

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

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

WPA No.17135 of 2011

Premansu Sekhar Palai

....Petitioner

-Vs-

The State of West Bengal & Ors.

..... Respondents

- - - - -

Mr. Anjan Bhattacharya, Adv.

Mr. Sanjay Patra, Adv.

Ms. Anita Shaw, Adv.

..... for the Petitioner

Mr. Supriyo Chattopadhyay, Adv.

Mr. Sabyasachi Mondal, Adv.

..... for the State Respondents

Heard On : 18.01.2023

Judgment on : 08.02.2023

Rabindranath Samanta, J:-

1. Challenge in this writ petition is against the order of termination of engagement of the petitioner as a Para Teacher of a primary school namely Kasba Tilottama Primary School, Purba Medinipur issued by the Secretary of 123 Kasba Village Education Committee and the order dated 17.04.2008 passed by the District Magistrate, Purba Medinipur concurring the order of termination issued by the Secretary of the said Village Education Committee.

2. Background facts which led to the filing of the writ petition may be adumbrated as under:

The petitioner passed Madhyamik examination in the year 1989. The Village Education Committee, in terms of a Memorandum dated 16.07.2004 issued by the District Project Officer, invited applications from the eligible candidates for engagement of a Para Teacher in Kasba Tilottama Primary School. In response thereto the petitioner made an application before the School authority seeking engagement as a Para Teacher of the school. By a letter dated 02.08.2007 issued by the Secretary, 123 Kasba Village Education Committee the petitioner was engaged as a Para Teacher in the aforesaid Primary School and he joined the school on 3rd August, 2007. As to engagement of Para Teacher in the school an agreement was entered into between the Secretary of 123 Kasba Village Education Committee and the petitioner. The tenure of the engagement was for one year at the fixed remuneration of Rs.1500 per month without any allowance. It is spelt in the agreement that the engagement of the petitioner is terminable with 1 (one) month's notice on either side and before completion of the contractual period of one year if his performance was not satisfactory. The petitioner alleges that a few days after he joined the said school, the Secretary of 123 Kasba Village Education Committee arbitrarily terminated his engagement as a Para Teacher without assigning any reason and without giving any opportunity of hearing to him. After his engagement was terminated, the petitioner made a representation to the authority concerned on 13.09.2007 alleging the arbitrary act of the Secretary in terminating his engagement illegally and arbitrarily. But, the concerned respondent authority turned deaf ear to his appeal. It may be noted that on 14th September, 2007 the local villagers, students and guardians made a mass petition to the concerned authorities for taking steps against the

illegal and arbitrary action taken by the Head Master-cum-Secretary of 123 Kasba Village Education Committee terminating the engagement of the petitioner as a Para Teacher.

3. Getting no redressal of his grievances, the petitioner filed a writ petition being WP No. 22911 (W) of 2007 in this Court. By order dated 13.02.2008 a learned Single Bench disposed of the writ petition directing the District Magistrate, Purba Medinipur to dispose of the matter regarding termination and/or re-engagement of the petitioner by passing a reasoned order within a fortnight from the date of communication of the order after giving opportunity of hearing to the petitioner and the concerned respondents. In compliance of this order the District Magistrate disposed of the matter by an order dated 17.04.2008 wherein the District Magistrate though observed that the termination of the engagement was made without serving one month's notice, but, since one month's notice was not given before termination of the engagement the petitioner was entitled to one month's honorarium. On such observation the District Magistrate directed that one month's honorarium be given to the petitioner.
4. By preferring this writ petition the petitioner challenges both the order of termination of his engagement by the Secretary, 123 Kasba Village Education committee as well as the order passed by the District Magistrate on the grounds that the Secretary of the Village Education Committee inflicted the order of termination of engagement without giving one month's notice to him which was mandatory in nature and the District Magistrate in his order impugned also overlooked this aspect of the matter. In such premises, the petitioner prays for quashing of the order of termination of his engagement by the Village Education Committee and the order passed by the District Magistrate and direction upon the concerned respondents to reinstate the petitioner as a Para Teacher in the said school.

