

Item No. 12
22.02.2023
Court. No. 19
GB

W.P.A. 10037 of 2022

Kaisar Ansari
VS
The State of West Bengal & Ors.

Md. Nauroz Rahber,
Md. Jawwad

...for the Petitioner.

Mr. Amal Kumar Sen,
Mr. Lal Mohan Basu

...for the State.

The petitioner challenges his termination from service.

The petitioner was performing his duties as a Gram Rojgar Sevak at Domohana Gram Panchayat which was a contractual post, renewable year to year. As a Gram Rojgar Sevak the petitioner was to take measurement of the proposed sites where the works under MGNREG projects were supposed to be executed and implemented. Geo tagging of these sites were to be done and photographs were to be uploaded online, in the site.

A show cause notice dated April 18, 2022 was issued by the Block Development Officer and Programme Officer, MGNREGS asking the petitioner to submit a reply in connection with Geo tagging and uploading of photographs of 13 ponds which were purportedly excavated under the scheme, although the work had not been done.

One Maniul Haque complained to the Block Development Officer, Karandighi Block that the excavation

of the ponds had not been done, although, the money for such excavation had been utilized by the Pradhan and other persons involved in the said scheme of the said gram panchayat. According to the district enquiry team, the allegations of mis appropriation were found to be correct and it was detected that all the persons including the petitioner were involved in such malpractice. The district inspection team did not find any farm ponds at all, which indicated that the ponds which had allegedly been excavated, did not exist in the area at all. The money was utilized and the petitioner had uploaded pictures by Geo tagging, in order to show that such work had been implemented. These pictures and Geo tagging were false and misleading and hence the petitioner was found guilty of misconduct.

The show cause notice dated April 18, 2022 indicates the charges against the petitioner. The petitioner was asked to show cause why legal action shall not be taken against him for violation of the provisions of the Act. The petitioner submitted a reply and stated that the inspection was done in his absence, but all the schemes had been executed and implemented. The reply of the petitioner was considered by the Block Development Officer who was also the Programme Officer. The same was not found to be satisfactory. By a letter dated April 22, 2022 the petitioner was asked to attend a personal hearing on April 25, 2022 at 12 noon.

It is pertinent to mention that similar show cause notices were issued to the Nirman Sahayak, Executive Assistant and Village Level Entrepreneur of Domohana

Gram Panchayat with regard to the irregularities detected in respect of alleged excavation of the 13 ponds under the MGNREGA Scheme.

After granting an opportunity of being heard, the authority found that the petitioner could not explain why he had conducted the field measurement and had also done the Geo tagging of such schemes by uploading photographs of such sites in respect of which no work had ever been done under the MGNREGA Act. The matter was then sent to the District Nodal Officer, MGNREGS, Uttar Dinajpur for necessary directions in this regard. The order of the Block Development Officer was passed on April 25, 2022 and similar findings were also recorded in respect of the Nirman Sahayak, Domohana Gram Panchayat and the Village Level Entrepreneur.

The Pradhan was also directed to return the money which had been misappropriated. Thereafter, the District Nodal Officer issued a notice to the petitioner and other persons involved for further hearing and they were asked to produce documentary evidence, if any, on May 13, 2022 at 12 noon in the office of the District Nodal Officer. The petitioner could not produce any documentary evidence in support of his claim. Further notice of hearing was issued by the District Nodal Officer on May 17, 2022. Thereafter, the District Magistrate directed that the petitioner should be terminated.

The order was passed after hearing the petitioner and after giving adequate opportunity to the petitioner to submit

necessary documents and evidence in support of his contentions. Orders were also passed with regard to others who were found involved in such malpractice, including the Pradhan. The Executive Assistant of Domohana Gram Panchayat who was found responsible for such malpractice, was decided to be proceeded against by initiation of a disciplinary proceeding in accordance with the service rules governing the said employee. The Pradhan was directed to deposit the money misappropriated, failing which the authority reserved the right to take strict action against the Pradhan. Maniul Haque and Anis Ali, supervisors and 25 beneficiaries were directed to appear for further hearing.

The scope of judicial review is to ascertain whether the rules of natural justice had been followed and ensure that the petitioner had not been subject to blatant illegality in the procedure followed by the authority. According to the petitioner, the rules of natural justice was not followed and the order of termination did not provide sufficient reasons.

A report in the form of an affidavit has been filed by the Block Development Officer. All the queries raised by the Court have been answered with documents. It appears that the petitioner duly appeared before the Nodal Officer on three occasions. The petitioner did not file any document in support of his contention, although opportunity was given to file documentary evidence. The only contention of the petitioner was that the ponds had been excavated, although the district enquiry team did not find the same to be correct. An order was passed by the District Nodal Officer and the

District Magistrate-cum-District Programme Coordinator took a decision to terminate the petitioner on the basis of such findings against the petitioner.

The notification dated September 29, 2014 issued by the Commissioner, MGNREGA, Government of West Bengal, Panchayats and Rural Development Department provides the procedure to be adopted with regard to the termination of service of contractual workers under MGNREGA.

Accordingly, the Court finds that the show cause notice was in the nature of articles of charges dated April 18, 2022. The petitioner had filed his reply to the show cause without any documentary evidence. The petitioner was heard on several occasions and thereafter steps were taken to terminate the petitioner. The notification dated September 29, 2014 provides that an appeal shall lie from the order of termination, before the Commissioner. The writ Court can only enquire into the decision making process and is not a court of appeal. When there is a provision of appeal, alternative remedy would be a bar. Only in the following cases can the court interfere, namely:-

“(i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is violation of principles of natural justice; or (iii) where the order is wholly the without jurisdiction or the vires of an Act is challenged.”

In this case, these contingencies have not occurred.

In the matter of *CIT v. Chhabil Dass Agarwal*, reported in **(2014) 1 SCC 603**, The Hon’ble Apex Court held as follows:-

“13. In *Nivedita Sharma v. Cellular Operators Assn. of India* [(2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947] , this Court has held that where hierarchy of appeals is provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction for relief and observed as follows:

“12. In *Thansingh Nathmal v. Supt. of Taxes* [AIR 1964 SC 1419] this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed:

‘7. ... The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by the statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up’.”

The issues which have been raised by the petitioner, are factual and as such, the petitioner must prefer an appeal. All the points raised in the writ petition including the jurisdiction of the authority, the manner in which the authority proceeded, the contents of the order, can all be raised in the appeal. The appellate authority shall dispose of the appeal within a period of two months from date of communication of this order. The findings hereinabove, are only prima facie, in order to deal with the writ petition and shall not influence the appellate authority. A reasoned order shall be passed and communicated to all concerned within two months from receipt of the appeal. The petitioner shall be heard. The contention of the petitioner that apart from the petitioner none of the other persons had been punished

or no steps had been taken to fix their responsibility and impose necessary penalty as per law, shall also be available to the petitioner in the said appeal.

Accordingly, the writ petition is disposed of.

However there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)