

28.07.2023
Item no.8.
Court No.6.
AB

**M.A.T. 1577 of 2018
With
CAN 1 of 2019
(Old CAN 505 of 2019)**

**Swapna Das (Pradhan)
Vs
The State of West Bengal & Anr.**

Mr. Milan Chandra Bhattacharya, Sr. Adv,
Mr. Tapan Kr. Jana,
Ms. Sulagna Bhattacharya....for the Appellant.

Mr. Shamim Ul Bari,
Ms. Tanuja Basakfor the State.

By consent of the parties, the appeal and the connected application are taken up for hearing together.

A judgment and order dated December 3, 2018, whereby the appellant's writ petition being W. P. No.19491 (W) of 2009 was dismissed by a learned Single Judge, is under challenge in this appeal.

The appellant/writ petitioner was appointed as Samprasarika in a Madhyamik Siksha Kendra (MSK) on April 9, 2005. The appointment was initially for a period of one year. The appellant's service contract was renewed from year to year. Her contract was terminated by the Executive Officer of the concerned

Panchayet Samity by issuing a letter dated July 7, 2008.

In an earlier round of litigation, the appellant had approached a learned Single Judge of this Court in the writ jurisdiction by filing two writ petitions being W. P. No.28065 (W) of 2008 and W. P. No.4513 (W) of 2008, challenging the order of termination of her service by the letter dated July 7, 2008, issued by the Executive Officer of the Ramnagar I Panchayet Samity and also for an order for release of her remuneration. The said two writ petitions were disposed of by a common judgment and order dated August 3, 2009 with the following direction:

“Accordingly, in disposing of the present writ petition, direction is given to the Principal Secretary, Department of Panchayat and Rural Development, Govt. of West Bengal to consider the prayer of the writ petitioner for cancellation of the impugned orders whereby her service was terminated, as well as her prayer for reinstatement of her service, treating the writ petition as her representation. In taking a reasoned decision, opportunity is to be extended to the writ petitioner as well as to other selected candidates, if any, to vindicate their respective stands by producing relevant documents in their favour. The reasoned decision is required to be taken within two months of the communication of the order. Principal Secretary is also to consider where the post reserved for female candidate can be converted into a general post.”

Pursuant to the aforesaid order, the Principal Secretary to the Government of West Bengal passed an order dated October 26, 2009, after hearing the

concerned parties including the appellant, rejecting the representation of the appellant.

In the present round of litigation, the appellant challenged the aforesaid order of the Principal Secretary dated October 26, 2009, as also the order dated July 7, 2008, that was passed by the Executive Officer of the Ramnagar I Panchayet Samity, before the learned Single Judge.

The learned Judge noted that the records reveal that the writ petitioner was the wife of a person who was a Saha Sabhadhipati of the concerned Panchayet at the time of initial appointment of the writ petitioner. The learned Judge noticed various circulars and came to the conclusion that being a near relation of an office holder in a Panchayet Samity, the writ petitioner could not have been appointed. It was held that the writ petitioner could not claim any right on the basis of an illegal appointment. Hence, the writ petition was dismissed. The writ petitioner has come up in appeal before us.

We have heard Mr. Milan Chandra Bhattacharya, learned Senior Advocate appearing for the appellant and Mr. Bari, learned Advocate appearing for the State, at some length.

Mr. Bhattacharya, learned Senior Counsel appearing for the appellant has argued that as on the date of the initial appointment of the appellant i.e.,

April 9, 2005, there was no restriction on appointing the appellant as Samprasarika in spite of her husband being an office bearer in Ramnagar I Panchayet Samity. In support of such submission, learned Senior Counsel referred to a memo dated February 15, 2005, issued by the OSD and Ex-Officio Deputy Secretary to the Government of West Bengal, addressed to the Additional Mission Director, Paschim Banga Rajya Shishu Shiksha Mission. The said circular reads as follows:

“Sir,

In inviting reference to your Memo No.1435/ Mission-97/2005 dated 14.01.05 on the subject mentioned above, I am directed to state that the issue of near relation in the Panchayat Bodies may be ignored for the present though there should not be any compromise on qualification.”