5. The respondent No.3, the District Project Officer, Sarva Shiksha Mission, Purba Medinipur in his affidavit-in-opposition defending the order passed by the District Magistrate and denying the averments/allegations as made in the writ petition submits that the writ petition is liable to be dismissed.
6. It is evident from an engagement letter dated 02.08.2007 issued by the Secretary, 123, Kasba Village Education Committee that the petitioner was engaged as an Additional Para Teacher in the primary school namely Kasba Tilottama Primary School, Purba Medinipur. Admittedly, the petitioner joined as Additional Para Teacher in the school on 3rd August, 2007. An agreement entered into between the Secretary of the said Village Education Committee and the petitioner, inter alia, reads as under:
 - i) The Job assigned will be purely temporary and on contractual basis for 1 (one) year with effect from the date of joining provided his service in the institution is found satisfactory throughout his period of 1(one) year on a fixed remuneration of Rs.1500 (Rupees One Thousand and Five Hundred Only) per month without any allowances. His services will automatically be terminated on expiry of the period of 1(one) year or earlier as per this contract, if his performance in the school is not found satisfactory and/or violation of conditions below:
 - ii) He should carry out his duties in the primary school as allotted to him.
 - iii) During the vacation period also the said teacher will get the consolidated remuneration as stated above.
 - iv) He will not claim for an appointment on regular basis on expiry of his term nor will claim any other benefit financial or otherwise from the school or the concerned District Project Officer or any other body or authority.

- v) His engagement is terminable with 1(one) month's notice on either side and before completion of the contractual period of 1(one) year if his performance is not satisfactory.”
7. As stated above, the Secretary, 123 Kasba Village Education Committee by issuing a letter dated 11.09.2007 terminated the engagement of the petitioner. The letter in Bengali which is annexed to the writ application may be reproduced as under in english version:

“Respected Sir,

You are informed that from today your engagement as a Para Teacher in Tilottama Primary School stands cancelled. As per the decision of Village Education Committee taken in urgent meeting on 07.09.2007, you need not come to school. This order will come into force with effect from 12.09.2007.

11.09.2007

Yours faithfully,

***Secretary, Sri Asim Bi Das,
Head Teacher and
Secretary, 123 Kasba,
Village Education
Committee”***

8. Learned Counsel appearing for the petitioner by referring to condition 5 of the agreement and the letter dated 11.09.2007 issued by the Secretary of the said Village Education Committee submits that the letter or order of termination issued by the Secretary of the committee is arbitrary in nature since it violates the mandatory condition as

embodied in the agreement. Learned Counsel submits that no reason has been assigned in the letter or order of termination nor the letter speaks of giving any opportunity of hearing to the petitioner before terminating his engagement. Learned Counsel submits that apart from contractual right the petitioner possessed, the petitioner was entitled to get opportunity of hearing conforming to the principles of natural justice. Learned Counsel vehemently argues that since the livelihood of the petitioner was integrally associated with his engagement, such engagement cannot be put to an end whimsically and arbitrarily either by the Village Education Committee or by the District Magistrate.

9. Learned Counsel appearing for the State respondents submits that the Village Education Committee possessed the authority to terminate the engagement of a Para Teacher. By such authority the Village Education Committee terminated the engagement of the petitioner. Pointing to the observations made by the District Magistrate in his order learned counsel submits that since complaint of assault was made against the petitioner, the District Magistrate was justified in affirming the order of termination of engagement by granting one month's honorarium to the petitioner in lieu of one month's notice.
10. As I find, the District Magistrate in the impugned order dated 17.04.2008 on consideration of the enquiry report submitted by the District Project Officer has observed that the petitioner Premanshu Sekhar Palai was involved in an incident of assault on the head Master of the school and because of this the law and order situation in the whole Gram Sansad became very bad immediately after engagement of the petitioner as a Para Teacher. Over such incident two schools at the locality were closed by the angry citizens. However, the Village Committee should have given one month's notice before termination of engagement of Premanshu Sekhar Palai as Para Teacher. Since one month's notice was not given before termination

Sri Palai was entitled to one month's honorarium. On such observation the District Magistrate directed that one month's honorarium be given to the petitioner.

11. Now, the question which begs consideration is whether the order of termination of engagement of the petitioner as Para Teacher by the Secretary of Village Education Committee and concurred by the District Magistrate is legally tenable without serving one month's notice upon the petitioner or without giving him any opportunity of hearing ?
12. It is not in dispute that engagement of a candidate as a Para Teacher or Additional Para Teacher in a primary school at the relevant point of time was guided by the conditions of the agreement entered into between the candidate and the village education committee.
13. As quoted above, the relevant condition governing the termination of engagement is to this effect that the engagement is terminable with 1(one) month's notice on either side and before completion of the contractual period of 1(one) year if his performance is not satisfactory.
14. The letter or order of termination issued by the Secretary of 123 Kasba Village Education Committee does not speak of any reason on terminating the engagement of the petitioner. Neither in the letter of termination nor in the order of the District Magistrate there is any observation as to dissatisfaction of the authority concerned with the performance of the petitioner who joined as an Additional Para Teacher on 3rd August, 2007. It is faintly recorded by the District Magistrate in his order that there was complaint of assault against the petitioner. Perusal of the order does not show what is the nature of the offence alleged to have been made against the petitioner and the number of the criminal case. It is not reflected in the order whether the offence as alleged involved any moral turpitude of the petitioner. Be that as it may, all such faint allegations, if any made, all were before the engagement of the petitioner as a Para Teacher. But

