

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

WPA No. 16654 of 2014

Mansura Khatun (Bibi)

...Petitioner

Vs.

The State of West Bengal and Others

... Respondents

Mr. Ekramul Bari,
Ms. Tanuja Basak,
Sk. Imtiaz Uddin,

... for the Petitioner

Mr. Sarwar Jahan,
Ms. Mousumi Mitra,
Mr. Asif Mehdi,

... for the State respondents no. 3,
the Mission Director, Pachim
Banga Rajya Shishu Shiksha
Mission.

Mr. Nibaran Kumar Das,

... for the respondent no. 11,
the District Nodal Officer

Heard On : 12.04.2023

Judgment on : 01.05.2023

Rabindranath Samanta, J:-

1. Aggrieved by a Memo dated 26.03.2014 issued by the Paschim Banga Rajya Shishu Shiksha Mission terminating her engagement as a Sahayika in a Shishu

Shiksha Kendra, the petitioner has approached this Court by preferring this writ petition.

2. The facts which are necessary for adjudication of the matter may briefly be stated as under:

In response to an advertisement dated 10.05.2006 published by the Managing Committee of Dakshin Bahira Shishu Shiksha Kendra inviting applications from eligible candidates to engage a Sahayika in the Kendra, the petitioner made application for such engagement. By a resolution dated 07.06.2006 adopted by the managing committee of the Shishu Shiksha Kendra, the petitioner was engaged as 4th Sahayika in the Kendra with effect from 7th June, 2006. The petitioner states that since no candidate of 40 years of age was then available, she was engaged as a Sahayika in the Kendra.

3. Though the petitioner was engaged as Sahayika since 7th June, 2006 honorarium was paid to her for the month of September, 2007 on 13.04.2011. She received Rs. 13500/- as honorarium from the Barasat II Panchayat Samity for the period from August, 2006 to April, 2007. The petitioner states that on a report submitted by the Nodal Officer to the Mission Director, Paschim Banga Rajya Shishu Shiksha Mission, the Mission Director instructed the BDO, Barasat-II to pay the arrear honorarium to her for the period 2006-2007. Accordingly, she got the arrear honorarium as above.
4. The Administrative Officer of Paschim Banga Rajya Shishu Shiksha Mission by a memorandum dated 26.03.2014 informed the District Nodal Officer to terminate the engagement of the petitioner. By the same Memo the Administrative officer opined that the petitioner was not entitled to get any honorarium. In compliance of the Memo dated 26.03.2014 of the Administrative Officer, the District Nodal Officer requested the Executive Officer, Barasat-II Panchayat Samity to terminate her engagement. Ultimately, her engagement as a Sahayika stood terminated.
5. The petitioner in her subsequent pleading by way of affidavit-in-reply states that her engagement was subsequently ratified by the Panchayat Samity. Since she received honorarium after engagement as a Sahayika in the Kendra and her engagement was approved by Panchayat Samity, the concerned respondent authority cannot terminate her engagement.

6. Under the aforesaid circumstances, the petitioner prays that the memo dated 26.03.2014 issued by the administrative officer of Paschim Banga Rajya Shishu Shiksha Mission terminating her engagement as Sahayika be set aside and the respondent authority be directed to release her honorarium.
7. The respondent No.3, the Mission Director, Paschim Banga Rajya Shishu Shiksha Mission in his report in the form of affidavit states that at the time when the engagement process was initiated by the Managing Committee of the Shishu Shiksha Kendra then the engagement process was governed by the Government order dated 8th November, 2004. As per this Government order if all the candidates are less than 40 years of age, oldest candidate having requisite educational qualification should be considered with the prior approval of the Panchayat Samity. The petitioner was initially engaged in the year 2006 and she entered into an agreement with the Managing Committee. But the proposal of her engagement forwarded to the Panchayat Samity was disapproved by the Panchayat Samity in the year 2006-07. Subsequently, there was no approval until the year 2010. In the absence of the prior approval from the Panchayat Samity the initial engagement of the petitioner in the year 2006 itself becomes void abinitio. If the initial engagement is illegal then the question of renewal does not arise at all. After the Government order dated 23rd April, 2010 came into force the Sub-Divisional Officer has been made the competent engagement authority and the authority of Panchayat Samity to approve any proposal of engagement ceased. By Government order dated 04.12.2012 issued by the Panchayats and Rural Development Department, engagement of Sahayak/Sahayika has been stopped. On such grounds, this answering respondent submits that the writ application is liable to be dismissed.
8. Admittedly, in response to an advertisement made by the Managing Committee of Dakshin Bahira Shishu Shiksha Kendra the petitioner made application for engagement as a Sahayika in the Kendra. It is not in dispute that no candidate of the age of 40 years made application for such engagement. The petitioner was aged less than 40 years at the time when she applied for the post. As it is evident from a copy of resolution dated 21.01.2010 adopted by Barasat-II Panchayat Samity, the Panchayat Samity did not approve the engagement of the petitioner as a Sahayika for the year 2006-07 as she was below the age of 40 years. However,

since September, 2007 the Panchayat Samity accorded approval to her engagement vide the aforesaid resolution dated 21.01.2010. It is spelt in the resolution dated 21.01.2010 that the Panchayat Samity recommended disbursement of honorarium to the petitioner since September, 2007.

