

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Shekhar B. Saraf

W.P.A. 3562 of 2022

SANGHAMITRA GHOSH

VERSUS

THE STATE OF WEST BENGAL & ORS.

For the Petitioner	:	Mr. Dipanjan Biswas, Adv. Mr. Sunil Gupta, Adv. Mr. Samir Kr. Choudhury, Adv.
For the State	:	Mr. Amrita Lal Chatterjee, Adv. Mr. S.N. Mookherjee, Ld. A.G. Mr. Anirban Roy, Ld. G.P. Mr. Raja Saha, Adv. Mr. Nilotpall Chatterjee, Adv.

Last Heard On: October 17, 2023

Judgement On: November 16, 2023

Shekhar B. Saraf, J.:

1. The instant writ petition has been filed by the petitioner, Sanghamitra Ghosh, praying for a writ of/or a writ in the nature of Mandamus for directions against the respondents to quash order being Memo No. HFW-35099/240/2021/222 dated January 31, 2022, to consider the representation of the petitioner dated February 11, 2022 and to pay the petitioner Rs. 50,083/- (Rupees Fifty Thousand and Eighty-three only) per month pending since December 1, 2021 on account of arrears of salary.

Facts:

2. I have laid down the factual matrix of the instant case below:
 - a. The petitioner was appointed as the State Statistical Manager in the State Programme Management Unit of National Rural Health Mission (hereinafter referred to as “NRHM”) under the West Bengal State Health and Family Welfare Samiti (hereinafter referred to as “Samiti”) on contractual basis on January 1, 2013 unto March 31, 2013 vide memo no. HFW/NRHM/753/2011/2536.
 - b. The petitioner’s contractual employment was usually renewed on a year-to-year basis since her joining date in January 1, 2013 till March 31, 2022, following which her contractual employment

was extended on monthly basis from April 1, 2021 unto April 30, 2021, May 1, 2021 to May 31, 2021 and then from June 1, 2021 to June 30, 2021. Thereafter, the petitioner was granted a routine extension for two months until August 31, 2021 vide Memo No. HFW-27011/137/2020/1351 dated July 7, 2021.

- c. On November 26, 2021, the petitioner was withdrawn from her place of posting at the State Programme Management Unit, Headquarters to District Programme Management Unit, Nandigram vide Memo No. HFW/35099/240/2021/3572. The petitioner received an email dated November 29, 2021 to comply with such an order following which the petitioner had responded stating that she would be unable to accept such an order as she deemed it to be illegal and malafide in nature. The HR Cell of the Samiti replied that the petitioner had not joined the new place of posting as per the order dated November 26, 2021, nor had she attended office from November 29, 2021 or submitted any leave application against such unauthorized absence. The HR Cell of the Samiti deemed this to be a case of unauthorized absence and insubordination of the aforementioned order dated November 26, 2021.
- d. The petitioner filed a writ petition being WPA 19243/2021 assailing the detailment order dated November 26, 2021.

- e. During pendency of the aforementioned writ petition, the Executive Director of the Samiti, issued a Memo No. SHFWS/ESTD-578/2012/173 dated December 1, 2021 that extended petitioner's contract tenure from September 1, 2021 to January 31, 2022 as State MIS Manager, State Programme Management Unit, Headquarters. Alternatively, the Chief Medical Officer of Health, Nandigram Health District (hereinafter referred to as "CMOH, Nandigram Health District") vide Memo No. CMOH (Ndgm)/120 dated January 18, 2022 cited the earlier detailment order dated November 26, 2021 directing the petitioner to join the Nandigram Health District office within three days of the receipt of the memo.
- f. The petitioner responded to such a letter by the CMOH, Nandigram Health District arguing that she was unable to attend office from November 17, 2021 due to health concerns and that her father-in-law had also been admitted in ICU, R.G Kar Hospital, Kolkata. IN addition, she also mentioned that the writ petition being WPA 19243/2021 was pending before the co-ordinate bench of this High Court.
- g. The Executive Director of the Samiti vide Memo No. HFW-35099/240/2021/222 dated January 31, 2022 decided to not renew petitioner's contract on account of her alleged period of unauthorized absence since November 29, 2021.

- h. The detailment order dated November 26, 2021 was set aside by the co-ordinate bench of this High Court vide order/judgement dated February 4, 2022 in the writ petition WPA 19243/2021.
- i. The petitioner vide letter dated February 11, 2022 requested the respondent authority to withdraw the order dated January 31, 2022 and allow her to resume her services as State MIS Manager, State Programme Management Unit at the Headquarters but the respondents did not reply to the same.
- j. Being aggrieved and dissatisfied by the impugned order dated January 31, 2022, the petitioner has filed the instant writ petition under Article 226 of the Constitution of India before this Court.

