

08.09.2023
Item No.12
Court No.6.
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**F.M.A. 1340 of 2022
with
I.A. No. CAN/1/2022**

**Sukdeb Karmakar.
Vs.
The State of West Bengal & Ors.**

Mr. Tarapada Das,
...for the appellant.

Mr. Lalit Mohan Mahata,
Mr. Ziaul Haque,
...for the State.

Mr. Siva Prasad Ghosh,
...for the respondent no.10.

A judgment and order dated August 30, 2022 whereby the appellant's writ petition being WPA 9711 of 2016 along with the connected applications were dismissed by a learned Single Judge of this Court, is the subject matter of challenge in this appeal.

It appears that the appellant/writ petitioner was contractually engaged in the post of Gram Rojgar Sevak (in short 'GRS') vide Memo dated December 2, 2014 issued by the Block Programme Officer, Bandwan. His engagement was initially for the period of one year with a clause for renewal for another year. However, his engagement was terminated vide a communication dated April 27, 2016, made by the concerned Block Development Officer to him, on the

basis of an order dated April 20, 2016, passed by the District Magistrate, Purulia.

The ground on which the appellant's engagement was terminated was that he did not have Mathematics and Physics as compulsory subjects in his Higher Secondary although the same was a requirement in the concerned advertisement notice dated October 28, 2014.

The appellant approached the learned Single Judge challenging the communication dated April 27, 2016 as also the order of the District Magistrate, Purulia, dated April 20, 2016. The order of the District Magistrate, Purulia, reads as follows :

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20.04.2016

The S/Rs are perused. Both Sri Mahato & Sri Karmakar are present. BDO Bandwan is also present.

As per written submission of Sri Karmakar, he had Physics in Class XI only and Mathematics in Class XII only, both as Additional subjects and not as compulsory subjects in Higher Secondary examination.

The clarification of Nodal Officer for WBSCVET in Purulia District & Principal, Purulia Polytechnic College has also been received. It also indicates clearly that Sri Karmakar had Physics in only Class XI and Mathematics in only Class XII, both as Additional subjects, during his Higher Secondary examination.

Now, as per clarification issued by Department of Panchayats & Rural Development, Government of West Bengal vide No.6561-RD(NREGA)/18S-03/2009 dated 07.10.2009, candidates passing Vocational course (X+2 level) with Physics and Mathematics as compulsory

subject are only eligible for the post of GRS. Hence, it is crystal clear that Sri Karmakar was not eligible for the post of GRS from the very beginning!

Sri Karmakar, when he was informed of his intelligibility for getting engaged in the post of GRS and the fact that his order of engagement would be directed to be terminated after this hearing if he could not bring out any new information/argument, chose to remain silent.

Hence, BDO Bandwan is directed to terminate the engagement of Sri Sukdeb Karmakar in the contractual post of GRS in Kuilapal GP of Bandwan block immediately after receipt of this order, BDO, Bandwan is also directed to arrange for payment to Sri Karmakar as per norm till the date of his termination.”

The learned Judge after recording the submissions of the parties in detail, dismissed the writ petition on broadly two grounds. Firstly, the learned Judge held that what the writ petitioner was trying to do was to enforce a private contract of employment by filing a writ petition. The contract was not a statutory contract. Hence, the writ petition was not maintainable. Secondly, on merits, the learned Judge held that on a proper interpretation of the clauses in the advertisement notice, the writ petitioner was required to have Mathematics and Physics as compulsory subjects in his Higher Secondary. However, admittedly, the writ petitioner had Mathematics and Physics as additional subjects. This

would not be in conformity with the requirements mentioned in the advertisement notice. Hence, the learned Judge did not find any error or irregularity in the order of the District Magistrate holding that the writ petitioner was initially not entitled to be engaged. His engagement was wrongful and hence, should be terminated.

Being aggrieved, the writ petitioner has come up by way of this appeal.

We have heard Mr. Das, learned advocate appearing for the appellant, at length. We have not called upon the learned advocates for the State or the private respondents to make any submission, since according to us, there is no merit in this appeal.

We are in agreement with the learned Single Judge that the engagement of the appellant/writ petitioner was purely contractual and for a finite period indicated in the engagement Memo. Prior to expiry of the period of engagement, it transpired that the appellant did not conform to the requirements mentioned in the advertisement notice. Accordingly, his contractual engagement was terminated. The contract did not have statutory flavour. The appellant ought to have approached the competent Civil Court with any grievance that he may have had regarding termination of his engagement. The learned Judge rightly held, in our opinion, that the high prerogative

writ jurisdiction of the High Court could not be invoked by the writ petitioner in the facts and circumstances of the case.

Mr. Das, relied on a decision of a co-ordinate Bench in ***MAT 1281 of 2015 (The Secretary of the Managing Committee, Chuamashina High School & Anr. Vs. State of West Bengal & Ors. and MAT 1544 of 2015 (State of West Bengal & Ors. Vs. Smt. Anima Karmakar & Ors.)*** rendered on March 30, 2017 in support of his argument that a private contract of employment could also be enforced in the writ jurisdiction. We have gone through the said judgment. We searched for the discussion on this aspect in that judgment but in vain. This point was not considered in the said judgment at all.

Even on merits, we are *ad idem* with the learned Single Judge. A bare perusal of the concerned advertisement notice would show that the candidates aspiring to serve as GRS, were required to have Mathematics and Physics in their Higher Secondary. Mr. Das argued that the notice did not say that the candidates must have had those two subjects as compulsory papers. It was enough if the candidates had Mathematics and Physics as additional subjects. We are not in agreement with Mr. Das. We are of the considered opinion that the candidates were required to have those two subjects as compulsory subjects.

This would also be borne out by the Notification dated October 7, 2009, issued by the Department of Panchayats and Rural Development, Government of West Bengal.

However, we are told that the appellant served as GRS from April 2016 till December 2016 for which he has not received remuneration. We direct the concerned Block Development Officer to release the remuneration of the appellant for that period, if the same has already not been released, within four weeks from the date of communication of this order by the appellant to the Block Development Officer.

Resultantly, we hold that there is no infirmity in the judgment and order impugned in this appeal.

The appeal being FMA 1340 of 2022 is dismissed along with the connected application being I.A. No. CAN 1 of 2022.

There will be no order as to costs.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)