

72.
21.9.2023
S.D.

W.P.A. 7596 of 2023

Dr. Tirthendu Biswas

Vs.

The State of West Bengal & Ors.

Mr. Prantick Ghosh

Mr. Bitan Das

..For the Petitioner

Mr. Arjun Roy Mukherjee

...For the State

The petitioner is a registered Homeopathic Medical Practitioner. The petitioner was engaged as a Medical Officer (Ayush) by an order dated September 2, 2015 under Rashtriya Bal Swasthya Karyakram (RBSK). The petitioner worked at various places and last discharged his duties at Sadhikhan's Dear Rural Hospital, Jalangi Block, Murshidabad.

The petitioner was disengaged from his services by a Resolution dated June 23, 2022 due to his unauthorized absence during the contractual period (April 1, 2021 till March 31, 2022).

Mr. Ghosh, learned counsel appearing on behalf of the petitioner submits that a previous writ petition was filed being W.P.A. 3965 of 2022 whereby the petitioner prayed for

additional incentive of Rs.1 lac pursuant to a Notification dated April 1, 2020 issued by the Health and Family Welfare Department, Government of West Bengal due to the service rendered by the petitioner as a contractual employee to the COVID 19 patients. The petitioner also challenged his order of transfer in the said writ petition.

A Coordinate Bench of this Hon'ble Court vide order dated June 21, 2022 directed the authorities concerned to consider the petitioner's prayer in relation to joining at the transferred place of posting. Furthermore, the petitioner's prayer of payment of Rs.1 lac was acceded to by the State Government.

Now, it is the petitioner's grievance that immediately after passing of the order by the Coordinate Bench in a previous writ petition, the petitioner was being disengaged from services by a Resolution dated June 23, 2022. Mr. Ghosh, submits that such an action has been taken without giving an opportunity of hearing to the petitioner and that the petitioner is entitled to the protection of Article 311 (2) of the Constitution of India.

Mr. Roy Mukherjee, learned counsel appearing on behalf of the State of West Bengal submits that the petitioner is a contractual employee and as such the provisions of

Article 311 of the Constitution of India is not applicable to the petitioner.

He further draws the attention of this Court to the conduct of the petitioner. The petitioner has been absenting himself from duty since August 23, 2020.

A show-cause was issued on October 19, 2020 asking the petitioner to explain why disciplinary action should not be initiated against him. By an order dated October 20, 2020 issued by the BMOH, Berhampur Block, the petitioner was released from service at Karnasubarna BPHC, Berhampur Block and was directed to report to the BMOH, Sadhikhan's Dear Rural Hospital. The petitioner failed to do so.

By a letter dated March 16, 2021, the petitioner intimated to BMOH, SDRH to grant him a medical leave from February 8, 2021 till March 15, 2021. He evidenced his intention to join the duties from March 16, 2021.

Immediately after the said letter, the petitioner wrote another letter on March 16, 2021 to the BMOH, SDRH intimating the fact that he would again require earned leave for 15 days from March 17, 2021 till April 2, 2021.

Therefore, it is submitted by the State respondents that the petitioner has not been discharging his duties

honestly and diligently, that is required from a Medical Officer.

Considering the rival submissions of the parties and the materials placed on record, this Court finds that the last extension of the petitioner's engagement was made on August 2020. Therefore, the period of contractual engagement was at least till August 2021.

During the period of contractual engagement, the petitioner took leave on several occasions. Since August 23, 2020, the petitioner has not been performing his duties satisfactorily and absenting himself frequently. After duly adjusting his leaves, the State respondents held the petitioner to be an unauthorized absence from April 1, 2021 till March 31, 2022.

This Court finds no perversity in the decision making process of the State respondents.

The decision of the State respondents are neither arbitrary nor due to any *mala fide* intention.

Furthermore, this Court finds that the protection under Article 311 of the Constitution of India is only to be given to the employees who are employed in civil capacities under the Union or a State and cannot be extended to contractual employees.

In such view of the matter, this Court finds no merit in the present writ petition.

Accordingly, **W.P.A. 7596 of 2023** is **dismissed**.

All parties shall act on the server copy of this order duly downloaded from the official **website** of this Court.

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

(Lapita Banerji, J.)