. Habibur Rahaman

Mr. Munjel Alam

Mr. Rajesh Naskar

.....for the Petitioner

Mr. Pinaki Dhole

Mr. Avishek Prasad.....for the State

1. The petitioner has prayed for issuance of a writ of mandamus commanding the respondents to reinstate him to his post after setting aside the memorandum dated October 7, 2021 and the letter of termination issued on December 13, 2021.
2. The petitioner claims that he was engaged purely on contractual basis as Additional Inspector, Backward Classes Welfare/Tribal Development under Bamangola Development Block dated September 19, 2019. The petitioner claims to have joined his service on September 20, 2019. The grievance of the petitioner is that he was not allowed to work on and from September 30, 2021. The petitioner claims to have submitted a

representation before the concerned authority dated October 7, 2021. The petitioner has prayed for setting aside the memo no. 900/BCW/(MLD) dated December 13, 2021 whereby his engagement was terminated w.e.f. November 6, 2021.

3. Mr. Lahiri, learned advocate appearing in support of the writ petition submits that the Project Officer-cum-District Welfare Officer, Backward Classes Welfare & Tribal Department is not competent to terminate the engagement of the petitioner, as such engagement was made by the Commissioner, Backward Classes Welfare & Tribal Development.
4. By drawing the attention of the Court to the notice dated October 7, 2021 issued by the Project Officer, Mr. Lahiri contends that the engagement of the petitioner was terminated on the recommendation made by the Project Officer. He submits that the terms and conditions of the engagement do not state that the termination can be made on the recommendation by any authority.
5. By referring to the letter dated September 30, 2021 issued by the Block Development Officer, Bamangola Development Block, Malda, Mr. Lahiri contends that the engagement was terminated on

some health issues without making any attempt to assess the fitness of the petitioner. Mr. Lahiri concludes by submitting that from the aforesaid documents, which are part of the records before this Court, it would appear that the grounds for termination are punitive and stigmatic. By relying upon several decisions of this Court as well as the Hon'ble Supreme Court of India, Mr. Lahiri submits that the termination of a person without giving an opportunity of hearing is liable to be set aside by this Court. He therefore, submits that this Court should reinstate the petitioner to his post after setting aside the order of termination.

6. He further submits that since he along with several other persons signed in a mass petition making allegations against the illegal activities of the Block Development Officer of the concerned block, the respondent authorities, as a counter blast, has issued the order of termination.
7. He further submits that the order of termination cannot be given a retrospective effect. In support of the aforesaid contentions, Mr. Lahiri places reliance upon the following decisions:

(1) ***Manas Mandal vs. The State of West Bengal & Ors.*** reported at ***MANU/WB/1367/2009***;

(2) ***Hindusthan Steel Ltd. vs. Rabindra Nath Banerjee*** reported at ***1984 (2) CLJ 297***;

(3) ***Kakoli Sen Sarma vs. State of West Bengal & Ors.*** reported at ***2018 LabIC 3043***;

(4) ***GRIDCO Limited & Ors. vs. Sadananda Doloi & Ors.*** reported at ***AIR 2012 SC 729*** and

(5) ***V.P. Ahuja vs. State of Punjab & Ors.*** reported at ***AIR 2000 SC 1080***.

8. Mr. Dhole, learned advocate representing the State/respondents submits that the petitioner was engaged as a contractual worker and the period of such contract was only for a period of 1 year. He submits that since the period of contract has already expired, the petitioner cannot claim any right to continue in the said post, where he was engaged.
9. He submits that the order of termination cannot be said to be stigmatic and therefore, the decisions relied upon by Mr. Lahiri do not have any application to the facts of the instant case.
10. Heard the learned advocates for the parties and perused the materials placed. The petitioner was engaged as Additional Inspector vide memo dated September 19, 2019. The terms and conditions for such appointment has been specifically

incorporated in the said memo, which is extracted hereinbelow:

“1. The contractual engagement will take effect from the date of joining and will continue for a period of 01(one) year w.e.f. the date of assuming charge or till regular appointments to the posts are made or till further orders, whichever is earlier.

2. The Additional Inspector Backward Classes Welfare, engaged on contractual basis will have to discharge the duties and responsibility of the Inspector, Backward Classes Welfare as laid down in this office No. 12 BCWD dated 20.08.2002 as may be assigned by his superior authority from time to time.

3. For the purpose of the works mentioned above, this assignment will not be treated as employment/ re-employment/ commercial employment.

