

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

(Appellate Side)

MAT 1374 of 2019

With

I A CAN 1 of 2019

(Old CAN 9635 of 2019)

The Pradhan, Kanduah Gram Panchayat & Anr.

-Versus-

Smt. Niva Bachar & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Appellants : Mr. Anjan Bhattacharya, Adv.,
Ms. Anita Shaw, Adv.
Ms. T. Khatun, Adv.

For the State Mr. Jahar Lal De, Adv.,
Mr. Abdus Salam, Adv.

For the Respondent No.5 Ms. Mekhla Sinha, Adv.

For the Private : Mr. I. N. Mukherjee, Adv.,
Respondent Mr. D.K. Chandra, Adv.

CAV On : 15.03.2023

Judgment On : 11.04.2023

Apurba Sinha Ray, J. :-

1. Being aggrieved by and dissatisfied with the judgment and order dated 28.06.2019 passed in W.P. No. 27010(W) of 2017 and W.P. No. 21210(W) of 2015 the appellant has filed the instant appeal on the grounds, inter alia:-

a. that the Learned Single Judge erred in law and in fact, in passing the impugned order,

b. that the Learned Single Judge has failed to appreciate that the writ petitioner/respondent read upto Class-IV as on 10.12.1990,

c. that the Learned Single Judge has failed to appreciate that in the year 1998, the writ petitioner/respondent had filed a writ petition being WP No. 9546 (W) of 1998, by which this Hon'ble Court was pleased to direct the State respondents to consider the prayer of the petitioner for absorption,

d. that the Learned Single Judge has failed to appreciate that a second writ petition was filed being No. 5964(W) of 2006 in which on 20.02.2009 this Hon'ble Court was pleased to direct the respondents to reconsider the case of the petitioner afresh by quashing the order of the Sub-Divisional Officer, Howrah which was passed against the petitioner nullifying her absorption and was a subject matter of challenge in WP No. 5964(W) of 2006.

e. that the Learned Single Judge has also failed to appreciate that the respondent/writ petitioner filed a contempt application being No. WPCRC 64(W) of 2010 in connection with WP No. 5964(W) of 2006 for compliance in which, it

was found by the Hon'ble Court that the mark sheet and transfer certificate shown by the writ petitioner/respondent no. 1 are fabricated and procured wherein the Hon'ble Court further directed District Inspector, Howrah to investigate into the circumstances, in which, the mark sheet and transfer certificate was issued and to lodge appropriate criminal and disciplinary proceeding against the Head Master of the School, who issued the transfer certificate,

f. that the Hon'ble Single Judge has failed to appreciate that challenging two interim orders passed in W.P. No. 21210(W) of 2015 a Mandamus Appeal was preferred before the Hon'ble Division Bench being FMA No. 957 of 2017 with CAN 7224 of 2017 with CAN 7469 of 2017 by the present appellant, in which, the Hon'ble Court allowed the appeal after setting aside the two interim orders dated 04.04.2016 and 18.04.2016, by which, the Hon'ble Single Bench first was pleased to direct the Prodhan (Appellant) to pay Rs. 1,000/- as the remuneration of the writ petitioner/respondent No. 1 and, when not paid, directed to be paid from the salary of the Prodhan,

g. that the Learned Single Judge has failed to appreciate that on 31.10.2017, the writ petitioner/respondent was terminated from the casual/temporary job of the Panchayat upon giving proper reasoning,

h. that challenging the said order, the writ petitioner/respondent No. 1 had come to this Court by filing a fresh writ petition being W.P. No. 27010(W) of 2017,

i. that the Learned Single Judge has failed to appreciate that in the writ petitions being W.P. No. 27010(W) of 2017 and W.P. No. 21210(W) of 2015, the age of the petitioner which has been disclosed in the affidavit pages, differs from the age of the petitioner shown in the voter list of Sankrail Constituency published in the year 2016, wherein the petitioner's age has been shown as 62 years, and during the pendency of the writ petition, the Hon'ble Court was pleased to direct the state respondents to file a comprehensive report on the entire issue of the appointment and selection of the writ petitioner/respondent no. 1 but the said report was not considered by the Hon'ble First Court in spite of the report being placed before the Hon'ble First Court.

