

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

PRESENT:

THE HON'BLE JUSTICE RABINDRANATH SAMANTA

WPA No. 22686 of 2018

Sandhya Maity (Majee)

Vs.

The State of West Bengal & Ors.

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Mr. Saibal Acharya, Adv.
Mr. Kallol Kumar Maity, Adv.
Mr. S.P. Mukherjee, Adv.

..... for the Petitioner

Ms. Tuli Sinha, Adv.

..... for the State Respondents No.s 1,3,5,6 & 9

Mr. Md. Sarwar Jahan, Adv.
Ms. Mousumi Mitra, Adv.
Mr. Asif Mehdi, Adv.
Mr. Shahzad Noor Thander, Adv.

..... for the Respondents No. 2,
the Mission Director, Pachim
Banga Rajya Shishu Shiksha
Mission

Heard On : 24.03.2023

Judgment on : 02.05.2023

Rabindranath Samanta, J:-

1. Feeling aggrieved by the non-disbursement of her honorarium as a Sahayika for a period from December, 2008 to 5th September, 2016, the petitioner has approached this Court by preferring this writ petition.
2. This writ petition has a chequered background. The facts which led to the filling of the writ petition may be adumbrated as under:

The petitioner was engaged as a Sahayika in a Shishu Shiksha Kendra namely Chintamanipur Sukanta Smriti Shishu Shiksha Kendra on 7th June, 2002. Relating to her engagement an agreement was entered into between the petitioner and the managing committee of the Shiksha Kendra for the period from 7th June 2002 to 30th April, 2003. Thereafter, the agreements between them on year to year basis were made upto 30th April, 2009.

3. During the period from December 2008 to 5th September, 2016 disturbances broke out relating to renewal of her engagement and disbursement of honorarium to her. The classrooms of the Shishu Shiksha Kendra were locked on 8th November, 2008 and this incident was reported to the Block Development Officer on 10th November, 2008. Sometime classes were conducted at the house of Panchayat Member. The petitioner was not allowed to sign the attendance register and she was prevented from discharging her duties. Though honorarium was not paid to her, the petitioner performed her duties.
4. Seeking renewal of her engagement for the period 2009-10 and 2010-11 and disbursement of her arrear honorarium since December 2008 the petitioner preferred a writ application being W.P. No. 6044(W) of 2010 before this Court. By an order dated 14th May, 2010 the writ petition was disposed of by a learned Single Bench directing the concerned Block Development Officer to dispose of the representation dated 17.03.2010 of the petitioner within a specified time. In compliance thereof the Block Development Officer after conducting a hearing disposed of her representation by an order dated 02.07.2010. By the order the Block Development Officer, Chandipur Development Block directed the Managing committee of the Shishu Shiksha Kendra to renew the contract of the petitioner for the year 2009-10 and pay the arrear honorarium to her. The Managing Committee was also asked to reconsider the renewal of agreement of the petitioner for the year 2010-11. But, the order dated 02.07.2010 passed by the Block Development Officer was not complied by the Managing Committee of the Kendra. In

such backdrop, the petitioner filed an another writ application being W.P. No. 20217(W) of 2010 seeking direction upon the Secretary of the Shiksha Kendra to comply the order dated 02.07.2010 passed by the Block Development Officer and renew her engagement for the years 2009-10 and 2010-11. By an order dated 21.03.2011 the writ petition was disposed of by a learned Single Bench directing the Block Development Officer to dispose of the petitioner's representation dated 30.08.2010 within a specified time. By order dated 17.05.2011 the Block Development Officer disposed of the representation of her directing the Managing Committee of the Shiksha Kendra to renew the agreement of the petitioner and pay her honorarium which was admissible to her.

5. Interestingly, the Managing Committee of the Shishu Shiksha Kendra, instead of obeying the order of the Block Development Officer, preferred a writ petition being W.P. No. 10084(W) of 2011 challenging the order dated 17.05.2011 of the Block Development Officer. But, when the matter came up for hearing on 10th August, 2016 none represented the petitioner and accordingly the writ petition was dismissed for default.
6. By making a representation on 4th May, 2015 to the Executive Officer, Panchayat Samity, the petitioner complained that she went to the Shishu Shiksha Kendra on 24.04.2015 to perform her duties, but she was not allowed to join by the Mukhya Sahayika. Frustrated by the obstinate action on the part of the Shiskha Kendra, the petitioner requested the Block Development Officer to transfer her to any other Shishu Shiksha Kendra. She also conveyed this to the District Magistrate, Purba Medinipur by a letter dated 04.05.2015. Acting on her representation the Sub-Divisional Officer conducted a hearing of the petitioner, all the members of the Managing Committee of the Shisksha Kendra and the Block Development Officer & the Executive Officer, Chandipur Panchyat Samity on 21.05.2015. After hearing the Sub-Divisional Officer by an order dated 21.05.2015 directed the Shiksha Kendra to allow the petitioner to join her duties. By the order the petitioner was asked to refund all materials which were kept with

