

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/3327/2022

EJAJUL ISLAM

VS.

THE STATE OF WEST BENGAL AND ORS.

BEFORE :

THE HON'BLE JUSTICE LAPITA BANERJI

Date : 20th January, 2023.

Appearance :

Mr. Debdutta Basu, Adv.

...for the petitioner.

Mr. Subhabrata Dutta, Adv.

Mr. Debashis Sarkar, Adv.

Mr. P. Sinha, Adv.

...for the State.

Mr. Amal Kumar Sen, Adv.

Mr. Sabyasachi Mondal, Adv.

...for the CSTC.

The Court : The petitioner was engaged as a conductor with the Calcutta State Transport Corporation (CSTC) on July 20, 2015. The petitioner was engaged for a period of one year. The engagement of the petitioner was extended from time to time. By an office memorandum dated December 23, 2020 issued by the Deputy Managing Director, CSTC/the respondent no.5, the petitioner's engagement was terminated. It appears from the impugned memo dated December 23, 2020 that the petitioner has been found with excess amounts in his bag on June 13, 2016, November 1, 2018, September, 14, 2020, November 30, 2020 and finally on December 21, 2020. The petitioner's duty was stopped with effect from November 14, 2018 and, thereafter, the petitioner was again permitted to rejoin on September 4, 2020.

Mr. Basu, learned counsel appearing on behalf of the petitioner submits that such disengagement of the petitioner is in breach of principle of natural justice and should not have been effected without giving a hearing to the petitioner. He submits that no one should be condemned unheard.

He refers to a memorandum dated February 25, 2016 issued by the Joint Secretary, Finance Department, Government of West Bengal in support of his contention that the engagement of contractual/casual/daily rated worker shall not be terminated except as prescribed in the above referred memo. The abovementioned memo refers to the memo dated September 16, 2011 issued by the department vide No.9008 F-(P). He also refers to a judgment reported in (2015) 8 Supreme Court Cases 519 (**Dharampal Satyapal Limited vs. Deputy Commissioner of Central Excise, Gauhati and Others**) in support of his contention that even though there are no statutory provisions ensuring natural justice even then principle of natural justice are mandatory requirements and non-observance of the same invalidates exercise of power. He also draws the attention of this Court to a judgment and order passed on July 5, 2019 by a Co-ordinate Bench of this Hon'ble Court (**Bivas Modal vs. The State of West Bengal**) in support of his argument that even though an employee was contractual, he was given a right of hearing.

Mr. Sen, learned Additional Government Pleader appearing for the CSTC, draws the attention of this Court to the memo dated September 16, 2011. He submits that during the period of engagement the service of a casual/daily rated/contractual worker may be terminated because of involvement in criminal case/misconduct/delinquency/incapacitation **or** if the concerned worker intends to opt out of his engagement on his own.

He submits that no arbitrary action has been taken on behalf of the employer by disengagement the petitioner from service.

Having considering the rival submissions of the parties and the materials placed on record, this Court is of the following view :

- a) The petitioner was engaged in 2015.
- b) The memo dated February 25, 2016 refers to the memo dated September 16, 2011.
- c) The memo dated September 16, 2011 refers to employees who have been in service for not less than ten years continuously as on August 1, 2011.
- d) The petitioner admittedly was engaged in 2015 and, therefore, cannot claim the benefits of memo dated September 16, 2011 and consequently the memo dated February 25, 2016.
- e) The petitioner was a contractual employee who has been found with excess amounts in his pocket at least on five occasions and his duty was also stopped between November 14, 2018 till September 4, 2020. Being a contractual employee he cannot claim a full fledged disciplinary proceedings to be conducted against him prior to dis-engagement.
- f) The judgment in **Dharampal Satyapal** (supra) is not applicable to the facts of the case because it does not relate to the contractual employees. Furthermore, in paragraph 45 of the said judgment it has been held that even if there is an infraction of the principles of Natural Justice the question that has to be answered is whether remitting back the case to the authority will serve any purpose. On the facts of the case it was held that it would be a “a totally futile exercise.”

- g) This Court also places reliance of **Escorts Farms Ltd. vs. The Commissioner, Kumaon Division, Nainital, U.P. & Ors.** reported in (2004) 4 Supreme Court Cases 281 for the proposition that no doubt the right of hearing is a valuable right but if it amounts to completion of a mere ritual without possibility of change of decision on merits then it will be of no consequence.
- h) The judgment of the Co-ordinate Bench of this Hon'ble Court in **Bivas Modal** (supra) is also not applicable because the employer violated its amended standing orders in that case. Furthermore, what weighed with the Hon'ble Co-ordinate bench was the fact that the contractual worker was in long standing engagement.
- i) The petitioner in the present case has been engaged in 2015 and also disengaged for approximately a period of two years during such engagement.
- j) The case of the petitioner cannot be held to be at par with the case of the petitioner in **Bivas Modal** (supra).

This Court finds that no arbitrary and illegal act has been committed on behalf of the employer in disengaging the petitioner.

In the light of the discussion above, **WPO No.3327 of 2022** is **dismissed**.

Since no affidavits have been directed to be exchanged in the present writ petition, all the allegations contained therein are deemed not to have been admitted by the parties.

All parties to act on a server copy of this order downloaded from the official website of this Court.

Urgent certified website copies of this order, if applied for, be made available to the parties subject to compliance with all requisite formalities.

(LAPITA BANERJI, J.)

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