

Form No. J(2)

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

WP.ST 471 of 2013

IA NO: CAN/1/2015(Old No:CAN/606/2015)

Diptish Chandra Tarafder & ors.

Vs.

State of West Bengal & ors.

with

WP.ST 139 of 2018

IA NO: CAN/1/2019(Old No:CAN/4960/2019)

Diptish Chandra Tarafder

Vs.

State of West Bengal & ors.

For the Writ petitioners : Mr. Kallol Basu, Advocate
Mr. Suman Banerjee, Advocate
Mr. Krishnendu Bera, Advocate

For the State : Mr. Tapan Kr. Mukherjee,
Sr. Advocate & A.G.P.
Mr. Pinaki Dhole, Advocate,
Mr. Somnath Naskar, Advocate
in WPST 471 of 2013

Mr. Tapan Kr. Mukherjee,
Sr. Advocate & A.G.P.
Mr. Pinaki Dhole, Advocate,
Mr. Avishek Prasad, Advocate
in WPST 139 of 2018

Hearing on : 18.08.2023

Judgment on : 18.08.2023

DEBANGSU BASAK, J.:-

1. Two writ petitions are taken up for analogous hearing as they involve the same parties.

2. WP.ST 471 of 2013 is the first in point of time. It is directed against the order of the Tribunal dated March 7, 2013 passed in O.A.212 of 2011 by the West Bengal Administrative Tribunal, negating the claim of the writ petitioners therein for regularisation.

3. WP.ST 139 of 2018 is at the behest of one person, directed against an order dated August 2, 2018 passed in O.A.232 of 2016 by the West Bengal Administrative Tribunal, upholding the decision of discharge from service of such person.

4. In WP.ST 471 of 2013, there are number of writ petitioners which includes the writ petitioner in WP.ST 139 of 2018.

5. We enquired from the learned advocate appearing for the writ petitioners as to whether, all writ petitioners of WP.ST 471 of 2013 are proceeding with the writ petition or not. He takes instruction from the writ petitioner of WP.ST 139 of 2018 and submits to the Court that apart from writ petitioner of WP.ST 139 of 2018 who is a party writ petitioner in WP.ST 471 of 2013, other writ petitioners are not interested therein.

6. In such circumstances, apart from the writ petitioner of WP.ST 139 of 2018 who is a party in WP.ST 471 of 2013, the writ petition being WP.ST 471 of 2013 is dismissed as not pressed as against the other writ petitioners therein.

7. We are, therefore left with a common writ petitioner in the two writ petitions.

8. The writ petitioner in the two writ petitions was engaged as Part Time Workshop Instructor by a letter dated February 4, 2005.

9. By a writing dated August 31, 2015, he was informed that the terms of engagement as Part-time Workshop Instructor was discontinued for the academic session July 2015 onwards.

10. Learned advocate appearing for the writ petitioner submits that, the letter dated August 31, 2015, contains stigma as against the writ petitioner and therefore, provisions of Article 311 of the Constitution of India are attracted.

11. No show-cause notice, disciplinary proceeding, personal hearing or a right of representation being granted to the writ petitioner, the entire proceedings for termination of services of the writ petitioner stands vitiated, in view of breach of principles of natural justice and the termination being in violation of Article 311 of the Constitution of India. In support of his contentions he relies upon **AIR 1958 Supreme Court 36 (Purshotam Lal Dhingra vs. Union of India)** and **AIR 1964 SC 449 (Jagdish Mitter vs. The Union of India)**.

12. Relying upon **(1999) 3 Supreme Court Cases 60 (Dipti Prakash Banerjee vs. Satyendra Nath Bose National Centre For Basic Sciences, Calcutta and others)** learned advocate appearing for the writ petitioner submits that since the initial termination of service of the writ petitioner was vitiated, the writ petitioner is entitled to reinstatement with back wages.

13. With regard to the claim of the writ petitioner for regularisation, learned advocate for the writ petitioner relies upon various authorities and submits that, one opportunity should be given to the writ petitioner for the purpose of absorption through a scheme for regularisation as the writ petitioner was appointed prior to the decision of **(2006) 4 SCC 1 (Secretary, State of Karnataka & ors. vs. Uma Devi (3) and ors.)**.

14. Learned advocate for the writ petitioner relies upon other authorities in support of his contention with regard to the claim of regularisation.

