

30-03-2023
Item No. 1
Subrata
Bhattacharyya

IN THE HIGH COURT AT CALCUTTA
Constitutional writ Jurisdiction
Appellate Side

WPA No.10095 of 2015
Manik Mondal

-vs-

The State of West Bengal & Ors.
with

CAN No.1 of 2016
(Old CAN No.10984 of 2016)

Mr. Shuvro P. Lahiri
Mr. Rajesh Naskar ...for the petitioner

Mr. Tapan Kumar Mukherjee
Mr. Somnath Naskar ...for the State

Md. Sarwar Jahan
Mr. Mousumi Mitra
Mr. S.N. Thander
Mr. Asif Mehdi ...for respondent no.3

Mr. Habibur Rahaman
Mr. Archisman Singh ...for respondent no.13

Challenge in this writ petition is against an order dated April 6, 2015 passed by the Sub-Divisional Officer, Domkal, Murshidabad terminating the engagement of the petitioner as a Sahayak of Juginda Biswaspara Sishu Siksha Kendra and reinstatement of the thirteenth respondent, Smt. Jogmaya Chatterjee (Mukherjee), as a Sahayika in the said Siksha Kendra.

Background facts which led to filing of the writ petition may be summarised as follows:-

The petitioner, Manik Mondal, was working as a Sahayak in Juginda Biswaspara Sishu Siksha Kendra (hereafter referred to as "said SSK") since his engagement from August 16, 2004. From time to time his engagement was renewed by the concerned authority. The private

respondent no.13, Smt. Jogmaya Chatterjee (Mukherjee) by filing a writ petition [WP No.8839(W) of 2011] in this court assailed the termination of her engagement as Sahayika. By an order dated September 17, 2014, the writ petition was disposed of by a learned single Judge directing the Sub-Divisional Officer, Domkol to consider and dispose of her representation within a specified period giving an opportunity of hearing of her and the other interested parties. In terms of this order, the Sub-Divisional Officer by his impugned order dated April 6, 2015 disposed of the thirteenth respondent's representation terminating the engagement of the petitioner and reinstating her as a Sahayika in the said SSK. A resolution dated July 15, 2004 which was adopted by the managing committee of the said SSK was declared null and void by the Sub-Divisional Officer.

Under the aforesaid circumstances, the petitioner seeks that the impugned order passed by the Sub-Divisional Officer be set aside and the concerned respondent authority be directed to release the honorarium to him.

In her affidavit-in-opposition, the thirteenth respondent states that the managing committee of the said SSK, in order to engage four Sahayika of the said SSK, by issuing an advertisement invited applications from the eligible candidates. In response to the advertisement, two candidates made applications. Ultimately, the managing committee of the said SSK by adopting a resolution made proposal to engage her as the fourth Sahayika in the said SSK. Ultimately, the proposal was approved by the appropriate authority and she was engaged as the fourth Sahayika of the said SSK on August 27, 2003. In the year 2004, a new managing committee was formed for the said

SSK and it abruptly and without giving any intimation to her by adopting a resolution on July 15, 2004 terminated her engagement and in her place, the petitioner, Manik Mondal, was engaged in that post. As against such termination, she filed the said writ petition being WP No.8839(W) of 2011.

By the order dated September 17, 2014 the writ petition was disposed by directing the Sub-Divisional Officer, Domkol to consider and dispose of her representation. By the Sub-Divisional Officer's order dated April 6, 2015, the engagement of the petitioner was terminated and the thirteenth respondent was reinstated as the Sahayika in the said SSK on April 21, 2015 and since then she has been working in the said post. On such grounds and denying the averments/allegations made in the writ petition, the thirteenth respondent seeks dismissal of the writ petition.

However, the petitioner in his affidavit-in-reply denies and disputes the averments made in the affidavit-in-opposition of the thirteenth respondent.

Admittedly, initially, the thirteenth respondent was engaged as the fourth Sahayika in the said SSK on August 27, 2003 and she worked there till September 30, 2004. After the managing committee of the said SSK was reconstituted, it, by a resolution dated July 15, 2004, terminated the engagement of the thirteenth respondent and instead engaged the petitioner therein as a handicapped candidate.

As I find, as against the termination of her engagement as Sahayika, the thirteenth respondent by preferring the aforesaid writ petition sought for appropriate relief. By the single Judge's order dated

September 17, 2014 directing the Sub-Divisional Officer to consider and dispose of the thirteenth respondent's representation, the Sub-Divisional Officer by his order dated April 6, 2015 reinstated the thirteenth respondent on April 21, 2015 and since then she has been discharging her duties in the said SSK.

On the other hand, the petitioner, by virtue of the resolution of the newly constituted managing committee of the said SSK, was engaged as Sahayak in the said SSK on August 16, 2004 and his engagement continued till he was terminated by virtue of the Sub-Divisional Officer's order dated April 6, 2015.