4. No other financial benefit other than the contractual amount of Rs. 12,000/- p.m. will be admissible.

5. The Additional Inspector, Backward Welfare, will have the liberty to leave his contractual engagement after giving thirty days notice in writing. Similarly, this engagement is terminable, at the discretion of the Authority at any point of time by giving thirty days notice in writing.

6. No transfer from the place of posting will be allowed.

7. If the above terms and conditions are agreeable, the incumbent is requested to indicate such acceptance in clear terms by signing in full with date on a duplicate copy of this letter and send it within seven days of receipt of this letter, to this office through the concerned P.O. cum D.W.O./D.W.O. B.C.W failing which it will be presumed that he is not interested to join the contractual engagement and this assignment will be offered to someone else.”

11. After going through the terms and conditions, it appears to this Court that such contractual engagement is to take effect from the date of

joining and will continue for a period of 1 year with effect from the date of assuming charge or till regular appointments to the posts are made or till further orders, whichever is earlier. It was specifically stipulated therein that the assignment will not be treated as employment/re-employment/ commercial employment.

12. The petitioner joined in the contractual assignment pursuant to the said memo on September 19, 2019. The period of 1 year, as indicated in the memo dated September 19, 2019 expired on September 19, 2020. The petitioner could not substantiate by producing any document that the engagement of the petitioner was extended or renewed subsequently but the fact remains that the petitioner was allowed to continue even after September 20, 2020.

13. Mr. Dhole would contend that in view of the COVID pandemic, the authorities took a decision not to disengage any person from his engagement during such period. However, it appears that the engagement of the petitioner was terminated by an order dated December 13, 2021 issued by the Commissioner, Backward Classes Welfare & Tribal Development.

14. Though Mr. Lahiri has challenged the authority of the Project Officer to issue the order of termination but it appears from the memo dated December 13, 2021 issued by the Project Officer that there was an enclosure to such letter. The first line of the said letter states that the order no. 824 BCWTD, Dated 13.12.2021 of the Commissioner has been enclosed whereby the engagement of the petitioner has been terminated with effect from November 6, 2021.
15. Though the petitioner by filing an affidavit pursuant to an earlier order passed by this Court has stated that he has not received a copy of such enclosure but instead of entering into such dispute, this Court also directed the respondent authorities to file a supplementary affidavit enclosing the copy of the order of the Commissioner. It appears from the supplementary affidavit filed by the respondent no. 6 that the order of termination was issued by the Commissioner on December 13, 2021. Since the engagement of the petitioner was terminated by the authority, which engaged him, this Court is not inclined to accept the argument of Mr. Lahiri that the termination of the petitioner was by an authority, who lacked jurisdiction to issue such order of termination.

16. The next issue, which arises for consideration in this writ petition is whether the petitioner has any right to continue in the post of Additional Inspector, Backward Classes Welfare & Tribal Development by virtue of the order of engagement dated September 19, 2019.
17. As observed hereinbefore, such engagement was for a fixed period. The terms and conditions of the order dated September 19, 2019 do not contain any provision for renewal and/or extension of such contractual engagement. This Court can take judicial notice of the fact that at the time the period of 1 year, as mentioned in the order dated September 19, 2019 had expired, the COVID pandemic was in full force and the explanation given by the learned advocate for the State for allowing the petitioner to continue during the COVID pandemic cannot be outrightly rejected.
18. Since the engagement of the petitioner was for a limited period and the period of such engagement stood expired by efflux of time, this Court is of the considered view that there was no necessity to issue any order of disengagement/termination. However, in view of the fact that the petitioner was allowed to continue even after expiry of the said period, the authorities thought it fit to issue

the order dated December 13, 2021. The order dated December 13, 2021 issued by the Commissioner, Backward Classes Welfare & Tribal Development states that the service of the petitioner was on contractual basis and the same was terminated as per the terms and conditions as enumerated in the engagement order w.e.f. November 6, 2021.

19. After going through the said order, it does not appear to this Court that the said order is stigmatic. However, since this Court is of the view that the contractual appointee after expiry of the period of contract do not have a right to continue in the post, where he was engaged on contractual basis, it is not necessary to deal with the decisions cited by Mr. Lahiri as to the procedure to be followed if termination is stigmatic.
20. It is well-settled that a mandamus cannot be issued directing the authorities to renew and/or extend the term of engagement. This Court, therefore, holds that the petitioner cannot be reinstated in service.
21. The writ petition accordingly, fails and the same is dismissed.
22. However, there shall be no order as to costs.

23. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)