Contentions of the Parties:

- 3. The counsel for the petitioner has made the following submissions:
 - a. The petitioner has alleged that she had duly informed her senior of her inability to attend office due to her health and sought an extension for her sick leave. The petitioner submitted that no objection was raised against such intimations about her absence by the respondent authority and she has also submitted a

prescription from the Emergency Unit of the Salt Lake Sub-Divisional Hospital dated November 29, 2021 to support her claim.

- b. The petitioner has argued that unauthorized absence is not a ground for termination of employment, and at best it can lead to minor penalties depending on the circumstances.
 - c. Additionally, the counsel of the petitioner has submitted that such punitive order could only have been passed after an inquiry was conducted and the petitioner was given a reasonable opportunity to be heard. It is the submission of the petitioner that the impugned order dated January 31, 2022 did not comply with principles of natural justice.
 - d. Finally, the petitioner has also contended that the Memo No. 9008-F(P) from the Audit Branch of the Finance Department, Government of West Bengal (hereinafter referred to as “Memorandum”), dated September 16, 2011, allows her to be engaged in the same status and capacity till she attains the age of 60 years, since she has been working as a contractual worker for 10 years.
4. The counsel for the respondents has made the following submissions:

- a. The respondents have argued that the engagement of the petitioner was limited to the contract period, that is, till January 31, 2022, and the petitioner has no legal right to continue in the said post for eternity.
- b. It is the argument of the respondents that the petitioner did not join the post where she was detailed, nor did she render her services in the original place of posting.
- c. The counsel for the respondents has submitted that they have preferred an intra-court appeal being MAT No. 312 of 2022 against the order of the co-ordinate bench of this High Court dated February 4, 2022 that is pending consideration.

Observation and Analysis:

- 5. This Court will first consider the argument of the Memorandum dated September 16, 2011, as submitted by the petitioner.
 - a. The petitioner was engaged as a contractual worker on January 1, 2013, which is three years after the cut-off period (that is, April 1, 2010) to be considered within the scope of the Memorandum. The relevant clause of the Memorandum to prove such a finding has been reproduced below:

*“(v) Those casual/daily rated/contractual workers who will complete 10 year service on 1st July every year will come under the purview of this Order **provided no such workers if engaged after 01.04.2010 will come under the purview of this Order.**”*

[Emphasis Added]

- b. From the aforementioned clause, it is clear that the petitioner’s contractual employment does not fall within the scope of the Memorandum.
 - c. Therefore, this Court does not find any merit in the petitioner’s submission that she ought to be engaged in the same status and capacity till she attains the age of 60 years on account of being a contractual worker for 10 years.
6. This Court will now consider the issue of the impugned order by the Executive Director of the Samiti dated January 31, 2022:
- a. The impugned order did not extend the contractual tenure of the petitioner due to unauthorized absence since November 29, 2021. The impugned order is dated January 31, 2022 whereas the order of the co-ordinate bench of this High Court in WPA 19243/2021 is dated February 4, 2022. The order of the co-ordinate bench of this High Court dated February 4, 2022 set aside the detailment order dated November 26, 2021 which directed the petitioner to be posted as District Programme Management Unit, Nandigram.

It was such detailment order that seems to be the cause of the alleged unauthorized absence. However, once the learned Single Judge of this High Court vide order dated February 4, 2022 set aside the detailment order itself, there can be no question of petitioner's unauthorized absence from the Nandigram Health District office.

- b. It is also pertinent to note that the argument of the respondents stating that the petitioner is a contractual worker and therefore has no legal right to continue in the said post for eternity, is wholly immaterial to the present factual matrix. The Samiti must act in accordance with the order of the co-ordinate bench of this High Court dated February 4, 2022 and therefore the impugned order dated January 31, 2022 which does not extend the tenure of the petitioner solely on the ground of alleged unauthorized absence from the Nandigram Health District office is infructuous.
7. The respondents have alleged that the petitioner has been absent from her original posting at State Programme Management Unit, Headquarters as well, but have not provided any documents to substantiate such an allegation.
8. Accordingly, this Court gives the following directions.

Order and Directions:

9. In view of the aforementioned discussion, let there be a Writ of Mandamus issued in terms of prayer (a) against the respondents. This Court sets aside the order of the Executive Director of the Samiti dated January 31, 2022 and allows the petitioner to be considered for extension of her contractual employment.
10. The respondent authority shall be at liberty to decide on the issue of unauthorized absence of the petitioner from her original posting at State Programme Management Unit, Headquarters in consonance with the order of the co-ordinate bench of this High Court in WPA 19243/2021 dated February 4, 2022 and allow the petitioner a reasonable opportunity to be heard for this decision.
11. The respondent authority shall be at liberty to decide upon the issue of pending dues of the petitioner, if any, in consonance with the order of the co-ordinate bench of this High Court in WPA 19243/2021 dated February 4, 2022.
12. Accordingly, this Writ Petition being WPA 3562/2022 is allowed. There shall be no order as to the costs.

13. An urgent photostat-certified copy of this order, if applied for, should be made available to the parties upon compliance with requisite formalities.

(Shekhar B. Saraf, J.)