Learned Counsel then argued that as per the relevant Government Circulars, each MSK must have at least one lady Samprasarak. He submitted on instruction that in the concerned MSK, there was no lady Samprasarika. Hence, it was incumbent on the respondents to continue the appointment of the appellant.

Referring to the letter of termination of the appellant's service dated July 7, 2008, Mr. Bhattacharya submitted that the Executive Officer of Ramnagar I Panchayet Samity was not the competent authority to issue the letter of termination.

Learned Senior Counsel then submitted that the Circulars that the State is seeking to rely upon, all came into existence after the initial appointment of the appellant. Such Circulars cannot be given retrospective effect and cannot be made applicable to the appellant. In support of this contention, learned Senior Counsel relied on a decision of the Hon'ble Supreme Court in the case of ***P. Mahendran & Others Vs State of Karnataka & Others*** reported in ***AIR 1990 SC 405***. In particular, learned Counsel relied on the following observations of the Supreme Court –

“.....The amended Rule could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter.”

Appearing for the State, Mr. Shamim Ul Bari, learned Advocate drew our attention to a Government Circular dated November 7, 2005, which was obviously in supersession of the earlier Circular dated February 15, 2005. The November Circular reads as follows:

*“Sir,
In inviting a reference to your memo No.355/MSK16D/05 dated 13.09.2005 on the subject mentioned above, I am directed to state that a member of a Panchayat Body or his/her near relation cannot be*

engaged as Samprasarak/Samprasatika of an MSK and if any Samprasarak/Samprasatika is subsequently elected to any PR Body he/she may continue to work as such but will draw remuneration from one place only. This clarification has been issued earlier vide this Department's memo No.5764-PN/O/ I/4P-3/2002 dated 04.10.2005 to Zilla/Mahakuma Parishad."

Learned Advocate also drew our attention to a Government Order dated October 4, 2006, which reads as follows:

"A question has been raised as to whether a Panchayat member can be engaged as Samprasarak/Samprasatika of a Madhyamik Siksha Kendra.

It is hereby clarified that a member of a Panchayat Body or his/her near relation cannot be engaged as Samprasarak/Samprasatika of a MSK. However, if any Samprasarak/Samprasatika is subsequently elected to any PR Body he/she may continue to work as such but will draw remuneration from one place only.

The Panchayat Bodies within the district may please be informed suitably. "

Our attention has also been drawn to yet another Circular dated May 2, 2008, the relevant portion whereof reads as follows:

"Whereas it has been clarified vide this Department's memo No.6104-PN/O/I/0-3/2004 dated 07.11.2005 that 'a member of a Panchayat Body or his/her near relation cannot be engaged as Samprasarak/Samprasatika of an MSK and if any Samprasarak/Samprasatika is subsequently elected to any PR Body he/she may continue to work as such but will draw remuneration from one place only' and

Whereas it is felt expedient to modify the above and clarifications issued from time to time regarding engagement of members of Panchayati Raj Bodies and their near relation as Samprasarak/Samprasatika, it is

hereby ordered that there is no bar to engage any near relation of any member of Panchayati Raj Body as Samprasarak/Samprasatika of an MSK except the near relation of the office bearers of Panchayati Raj Body i.e. Chairpersons/Members of various Standing Committee/Upa-Samitis. If any Samprasarak/Samprasatika is subsequently elected to any PR Body he/she may continue to work as such but will draw remuneration from one place only and if he/she is nominated as one of the office bearers of the Panchayati Raj Body he cannot continue his/her work as Samprasarak/Samprasatika”.

