

Ct. 16.05
No. 2023
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W.P.A. 8914 of 2023
Nityananda Maity
-Versus-
The State of West Bengal & Ors.

Mr. Sakti Pada Jana, Adv.

Mr. Subhajyoti Das, Adv. ...For the Petitioner

Ms. Sweta Mukherjee, Adv. ...For the State Respondents

Mr. Abdus Salam, Adv. ...For the Respondent Nos. 5 and 6

A report in the form of affidavit filed by the respondent No. 3 be kept on record.

The petitioner was engaged as Contractual Instructor in a vocational training centre of a school namely, Bhimeswari Uchcha Sikshayatan on 20.01.2010. Since the petitioner was engaged in the year 2010, his engagement shall continue till he attains the age of 60 years.

The petitioner complains that he has falsely been implicated in a criminal case arising out of Bhagawanpur Police Station Case No. 333 of 2022 dated 26th August, 2022 under Sections 354 /354A/509/34 of the Indian Penal Code and Sections 10/12/17/18/8 of the Protection of Children from Sexual Offences Act.

He states that after completion of investigation charge sheet has been submitted against him as well one co-accused. However, after submission of the charge sheet, he approached this Court seeking anticipatory bail and this Court granted anticipatory bail to him. Ultimately, he was released on regular bail.

The petitioner made representation to the Teacher-In-Charge of the institution seeking permission to join the

institution, but he was not allowed to resume his duties. Though the petitioner's remuneration was released upto the month of November, 2022, but his name was struck out from the wage/remuneration roll from the month of December 2022.

Under the aforesaid circumstances the petitioner by preferring this writ petition seeks, inter alia, the following reliefs.

“A Writ in the nature of Mandamus commanding the Respondents, their agents, servants, subordinates, employees and/or assignees specifically respondent nos. 6 to allow the petitioner to join as the Contractual Instructor for the vocational stream run by Bhimeswari Uchcha Sikshayatan, District - Purba Medinipur and also directing them to disburse remuneration with arrears for the period of December, 2022 to till date to the petitioner immediately by not interrupting his service;

A Writ in the nature of Mandamus directing the Respondents, their men, agents, assigns and subordinates to show cause as to why without any reason the petitioner was not allowed to join the school by the Teacher-in-Charge to resume his duty and why the name of the petitioner has been removed from the Grant-in-Air Sanctioned order and that shall not be set aside and/or quash with a direction upon the respondent authorities to allow the petitioner to join his duty at the said school and directing all other authorities to take consequential steps in accordance with law.”

Learned Counsel appearing for the petitioner submits that without giving any opportunity of hearing to his client and without issuing any termination order, the engagement of his client cannot be taken away arbitrarily by the authority concerned.

Per contra, learned Counsel appearing for the State respondents submits that since a criminal case has been registered against the petitioner on the allegations of serious offences under the Protection of Children from Sexual Offences Act, the engagement of the petitioner is liable to be terminated in terms of the Clause 7 of the Memorandum dated 15th July, 2019 issued by the Finance Department, Government of West Bengal.

Adopting the submission of learned Counsel for the State respondents, learned Counsel appearing for the respondent Nos. 6 and 7, the School Authority, submits that since the petitioner was absent for a considerable period and he was involved in serious offences, he was not allowed to work in the education centre.

Admittedly, the petitioner had been working as a Contractual Instructor in the aforesaid Vocational Training Centre since 20.01.2010. As pointed out by the learned Counsel for the petitioner, the petitioner's engagement will continue upto the age of 60 years in terms of the Government Notifications dated 25th February, 2021 and 15th July, 2019.

Undisputedly, the engagement of the petitioner has not yet been terminated by issuing any order, nor he was served with show cause notice as to termination of his engagement.

The Hon'ble Apex Court in the case of *K. Ragupathi Vs. State of Uttar Pradesh & Ors.*, reported in (2022) 6 SCC 346 has held that the engagement even of a contractual employee cannot be terminated without following the principles of

natural justice.

What I find from the documents on record, the remuneration of the petitioner was paid upto November, 2022, but, without terminating his engagement and without giving any opportunity of hearing to him his remuneration was stopped from the month of December, 2022. In such context, learned Counsel appearing for the State respondents submits that since the bills from the month of December, 2022 were not submitted by the School Authority, his remuneration from the month of December, 2022 was not disbursed.

Be that as it may, the fact remains that the engagement of the petitioner as Contractual Instructor of the said Vocational Training Centre still subsists. His engagement has not been terminated in accordance with law, nor any show cause notice has been served upon him relating to termination of his engagement. As I find, before disallowing the petitioner to resume his duties, the institution Authority did not adhere to the principles of natural justice.

Whether the engagement petitioner is terminable or not, the School Authority may decide in accordance with law. But without any written order or direction terminating his engagement, the institution Authority cannot disallow him to join the Educational Centre.

Having heard the learned Counsels appearing for the parties and in view of the above I think that the writ petition may be disposed of by passing the following order.

The respondent Nos. 5 and 6 are directed to allow

the petitioner to join his duties as a Contractual Instructor of the aforesaid Vocational Training Centre forthwith.

The respondent No. 6 is directed to take all the necessary steps towards disbursement of the remuneration / honorarium of the petitioner from December, 2022 in accordance with law.

However, this order will not prevent the institution Authority as well as the State respondents from initiating any disciplinary proceeding against the petitioner in accordance with law.

With the aforesaid directions the writ petition stands disposed of.

There will be no order as to costs.

Since no affidavit has been invited from the school authority, the allegations / averments as made in the writ applications shall be deemed to have been not admitted by the school authority.

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

Urgent photostat copy of the order, if applied for, be supplied to the parties on priority basis on compliance of necessary formalities, on priority basis.

(*Rabindranath Samanta, J.*)