j. that the Hon'ble Single Judge has failed to appreciate that the writ petitioner/respondent used to come to the office of the Panchayat continuously after 11:00 a.m. which was beyond the normal office time,

k. that the order of termination was issued against the writ petitioner/respondent, after mentioning that the writ petitioner/respondent had failed to discharge her statutory duty to attend the government office on time,

l. that the Hon'ble Single Judge has failed to appreciate that the writ petitioner/respondent had submitted her application form after 4 years from the date of death of her husband and hence by any means, the appointment of the writ petitioner/respondent No. 1 cannot held to be justified and the

decision of the Hon'ble First Court in setting aside the order impugned dated 31.10.2017 passed by the appellant herein is bad in law,

m. that the Learned Single Judge has failed to appreciate that the writ petitioner/respondent cannot be engaged in temporary service of the Gram Panchayat and the extended benefit allowed by the Hon'ble First Court under Memo No. 9008-F(P) dated 16.09.2011 of the Audit Branch, Finance Department, Government of West Bengal to the writ petitioner/respondent is required to be set aside, that the impugned order of the Hon'ble Trial Court dated 28.06.2019 is bad in law and is liable to be set aside.

2. The Learned Counsel appearing on behalf of the appellant has submitted that in the writ petitions being W.P. No. 27010(W) of 2017 and W.P. No. 21210(W) of 2015 the age of the petitioner which has been disclosed in the affidavit pages does not tally with the voter list of Sankrail Constituency published in the year 2016 where the petitioner's age has been shown as 62 years. The order of termination was rightly passed by the appellant since the writ petitioner/respondent used to come to the office of the Panchayat every day after 11:00 a.m. which was beyond normal office time. Moreover, the respondent/writ petitioner had failed to discharge her statutory duty by attending the government office on time. The Learned Single Judge did not consider the fact that the writ petitioner/respondent had submitted her application for absorbing her in permanent capacity four years after the death of her husband and therefore the Learned Single Judge was not correct to set aside the order dated 31.10.2017 passed by the

appellant herein. The Learned Counsel has also drawn the attention of this Court to the fact that the writ petitioner/respondent cannot be engaged in the temporary service of the Gram Panchayat in view of the above facts and circumstances, and further the benefit under the relevant circular extended by the Learned Single Judge to the petitioner cannot be sustained.

3. The Learned Counsel appearing on behalf of the writ petitioner/respondent no. 1 has submitted that the writ petitioner/respondent no. 1 has been struggling since 1989 for getting justice by filing writ petitions one after another. The struggle began when the husband of the petitioner/respondent namely Batakrisna Bachar, who was an employee in the office of the Kanduah Gram Panchayat, and was serving as Dafadar, died in harness on 12.03.1985 leaving behind the respondent no.1 and two minor children. Being helpless with the minor children she made an application before the aforesaid Gram Panchayat declaring therein that she read upto Class-IV. The member of the Kanduah Gram Panchayat including the then Prodhan took a resolution on 10.12.1990 and engaged the petitioner in the said Gram Panchayat at a monthly salary of Rs. 100/- only. The writ petitioner/respondent no. 1 time and again prayed for regularization of her service and finding no alternative she filed several writ petitions praying for necessary directions upon the concerned authorities for regularization of her service and to absorb her in the permanent post of Panchyat Karmi in accordance with the provisions of law but as the concerned authority did not consider her prayer for regularization, a series

of litigations were filed from the side of the respondent/writ petitioner and ultimately the service of the respondent/writ petitioner was illegally terminated by the appellant. By the judgment dated 28.06.2019, the two writ petitions as aforesaid were disposed of and the Learned Single Judge has directed the respondent no. 1 to be engaged in temporary service in the Gram Panchayat and further the Learned Single Judge extended the benefit of Memo No. 9008-F(P) dated 16.09.2011 of the Audit Branch, Finance Department, Government of West Bengal to the writ petitioner/respondent as adopted from time to time calculatable at pro-rata rates from the date of her first engagement by resolution dated 10.12.1990.

4. The Learned Single Judge has come to several findings, inter alia, that;

a. Initial engagement of the writ petitioner was on humanitarian grounds.

b. The writ petitioner did not make any representation regarding her educational qualification at that time. The Gram Panchayat suo moto referred to her academic qualification without any supporting document.

c. The SDO's order dated 26.12.2005 was rejected on 20.02.2009 in the second writ petition of the respondent and accordingly the order dated 05.04.1999 of DPRDO had also lost its force.

d. The repeated assertion of the Hon'ble Court in the orders dated 05.08.1999, 09.11.2005 and 20.02.2009 passed in three writ petitions have

the combined effect of setting aside any administrative decision contrary thereto.