Learned Advocate submitted that it is not in dispute that the husband of the appellant was an office bearer of the concerned Panchayet Samity at the relevant point of time. Hence, although the initial appointment of the appellant may not have been irregular or illegal by reason of the Circular dated February 15, 2005, her appointment could not be renewed or she could not be re-appointed in the following years because of the restriction imposed by the Government Order dated November 7, 2005 and subsequent Circulars. Even the Circular dated May 2, 2008, providing some degree of relaxation would not come to the aid of the appellant since near relation of an office bearer of a Panchayet Samity could not have been appointed as a Samprasatika as per the May 2008 Circular.

Learned Advocate then referred to a Govt. Circular dated October 27, 2006, which provided that if an issue arises as regards termination of the service

of a Samprasarika, the same shall be looked into by the concerned Siksha Sathi Samity of the concerned Panchayet Samity and the Executive Officer of the Panchayet Samity shall implement the decision of the Siksha Sathi Samity. In the present case, this procedure has been followed. The Executive Officer issued the termination letter dated July 7, 2008, in implementation of the decision of Siksha Sathi Samity. Hence, it cannot be said that the termination letter is without authority.

We have carefully considered the rival contentions of the parties.

We agree with Mr. Bhattacharya to the extent that the initial appointment of the appellant may not have been prohibited by the Government Circulars as would appear from the Circular dated February 15, 2005, which was in force as on the date of the appointment of the appellant i.e. April 9, 2005. However, by the time her appointment came to be renewed in 2006, the Government Circular dated November 7, 2005 had come into force. As per that Circular, the appellant could not have been re-appointed or her contract could not have been renewed. Likewise, for the subsequent years, by reason of the Government Order dated October 4, 2006, which has been extracted above, the appellant's service contract could not have been renewed or she

could not have been re-appointed. Hence, the conclusion reached by the learned Single Judge is correct.

Regarding the appellant's point that her service could not have been terminated because she was the only lady Samprasarika in the concerned MSK and her service should have been continued, we find no merit in this point. The relevant Circular merely says that if a MSK does not have a lady Samprasarak, then if a fresh appointment of a Samprasarak is being made, a lady should be appointed. That Circular has no manner of application in the facts of the present case.

As regards the point of the Executive Officer of the Ramnagar I Panchayet Samity lacking authority to issue the termination letter, we are unable to accept such contention. As has been pointed out by Mr. Bari, under the relevant Circulars/Notifications/Government Orders, the Siksha Sathi Samity of the concerned Panchayet Samity is the authority to look into the issue of termination of service contract of a Samprasarika. That was done in this case as would appear from the termination letter dated July 7, 2008. The letter was issued by the Executive Officer of the concerned Panchayet Samity merely giving effect to the decision of Siksha Sathi Samity. In our view, the procedure laid down by the concerned Circulars has been duly followed.

As regards the point that no retrospective effect can be given to the Circulars on which the State Government seeks to rely, we are of the view that this point also has no merit since no retrospective effect is being sought to be given to any of the Circulars in the present case. The restriction on appointing a lady as Samprasarika, whose husband is an office bearer in the concerned Panchayet Samity, came in November, 2005. That surely could not affect the initial appointment of the appellant in April 2005 since, as correctly contended by Mr. Bhattacharya, such Circulars cannot be given retrospective effect. However, at the time of renewal of the service contract of the appellant or her reappointment in 2006, the restriction had come into force by way of a Government Circular dated November 7, 2005. This was subsequently clarified by the Government Order dated October 4, 2006. Hence, the appointment of the appellant as Samprasarika could not have been renewed after expiry of one year from the date of her initial appointment. No retrospective effect to any of the concerned Circulars has been given in the instant case. Hence, the decision of the Hon'ble Supreme Court relied upon by the learned Senior Counsel would not have any manner of application to the facts of the present case.

In view of the aforesaid, we are of the opinion that there is no merit in the appeal.

MAT 1577 of 2018 stands dismissed along with CAN 505 of 2019 without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)