15. Learned Senior Advocate appearing for the State submits that, the claim for regularisation of the writ petitioner will survive only if, the discharge of the writ petitioner from the services is set aside. The writ petitioner stood discharged from services by the writing dated August 31, 2015. He contends that, the no stigma was attached to the writ petitioner. The letter dated August 31, 2015 does not speak of any stigma as against the writ petitioner. Therefore, the ratio of the **Purshotam Lal Dhingra (supra)** or **Jagdish Mitter (supra)** are not

attracted. Consequently, the question of reinstatement of the writ petitioner with back wages in terms of the **Dipti Prakash Banerjee (supra)** also does not arise.

16. Learned advocate appearing for the writ petitioner draws the attention of the Court to a Memorandum bearing No. 2966-F (P) issued by the Finance Department, Audit Branch of the State of West Bengal dated April 23, 2010 and submits that, casual/daily rated workers may be engaged till they attain the age of 60 years. Their period of engagement may be terminated in the event the incumbent is found to be involved in criminal case/ misconduct/delinquency/incapacitation. According to him, none of the conditions for termination of service as contemplated by the Memorandum dated April 23, 2010 exist so far as the writ petitioner is concerned. Therefore, the writ petitioner is entitled to be engaged till attaining the age of 60 years. The relief with regard thereto should be granted to the writ petitioner.

17. Learned advocate appearing for the State submits that, the Memorandum dated April 23, 2010 is not attracted to the writ petitioner simply on the ground that the writ petitioner was engaged as a part-time Workshop Instructor and not as a casual daily rated worker. Consequently, the writ petitioner is not entitled to claim engagement till attaining the age of 60 years.

18. As noted above, the writ petitioner was engaged as a part-time Workshop Instructor on February 4, 2005 in a particular institution. He

was transferred to another institution subsequently. Thereafter, by a writing dated August 31, 2015, the writ petitioner was informed that the term of engagement as a part-time Instructor would be discontinued from the academic session July 2015 onwards. Not a word in the writing dated August 31, 2015 can be construed to stigmatise the writ petitioner in any manner.

19. The writing dated August 31, 2015 refers to a department Memo No.1905-TET(Poly)/10M-74/2015 dated August 25, 2015.

20. The memo dated August 25, 2015, is an intra department memo with copy thereof not being made over to the writ petitioner. The memo emanated from the Joint Secretary, Government of West Bengal and was addressed to the Director of Technical Education & Training, West Bengal with copy forwarded to the Principal of the Polytechnic. There in such memo, another memo of July 15, 2015 was referred to and it was found that, the writ petitioner was guilty of dereliction of duty as a part-time Instructor. Steps were directed to be taken to discontinue the engagement of the writ petitioner.

21. Since, the letter of discharge dated August 31, 2015, does not allude to any misconduct on the part of the writ petitioner and its speaks mainly of discontinuation of service of the writ petitioner with effect from academic session July 2015 onwards, we are of the view that, the letter dated August 31, 2015 does not cast any aspersion or stigma on the writ petitioner.

22. **Purshotam Lal Dhingra (supra)** and **Jagdish Mitter (supra)** are of the view that a government employee even if engaged on temporary basis is entitled to the protection under Article 311 of the Constitution of India, if , his services are sought to be terminated by attaching a stigma to him. They also observed that, in the event, the termination of the services of the temporary government servant is founded in the right flowing from contract or the service rules, then Article 311 of the Constitution of India is not attracted.

23. In the facts and circumstances of the present case, since, there is no stigma attached to the writ petitioner in the letter dated August 31, 2015, and since he was appointed part time and on contractual basis, we are of the view that writ petitioner is not entitled to claim protection under Article 311 of the Constitution of India.

24. Consequently, since the order of discontinuance of service of the writ petitioner not being held to be invalid the ratio laid down in **Dipti Prakash Banerjee (supra)** is not attracted.

25. The memo dated April 23, 2010 of the Government relates to the casual and daily rated workers. In the present case, writ petitioner was engaged as a part-time Workshop Instructor. Moreover, as noted above, his discontinuation from services was without any stigma attached to him.

26. In such circumstances, we are of the view that, the writ petitioner is not entitled to claim the protection of memo dated April 23, 2010.

27. In view of the discussions above, we find no merit in the WP.ST 139 of 2018.

28. Since the writ petitioner is no longer in service, the question of regularisation of the writ petitioner does not arise. Therefore, we refrain from entering into a detailed discussion with regard to all the contentions raised by the parties in WP.ST 471 of 2013.

29. **WP.ST 471 of 2013** and **WP.ST 139 of 2018** along with connected applications are **disposed of** without any order as to costs.

(Debangsu Basak, J.)

30. I agree.

(Md. Shabbar Rashidi, J.)