e. Though two interim orders dated 04.04.2016 and 18.04.2016 were set aside by the Division Bench on 13.09.2017, the prayers for release of salaries of the writ petitioner and her absorption in permanent capacity in the writ petition were kept pending for ultimate consideration by this Hon'ble Single Judge.

f. The termination order dated 31.10.2017 is pre-emptive and definitely pre-mature since the same was passed without obtaining leave of Hon'ble Court, particularly when the Hon'ble Court was considering the issue of permanent appointment of the writ petitioner.

g. Notwithstanding the allegation of fraud against the writ petitioner, she was allowed to continue her job till 31.10.2017. No whisper of allegation of fraud has been mentioned in the order dated 31.10.2017. No affidavit containing such allegation of fraud against the writ petitioner was submitted in spite of having such opportunity to do so in view of the order of the Hon'ble Division Bench dated 13.09.2017.

h. Though there is a need for an investigation regarding the allegation of fraud against the petitioner, the termination of the writ petitioner by virtue of the order dated 31.10.2017 was unfair and illegal.

i. Accordingly, the Learned Single Judge directed as follows:

“ A) That the order impugned dated 31st October, 2017 stands set aside.

B) That the petitioner be therefore recognized to be in temporary service of the GP in issue being Kanduah GP, District Howrah.

C) As a temporary employee the petitioner be extended benefits allowed under Memo No. 9008-F(P) dated 16th September, 2011 of the Audit Branch, Finance Department, Government of West Bengal as revised and adopted from time to time calculable at pro rata rates as applying from the date of her first engagement by Resolution dated 10th December, 1990 of the GP.

D) That the District Magistrate/Howrah/ the respondent Nos. 5 to WP IV shall take steps as directed above within six weeks from the date of communication of this order.

E) That pending complete investigation into the issue of fraudulent educational certificates as directed by the solemn order dated 27th August, 2010 in WPCRC No. 64(W) of 2010 arising out of WP II, the writ petitioner is restrained from raising any claim to permanent appointment.”

Decision with reasons

5. The impugned judgment of the Learned Single Judge has been challenged mainly on the grounds that;

a. The discrepancy in the age of the writ petitioner as found in the relevant affidavits and the voter list was not taken into consideration;

b. The comprehensive report which was sought for by the Learned Single Judge was never considered at the time of passing the impugned judgment;

c. The fact that the application for appointment on the grounds of die-in harness was submitted by the writ petitioner after four years of the death of the original employee was also not taken into account.

*d. Benefit under the **Memo No. 9008-F(P), dated 16.09.2011** cannot be extended to the writ petitioner/respondent.*

6. It appears that Writ Petition No. 27010(W) of 2017 was filed for cancelling the order dated 31.10.2017 terminating the temporary service of the writ petitioner whereas Writ Petition No. 21210(W) of 2015 was filed by the said writ petitioner/present respondent no. 1 for absorbing her as a permanent employee in Kanduah Gram Panchayat as a died in harness candidate. The Learned Single Judge has been pleased to dispose of both the above two writ petitions by order dated 28.06.2019, setting aside the dismissal order dated 31.10.2017 passed against the respondent and further restraining the respondent to raise any claim for permanent employment until completion of relevant investigation. Therefore it appears that the Learned Single Judge has kept open the issue of permanent employment of Smt.Niva Bachar till the investigation regarding allegation of submission of fraudulent documents is over. The respondent has been recognized as a casual worker/employee of the Panchayat who is entitled to benefits extended from time to time by the Government of West Bengal to the casual workers engaged in various departments including panchayat bodies.

7. It appears from the records that though the writ petitioner filed Writ Petition No. 21210(W) of 2015 with prayers, inter alia, for absorbing her in the permanent employment of Kanduah Gram Panchayat, the Pradhan of Kanduah Gram Panchayat without waiting for the disposal or final order in the Writ Petition No. 21210(W) of 2015, terminated the temporary service of

the writ petitioner/present respondent no. 1 on the ground that she was not performing her duties in accordance with official norms.

8. The appellant has tried to impress upon this court by contending that as there are serious irregularities regarding the age of the writ petitioner and also in view of the fact that the writ petitioner submitted the application for compassionate ground after four years of the death of her husband, she cannot be absorbed as a permanent employee of the concerned gram panchayat. Moreover, an investigation regarding submission of fraudulent documents on behalf of the writ petitioner is pending and therefore the writ petitioner/respondent cannot be given permanent employment as prayed for. In our considered view, as the writ petitioner's plea of permanent employment has been kept in abeyance by the Learned Single Judge till completion of relevant investigation, it is better to leave aside the above points of arguments of the Learned Counsel for taking up the same in an appropriate proceedings if any, later on.