the contractual conditions as embodied in the agreement say that satisfaction of performance of the petitioner as a Para Teacher will be assessed after his joining the job. In this regard there is no whisper of any allegation either by the Village Education Committee or by the District Magistrate.

15. What I think, the condition of giving one month's notice prior to termination of engagement as stipulated in the agreement is mandatory in nature. Admittedly, the Village Education Committee while terminating the engagement of the petitioner grossly violated this mandatory condition.
16. As pointed out by the learned counsel for the petitioner, livelihood of the petitioner was integrally associated with his engagement as a Para Teacher. That being so, the Village Education Committee cannot arbitrarily terminate the engagement of the petitioner without resorting to the principles of natural justice or due process of law. The action on the part of the Village Education Committee is arbitrary and capricious and thereby such action infringes the golden doctrine of reasonableness as enshrined in Article 14 of the Constitution of India. To speak in other words, by taking away the livelihood of the petitioner on terminating his engagement without following either by the contractual procedure or the principles of natural justice the Village Education Committee has also violated the fundamental right of the petitioner under Article 21 of the Constitution. While the letter or order of termination of the Village Education Committee is vitiated with gross illegalities, the order of the District Magistrate concurring such order of termination of the Village Committee is also illegal.
17. In view of the above, the question as posed is answered in the negative.
18. It is not in dispute that the petitioner is out of engagement as a Para Teacher or Additional Para Teacher in the said Primary School since 12.09.2007. Meanwhile, the law relating to engagement of Para

Teacher has undergone a sea-change. In terms of Government order dated 16.11.2010 issued by the School Education Department, Government of West Bengal the District Project Officer, Sarva Shiksha Mission is now the authority to engage a Para Teacher on the basis of the recommendation of the District Committee consisting of such members as stated in the Government order. Besides, this Government Order enjoins that the Para Teachers who were engaged on contractual basis will continue to remain so engaged under contractual basis till attainment of the age of 60 years and after being discharged on attainment of 60 years of age the Para Teachers will be paid a lump sum amount of Rs.1,00,000/- only as one time payment as token of their service rendered in connection with education of primary and upper primary stages for at least a period of 10 (ten) years.

19. Since the petitioner was terminated from engagement as a Para Teacher illegally and arbitrarily, the aforesaid letter or order of termination by the Village Committee and the order of the District Magistrate affirming such order are liable to be quashed and the petitioner should be reinstated as a Para Teacher or Additional Para Teacher in Tilottama Primary School.
20. In view of the above, the writ petition is allowed on contest.
21. The letter or order of termination of engagement of the petitioner made by the Secretary, 123, Kasba Village Education Committee on 11.09.2007 and the order dated 17.04.2008 of the District Magistrate affirming the letter or order of termination of the Village Education Committee are hereby set aside.
22. The respondent No. 3, the District Project Officer, Sarva Shiksha Mission, Purba Medinipur is directed to reinstate the petitioner as a Para Teacher or Additional Para Teacher of Tilottama Primary School within fifteen days from date. The petitioner shall be entitled to get honorarium or remuneration and other service benefits as admissible

to a Para Teacher from the date of his re-instatement. But, it is made clear that he shall not be allowed to claim any arrear honorarium for the period during which he was out of engagement as a Para Teacher or Additional Para Teacher. However, for the purpose of extending terminal benefits to the petitioner after his discharge on attainment of 60 years of age his engagement will be counted from the date of his first engagement on 3rd August, 2007.

23. If any law and order problem occurs due to re-instatement of the petitioner as a Para Teacher, the concerned police authority shall render all sort of police assistance to the school authority so that the petitioner can discharge his duties properly.
24. With the aforesaid direction the writ petition stands disposed of. Connected application, if any, also stands disposed of.
25. No order as to costs.
26. The parties may act on Server Copy of this judgment and order duly downloaded from the Official Website of this High Court.
27. Urgent certified/website copy of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)