As per the office memorandum dated March 30, 1999 issued by the Panchayats and Rural Development Department, Government of West Bengal, a woman, who at the time of the advertisement for engagement was above the age of 40 years, could be considered to be engaged as a Sahayika in a Shishu Siksha Kendra. However, if no woman of the age exceeding 40 years was available, then a woman whose age exceeded 35 years could be considered to be engaged as a Sahayika. As the office memorandum indicates women candidates are given preference to the male candidates, but a male, who is a handicapped person and possesses the requisite qualification, could be considered to be engaged as Sahayak in a Shishu Shiksha Kendra.

As it is found from the documents on record, the managing committee of the said SSK in response to the advertisement made by it received only two applications from two candidates. Out of the two applicants, the managing committee by adopting an appropriate resolution selected the thirteenth respondent to be

engaged as the fourth Sahayika in the said SSK. It is not in dispute that at that time she was aged more than 35 years but less than 40 years. No other eligible woman candidate was then available. Therefore, the observation made by the Sub-Divisional Officer in the impugned order dated April 6, 2015 that the thirteenth respondent fulfilled all the eligibility criteria to be engaged as Sahayika is acceptable. However, by the impugned order, the Sub-Divisional Officer terminated the engagement of the petitioner. From the medical certificate annexed to the writ petition, it is evident that the petitioner is a handicapped person.

In terms of the office memorandum dated March 30, 1999, the petitioner being a physically challenged person was eligible candidate to be considered for engagement as a Sahayak in the said SSK. As I find from the documents on record, the petitioner, by virtue of the resolution adopted by the managing of the said SSK, was engaged as a Sahayak on August 16, 2004 and he worked till his termination by virtue of the Sub-Divisional Officer's order dated April 6, 2015.

During the course of hearing, it is learnt by this Bench that there are four sanctioned posts of Sahayak/Sahayika of the said SSK, but the said SSK is now being managed by the sole Sahayika, the thirteenth respondent.

Learned counsels representing the respective parties very fairly submit that due to dearth of requisite number of Sahayaks/Sahayikas, education of the students of the said SSK is now being badly affected.

As quoted above, the thirteenth respondent after being engaged as the Sahayika worked in such capacity in

the said SSK from August 27, 2003 to September 30, 2004 and thereafter in terms of the Sub-Divisional Officer's order dated April 6, 2015 she was re-engaged on April 21, 2015 and since then she has been discharging her duties in the said SSK. Admittedly, on the other hand, the petitioner who was engaged on the strength of the resolution of the managing committee worked in the said SSK from August 16, 2004 till termination of his engagement. As the thirteenth respondent joined on April 21, 2015, it will be deemed that the petitioner worked as Sahayak till April 20, 2015.

Now, the question is whether the petitioner who worked as a Sahayak in the said SSK for a considerable length of time as indicated above can be thrown out of the engagement while the said SSK needs more Sahayaks/Sahayikas.

Article 21A of the Constitution of India enjoins that the State shall provide free and compulsory education to all children of the age group of six to fourteen years in such a manner as the State may, by law, determine. Therefore, getting education by the children of the age group six to fourteen years is their fundamental right as enshrined in Article 21A of the Constitution.

As the engagement of the petitioner continued for a considerable length of time, it may safely be held that by such engagement he has now been a trained Sahayak to impart education to the children.

In the absence of any express provision in any Government order or guidelines to accommodate the petitioner in the said SSK as a Sahayak/Sahayika, I feel that this court in exercise of its plenary power may direct the authority concerned to engage the petitioner as a

Sahayak in the said SSK for providing compulsory and elementary education to the children of the aforesaid age group for the welfare of the society.

In view of the above, the writ petition is disposed of by passing the following order.

In exercise of plenary power of this court, it is directed that the petitioner, Manik Mondal, be engaged as a Sahayak in the Juginda Biswaspara Sishu Siksha Kendra, Murshidabad with effect from May 1, 2023. The concerned respondents are directed to issue engagement letter in favour of the petitioner with effect from May 1, 2023. The engagement of the thirteenth respondent, Smt. Jogmaya Chatterjee (Mukherjee), as Sahayika in the said SSK shall continue till her cessation in accordance with law.

On the petitioner's engagement as Sahayak in the said SSK with effect from May 1, 2023, the concerned respondent shall pay the honorarium as admissible to him till his engagement comes to an end in accordance with law.

It is made clear that no honorarium shall be paid to the petitioner during the period he was out of engagement as a Sahayak. The portion of the order dated April 6, 2015 of the Domkol Sub-Divisional Officer by which the petitioner's engagement was terminated stands quashed and set aside.

The length of service rendered by the petitioner as well as the thirteenth respondent as Sahayak/Sahayika shall be counted for the purpose of granting terminal benefits to them on cessation of their engagement on superannuation.

However, it is made clear that this order shall not be cited as a precedent.

With the above observations, WPA No.10095 of 2015 stands disposed of. No order as to costs.

Consequently, the application [CAN No.1 of 2016 (Old CAN No.10984 of 2016)] is also disposed of.

No order as to costs.

All parties are to act on the server copy of this order duly downloaded from the official website of this court.

Certified copy of this order, if applied for, shall be made available to the parties.

[Rabindranath Samanta, J]