9. The Learned Single Judge has recorded in the judgment that no affidavit was submitted in the Writ Petition No. 21210(W) of 2015 from the side of the present appellant/Panchayat Pradhan, Kanduah in spite of getting several opportunities. However, during hearing of this appeal the learned Advocate for the appellant submits that one comprehensive report was filed from the side of BL&LRO as per direction of the Court but the same was not considered by the Learned Single Judge.

9.1. Now if we peruse the said comprehensive report dated 26.07.2018, we shall find that it narrated the chronological events which had taken place from 1985 concerning the writ petitioner/respondent. The learned Advocate for the appellant emphasized that the stand of the appellant in 21210(W) of 2015 can, therefore, be well established from the said comprehensive report.

9.2. The said comprehensive report dated 26.07.2018 itself says that it is a “comprehensive report regarding the status of casual employment of Smt. Niva Bachar at Kanduah Gram Panchayat”. The report further contends, inter alia, that :-

a. After the death of her husband, who was a Dafadar in Panchayat, Smt. Bachar was engaged as an office cleaner in the office of the Kanduah Gram Panchayat since 01.07.1985; but her prayer for absorption as a permanent employee was rejected by DPRDO on 31.03.1999.

b. The Sub-divisional Officer, Sadar, Howrah also rejected the prayer of Smt. Bachar for a permanent job as a Gram Panchayat Karmee on 26.12.2005.

c. Smt. Bachar filed WP No. 21210(W) of 2015 for absorption of the petitioner as a permanent employee in the Panchayat.

e. Pradhan of Gram Panchayat submitted an affidavit for allowing Smt. Bachar to continue her service as a temporary worker on humanitarian ground.

e. Due to irregularity in attendance and unsatisfactory performance, the service of Smt. Bachar was terminated in a General Meeting of the said Panchayat on and from 01.11.2017.

f. On 27.08.2010, the Hon'ble Court directed investigation as apparently fabricated marksheet and transfer certificate were produced on behalf of Smt. Niva Bachar.

9.3. Therefore, as per argument of the Learned Counsel of the appellants, if we construe the grounds stated in the comprehensive report as stand of the appellant in W.P. No. 21210(W) of 2015 as respondent therein, we shall find that most of the grounds of the Panchayat were not accepted by the Hon'ble Court in different rounds of litigations between the parties, and no appeal was preferred against such orders at the instance of State of West Bengal or the Panchayat.

10. The dispute between the respondent no. 1 and the Kanduah Gram Panchayat has a chequered history and several litigations have been initiated at the instance of the said respondent praying for her absorption as a permanent employee in the said Panchayat. The record shows that as per direction of the Hon'ble Division Bench in AST 149 of 2016, the Appellant, Sri Alok Kumar Dati submitted one affidavit before the said Division Bench consisting of the then Hon'ble Chief Justice of High Court Calcutta and my Learned Senior Brother of this Appeal. The contents of the said affidavit are here under :

“On 16/5/2016 the above mentioned appeal was taken up for hearing by the Hon’ble Chief Justice Manjula Chellur sitting with Hon’ble Justice Arijit Banerjee and showing respect to the view taken by the Hon’ble Bench to employ Smt. Niva Bachar at Kandua Gram Panchayat on regular basis as a temporary worker the Pradhan has decided to maintain an attendance register for her, where the petitioner will put her signature and will mention the time of her joining and departure at the office of the panchayat on day to day basis.

It is further undertaken on behalf of the Pradhan that the payment of Smt. Bachar will be made on a monthly basis upon allowing her to sign on the voucher, while accepting the money.

The Pradhan further undertakes that the petitioner is welcome in the office of the panchayat to perform her work and there will be no pressure from the side of the Panchayat, as anticipated by the petition in the High Court.

The Pradhan further undertakes to pay the petitioner her remuneration within the first week of every English calendar month. The Pradhan being the Appellant herein has highest regard to this Court and will obey each and every direction of this Court.....”

11. Therefore from the above it is clear that the Prodhan had already recognized the respondent no. 1 as a casual worker in the gram panchayat before the Division Bench and had undertaken to obey each and every

direction of the Court but unfortunately on 31st October 2017, he along with Members of the Panchayat have taken a different view. The relevant resolution dated 31/10/ 2017 is reproduced herein below :

“ 3. Miscellaneous : Panchayat Member Deben Malik wants to know what steps have been taken against Niva Bachar who used to come to panchayat at 11:30 a.m. and without doing any work used to sit idle and thereafter used to leave the place without informing anybody. He also alleges that she often remains absent.