9. Certain facts which emanate from the documents on record are that as to non-disbursement of honorarium to the petitioner since her engagement by the Managing Committee of the Shiksha Kendra, the District Nodal Officer referred the matter to the Mission Director, Paschim Banga Rajya Shishu Shiksha Mission. By a communication the Mission Director instructed the BDO, Barasat II to pay the arrear honorarium to the petitioner Monsura Bibi for the period 2006-07 on the ground of approval of Shiksha Sthayee Samiti of Panchayet Samity and agreement entered into between the petitioner and the Managing committee of the Shiksha Kendra. Accordingly, the executive officer, Barasat II Panchayat Samity vide Memo dated 21.01.2011 disbursed an amount of Rs. 13,500/- as arrear honorarium to her for the period from August, 2006 to April, 2007. As it appears from a Memo dated 31.12.2013 of the District Nodal Officer addressed to the Mission Director, Paschim Banga Rajya Shishu Shiksha Mission, an amount of Rs. 1,500/- was paid to the petitioner as honorarium for the month of September, 2007 by the Panchayat Samity, but without any specific reason.
10. Now, the question which falls for consideration is whether subsequent approval of the engagement of the petitioner as a Sahayika in the Kendra vide resolution dated 21.01.2010 and disbursement of some arrear honorarium to her by the executive officer, Barasat-II Panchayat Samity and the Panchayat Samity will regularise the initial engagement of the petitioner as a Sahayika.
11. Undisputedly, the petitioner Mansura Khatun (Bibi) while she was engaged as a Sahayika in the Kendra on 07.06.2006 by the managing committee of the Shiksha Kendra she was then less than 40 years of age. Prior to 21.01.2010 her engagement was not approved by Shiksha Sthayee Samity of the concerned Panchayat Samity. Government order dated 8th November, 2004 issued by the Department of Panchayats and Rural Development, Government of West Bengal provides that in case all the eligible candidates are less than 40 years of age, oldest candidate having requisite educational qualification should be considered, with the prior approval of the concerned Panchayat Samity. Here, the managing

committee of the Shiksha Kendra did not obtain any prior approval before selecting the petitioner for engagement as Sahayika. During the period 2006-07 while the petitioner remained engaged in the Shiksha Kendra her engagement was without any ratification by the Shiksha Sthayee Samity of the concerned Panchayat Samity. That being the position, her initial engagement is not in accordance with law. To speak in legal parlance her engagement as a Sahayika is illegal ab initio.

12. Learned counsel appearing for the petitioner submits that by resolution dated 21.01.2010 Barasat II Panchayat Samity approved the engagement of the petitioner mentioning therein that the petitioner was paid honorarium by the executive officer, Panchayat Samity for the period 2006-07 and her honorarium for the month of September 2007 be paid. According to learned counsel, irregularity, if any crept in the initial engagement of the petitioner was cured by the resolution dated 21.01.2010.
13. Per contra, learned counsel appearing for the Mission Director, Paschim Banga Shishu Shiksha Mission submits that since the petitioner was aged less than 40 years, her engagement was not approved by the concerned Panchayat Samity and as such her initial engagement was vitiated with illegality. According to learned Counsel the subsequent approval of the engagement by the Panchayat Samity will not cure the illegalities of the engagement. Referring to a Memorandum dated 23.04.2010 issued by the Department of Panchayats and Rural Development learned counsel argues that with the advent of this Memorandum the authority to engage a Sahayika in a Shiksha Kendra was vested in the Sub-Divisional Officer and the authority of the managing committee and Panchayat Samity to engage any Sahayika ceased. In such context, learned counsel submits that the writ petition is liable to be dismissed.
14. Since the engagement of the petitioner as a Sahayika was made by the Managing Committee of the Shiksha Kendra without approval of the concerned Panchayat Samity, the initial engagement of her is illegal ab initio. By subsequent approval of her engagement by the Panchayat Samity vide resolution dated 21.01.2010, in my opinion, would not cure the illegality of the initial appointment. Disbursement of an amount of Rs.13,500/- by the executive officer, Barasat II Panchayat Samity to the petitioner as arrear honorarium for the period from August 2006-2007 and payment of Rs. 15,000/- as honorarium by the Panchayat Samity sans the lawful

approval of the engagement of the petitioner, in my opinion, would not cure the illegality of the initial engagement of her.

15. Viewed from all aspects this Court finds that the Memo dated 26.03.2014 issued by the Administrative Officer of Paschim Banga Rajya Shishu Shiksha Mission directing the nodal Officer to terminate the engagement of the petitioner is in accordance with law and this Memorandum does not invite any interference by this Court.
16. Therefore, the writ petition having no merit is dismissed on contest.
17. However, it is made clear that the honorarium which was disbursed to the petitioner will not be recovered from her.
18. Thus, the writ petition and connected application, if any, stands disposed of.
19. No order as to costs.
20. Parties may act on the Server Copy of this judgment and order.
21. Urgent certified website copies of this judgment and order, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)