her within ten days. Besides, the Shishu Shiksha Kendra was directed to disburse the previous dues which were payable to the petitioner. This time also the Managing Committee of the Shiksha Kendra did not obey the order passed by the Sub-Divisional Officer. Thereafter, one Sumita Jana, a Panchayat member, challenging the legality of the order dated 21.05.2015 passed by the Sub-Divisional Officer preferred a writ application being WP No. 16672(W) of 2015. Ultimately, by order dated 11.08.2015 passed by this Court the writ petition filed by her was dismissed as not pressed. Under such factual background, the Executive Officer, Chandipur Panchayat Samity by memo dated 20.06.2016 requested the Sub-Divisional Officer to transfer the petitioner to any other Shishu Shiksha Kendra. Ultimately, the Sub-Divisional Officer, Tamluk, by order dated 02.09.2016 transferred the petitioner to Hinchu Vidyasagar Shishu Shiksha Kendra from Chintamanipur Sukanta Smriti Shishu Shiksha Kendra and she joined the Shishu Shiksha Kendra on 6th September, 2016. After she joined Hinchu Vidyasagar Shishu Shiksha Kendra, no disturbance ever broke out relating to disbursement of her honorarium. The petitioner complains that no honorarium was paid to her for the period from December, 2008 to 5th September, 2016 by the authority concerned without any justifiable ground.

7. Under the aforesaid circumstances the petitioner prays for direction upon the concerned respondents to release her arrear honorarium for the period from December 2008 to 5th September 2016 along with 10% interest thereon.
8. The respondent No. 6, Block Development Officer, Chandipur Development Block & the Executive Officer, Chandipur Panchayat Samity in his affidavit-in-opposition states that the petitioner performed her duties as a Sahayika in the Shishu Shiksha Kendra from 08.12.2009 to 16.02.2010 and she is entitled to get honorarium for such period. During this period she served the Shishu Shiksha Kendra physically. This respondent states that the arrear honorarium for this period has been disbursed to her. On such grounds and admitting what

are on record this answering respondent submits that the petitioner is not entitled to get the honorarium for the period as claimed by her.

9. In the affidavit-in-reply the petitioner annexing a series of documents demonstrates some adversarial circumstances under which she was not allowed to perform her duties in the Shiksha Kendra.
10. As stated in the writ application, disturbances in the Shishka Kendra broke out since December 2008. She alleges that the classrooms of the Shiksha Kendra were locked on 8th November, 2008 and she reported the matter to the Block Development Officer on 10th November, 2008. Since she was not allowed to sign the attendance register and perform her duties she preferred the writ application being WP NO, 6044(W) of 2010. It appears that by order dated 14th May, 2010 passed by a learned Single Bench, the writ petition was disposed of directing the Block Development Officer to dispose of the petitioner's representation dated 17.03.2010 within a specified time. As I find, in compliance of the order of the learned Single Bench the Block Development Officer by order dated 02.07.2010 disposed of the representation of the petitioner directing the Managing Committee of the Shisksh Kendra to renew the contract of the petitioner for the year 2009-10 and reconsider for renewal of her engagement for the year 2010-11. As alleged by the petitioner, the authority of the Shishu Shiksha Kendra did not act in terms of the order of the Block Development Officer. Again, as this Court finds from Annexure P3, the writ petitioner approached this court by filing an another writ application being WP No. 20217(W) of 2010. By order dated 21.03.2011 this writ petition was disposed of directing the same Block Development Officer to dispose of the petitioner's representation dated 30th August, 2010 by a reasoned order. By order date 17.05.2011 the Block Development Officer, after conducting a hearing, disposed of the petitioner's representation directing the Managing Committee to renew the due contract of the petitioner and pay the arrear honorarium which was payable to her. Annexure P5 i.e. an order dated 10.08.2016 shows that the Managing Committee of the Shishu Shiksha Kendra preferred a writ application being WP No.

10084(W) of 2011 challenging the order dated 17.05.2011, but, by the order dated 10.08.2016 the writ petition was dismissed for non-appearance of the petitioner. As this Court finds, on a representation made by the petitioner to him, the executive officer, Chandipur Panchayat Samity by a Memo dated 21.04.2015 directed the Mukhya Sahayika of the Shishu Shiksha Kendra to allow the petitioner to join the Kendra immediately and send the joining report to him soon. But, the Mukhya Sahayika of the Shiskha Kendra flouting the order of the Executive Officer did not allow her to join her duties.