The President (Alok Kumar Dati Pradhan) has informed the house that on 16/5/2016 by virtue of an oral order of the Honorable Division Bench of Chief Justice of High Court and also on humanitarian ground the panchayat engaged Niva Bachar as a casual worker on daily wages basis. On that day Niva Bachar informed the Court that he used to sweep 4000 square feet of the building and she used to clean tables and she used to work there from 10:30 a.m. to 5:30 p.m. and by giving false information she mislead the Hon'ble Court. However, she was engaged on daily wages basis (initially @ Rs 176/- and thereafter Rs. 180/-). But Niva Bachar was habitually a late comer to the office and almost everyday she used to come at 11:30 a.m. or thereafter. She used to remain absent without giving any information. She was time and again asked to rectify her mistake, but in vain, and as a result, the office remained dirty and unclean for most of the days.” Accordingly the general body of the Panchayat decided to terminate the service of Smt. Bachar on and from 01.11.2017, and her service was terminated accordingly.

12. It appears that the appellants did not submit any affidavit in opposition against the writ petition being Writ Petition No. 21210(W) of 2015 bringing on record their allegations against the writ petitioner and without doing so the appellant straightaway terminated the temporary service of the writ petitioner on 31.10.2017 without giving any opportunity of hearing to the writ petitioner.

13. When a matter is pending before a Court of law and when the Hon'ble Court is in seisin of a legal issue, administrative prudence and propriety requires that such subject matter of the legal issue should remain undisturbed and should be left for necessary judicial decision on the relevant subject matter. But in this case it is found that the appellant terminated the temporary service of the writ petitioner without paying any heed that it might affect the legal issue which is being considered by the Learned Single Judge in the relevant writ petition.

14. It is further seen that on or about 31.10.2017 the appellant handed over the letter of dismissal to the respondent informing her that her service is no longer required on and from 01.11.2017. Therefore, it is clear that before dismissal of the writ petitioner from her temporary service, no opportunity of hearing was provided to the writ petitioner/respondent which is certainly a gross violation of natural justice.

15. Without taking a stand in the Writ Petition No. 21210(W) of 2015, the appellants, in violation of the principles of natural justice terminated the

service of the writ petitioner who has given service for more than 32 years in the concerned Gram Panchayat. Considering all the aspects including the fact that the writ petitioner has been fighting for justice for more than 32 years and has been filing writ petitions one after another on being deprived from permanent service we think that the Learned Single Judge has rightly extended the benefit of Memo No. 9008-F(P) dated 16.09.2011, Finance Department, Audit Branch, Government of West Bengal, to the respondent no. 1/writ petitioner as her continuous casual employment since 1985 has been well established.

16. However, it would not be out of place to mention that though the respondent has prayed for her absorption as a permanent employee in Kanduah Gram Panchayat in Writ Petition No. 21210(W) of 2015, the Learned Single Judge has categorically stated that the respondent is restrained from pursuing her claim of permanent employment till the relevant investigation is completed. The conclusion reached by the Learned Single Judge, in our opinion, is appropriate and justified, and we find no reason to differ with His Lordship's view in this regard.

17. As there is sufficient material in support of the fact that Niva Bachar has already been recognized in the court of law as casual employee/worker of Kanduah Gram Panchayat, the benefit of Memo No. 9008/F(P) dated 16.09.2011 as stated above should be extended to the respondent Niva Bachar. However, as the petitioner allegedly attained the age of 62 years in 2016, she is not required to be engaged as a casual worker in the said

panchayat at present, if such allegation regarding age of the petitioner is found to be correct, subject to payment of all dues including arrears till 31.12.2014 and Rs. 1,00,000/- as cessation of engagement benefit, as per provisions indicated by the Learned Single Judge in the impugned judgment. However, we make it clear that the concerned Gram Panchayat is not entitled to claim any refund or adjustment in respect of any payment made to Smt. Niva Bachar from 01.01.2015 to 31.10.2017 as she rendered her service to the panchayat till 31.10.2017.

18. In fine, the appeal is disposed of with the aforesaid modification in the impugned judgment. There will be no order as to costs.

19. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(APURBA SINHA RAY, J.)

(ARIJIT BANERJEE, J.)