11. Ultimately, on a representation dated 4th May, 2015 made by the petitioner to the Sub-Divisional Officer, the sub-divisional officer after conveying a meeting involving the petitioner, members of the managing committee of the Shishu Shiksha Kendra and the Block Development Officer passed an order dated 21.05.2015 which may be reproduced as under:

- A. "The present Mukhya Sahayika named Smt. Sefali Tunga (Pradhan) of the said SSK is hereby directed to allow Smt. Sandhya Maiti (Majee) to join the said SSK as per Memo No. 476 dated 21.04.2015 of the Executive Officer, Chandipur Development Block as soon as she submits her joining letter.
- B. Smt. Sandhya Maiti (Majee) will refund all materials which was kept with her as reported to the SSK within 10(ten) days without fail.
- C. If there are any previous dues of payment regarding cost of cooking Mid-Day-Meal and remuneration of cooking staff of the SSK, it will be arranged for payment after receiving of BDO's enquiry report. BDO, Chandipur is requested to cause an enquiry in this regard and to send report.
- D. Executive Officer, Chandipur Panchayat Samiti is hereby directed to arrange for inspection at Chintamonipur Sukanta Smriti SSK at least once in a week and keep observance to maintain suitable situation and academic atmosphere of the SSK. If any anomaly is found, legal action will be taken."

12. This time also, the managing committee did not pay any regard to the order passed by the Sub-Divisional Officer. On the contrary, on Sumita Jana, a member of the Gram Panchayat, challenging the order dated 21.05.2015 of the Sub-Divisional Officer, Tamluk, preferred a writ petition being WP No. 16672(W) of 2015. However, as it appears from Annexure P8, a learned Single Bench by an order dated 11.08.2015 dismissed the writ application as not pressed.
13. The chain of events as portrayed above, the orders dated 02.07.2010 and 17.05.2011 passed by the Block Development Officer in compliance with the orders of this court, the memo dated 21.04.2015 issued by the executive officer directing the Mukhya Sahayika of the Shiksha Kendra to join the petitioner immediately and the order dated 21.05.2015 of the Sub-Divisional Officer as quoted above all remained in force at all the material time. The series of the representations of the petitioner, her approach to this court by filing the writ petitions seeking redressal of her grievances and the aforesaid orders of the Block Development Officer/ Executive Officer and the Sub-Divisional Officer unequivocally demonstrate that all through the petitioner made endeavour to discharge her duties joining the Shiksh Kendra, but, the abrasive attitude of the Managing Committee of the Shiksha Kendra, especially the Mukhya Sahayika, frustrated all her endeavour. From a series of written complaints made by the petitioner as annexed to the affidavit in reply it appears that the petitioner was constantly prevented by the managing committee of the Shiksha Kendra to perform her duties as a Sahayika in the Kendra. It appears from two copies of FIR registered on the basis of her written complaints that one Chandipur PS Case No. 247 dated 19.09.2015 under Sections 341/323/354B/506/34, IPC was initiated against the Mukhya Sahayika of the SSK and some members of the managing committee of the Kendra and another Chandipur PS case no 11 dated 06.01.2016 under Sections 323/354/379/34, IPC was initiated against the Mukhya Sahayika of the Shishu Shiksha Kendra and some other members of the managing committee for investigation. All these are the circumstances which clearly exhibit that

because of the hostile behaviour/attitude of the Mukhya Sahayika of the Shishu Shiksha Kendra and the members of the managing committee of the Kendra the petitioner despite her fervent willingness to serve the Shiksha Kendra could not discharge her duties. In such factual matrix, the defence taken by the Block Development Officer that the petitioner only served the Shishu Shiksha Kendra remaining physically present from 08.12.2009 to 16.02.2010 putting signature on attendance register does not depict the true picture of the situation. While the Sub Divisional Officer felt that because of the obstinate attitude of the Managing Committee of the Shiksha Kendra the petitioner could not join the Shiksha Kendra, he by passing the order dated 02.09.2016 transferred her to Hinch Vidyasagr Shishu Shiksha Kendra from Chintamonipur Sukanta Smriti Shishu Shiksha Kendra.

14. The petitioner joined her new assignment on transfer on 06.09.2016.

Since the engagement of the petitioner remained force all along since December 2008 till 5th September, 2016 as ratified by the official actions of the Block Development Officer and the Sub Divisional Officer, she is entitled to get the arrear honorarium which was payable to her for the aforesaid period. Since she was denied her legal entitlements in time, she is entitled to get interest as compensatory dues.

15. It appears from a document annexed to the affidavit in opposition that an honorarium of Rs. 9383 was paid to the petitioner for the period from 08.12.2009 to 31.12.2009, 01.01.2010 to 31.01.2010 and 01.02.2010 to 16.02.2010. The arrear honorarium which is admissible to the petitioner will be adjusted with the honorarium as disbursed to her.

16. In view of the above, the writ petition succeeds and accordingly the writ petition is disposed of on contest by passing the followings order.

17. The state respondents are directed to disburse the arrear honorarium to the petitioner for the period from December, 2008 to 5th September, 2016 after adjustment of the honorarium which has been paid to her with interest at the @ 6% per annum from December, 2008 till the final

payment is made within six weeks from the date of communication of this judgment and order.

18. Connected application, if any, also stands disposed of. No order as to costs.
19. Parties may act on the server copy of this judgment and order duly downloaded from the official website of this court.
20. Urgent certified website copies of this judgement and order, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)