

07-02-2024
ct no. 13
Sl. 18
pk

WPA 1995 of 2024

Sanghamitra Ghosh

-Versus-

The State of West Bengal and others.

Mr. Shuvro Prokash Lahiri,
Mr. Rajesh Naskar

...for the petitioner

Mr. Tapan Mukherjee, A.G.P.
Ms. Sangeeta Roy

... for the State.

1. Affidavit of service filed in Court is taken on record.
2. The petitioner is aggrieved by an order dated 15.12.2023 passed by the Executive Director, West Bengal State Health & Family Welfare Samiti. The said Executive Director is also the Mission Director of the National Health Mission and Secretary to the Government of West Bengal, Department of Health.
3. By reason of the impugned order, renewal of the petitioner's yearly contractual service was declined by the respondents due to his unauthorised absence from 29.11.2021 till 31.01.2022. The unauthorised absence according to the petitioner arose because the petitioner did not join a transferee post at Nandigram. She was ordinarily posted at Calcutta. The petitioner contends that her service was not transferable.

4. The petitioner therefore refused to join at Nandigram. She could not report to duty at Calcutta, she was already relieved from here.
5. Admittedly, the petitioner was appointed on 1st January, 2013 on contract basis for a monthly lump sum of Rs.24,700/- to be posted at State Headquarters, Swasthya Bhawan, Salt Lake for a period of one year. However, the petitioner's contract was extended year to year until the year 2022 and to expire on 31.01.2022.
6. The petitioner was engaged as "State Statistical Manager", in the State Programme Management Unit of the National Rural Health Mission implemented through West Bengal State Health and Family Welfare Samiti.
7. Against the order of transfer, the petitioner approached this Court by way of WPA 19243 of 2021 which was disposed of by judgment and order dated 04.02.2022 holding that the petitioner's transfer to Nandigram from Kolkata, was illegal and outside the scope of her engagement and service.
8. An appeal has been filed by the State against the judgment which is still pending.
9. The respondents thereafter on 31.01.2022 refused to renew her yearly contract of service on the ground that the petitioner was unauthorisedly absent from 29.11.2021 till 31.01.2022.

10. The writ petitioner filed WPA 3562 of 2022 challenging the said order dated 31.01.2022. The said writ petition was disposed of by judgement and order dated 16.11.2023 whereby and under which it was held that the issue of unauthorised absence did not arise as the petitioner could not have been transferred as already held by the judgement dated 04.02.2022 (supra).
11. The order dated 31.01.2022 was set aside. Although the entitlement of the petitioner under a Circular dated 16th September, 2011 being Memo No. 9008-F(P) was raised by the petitioner, there was no pronouncement by the Court on the issue. The respondents were directed to reconsider the renewal of the petitioner's contract after affording a personal hearing to her.
12. In terms of the said judgement and order dated 16.11.2023 (supra) the respondents passed the impugned order dated 15.12.2023 once again referring to unauthorised absence of the petitioner from 29.11.2021 till 31.01.2022. The respondents declined the prayer for release of back wages from December, 2021 to November, 2023 of Rs.13,22,264/-. The respondents also refused to regularise the service of the petitioner for the entire period from 29.11.2021 till November, 2023.
13. This Court has heard the learned counsel for the petitioner, Mr. Lahiri for a substantial period of time

at length. This Court has also heard Mr. Mukherjee, learned senior counsel appearing for the State. It is clear from the letter of appointment/engagement of the petitioner that her service was contractual and only for one year. It is the exclusive discretion of the respondents as to whether the petitioner's contract would be renewed or not. The respondents have refused to renew her contract after its expiry on 31.01.2022.

14. Insofar as the reason for refusing to renew the contract i.e. of unauthorised absence is concerned, this Court is of the view that the same is *ex facie* illegal. Admittedly by decision of Co-ordinate Bench dated 16.11.2023 (*supra*) and the earlier decision dated 04.02.2022 (*supra*) it has been clearly held that the petitioner's service was not transferable. The petitioner was relieved from Swasthya Bhawan at Calcutta and was in law not bound to join any service at Nandigram.
15. The question of any unauthorised absence of the petitioner does not and cannot arise. The petitioner is, therefore, entitled to be treated as working for the said period. She is entitled to her pay and allowances in terms of the contract for the month of December, 2021 and January, 2022. Let the same be paid to the petitioner within a period of one month from date.

16. Insofar as the renewal of the petitioner's contract is concerned, this Court has already held that it is the exclusive discretion of the respondents i.e. the West Bengal State Health & Family Welfare Samiti as to whether the yearly contract of the petitioner would be renewed or not. The samiti has, in no uncertain terms on three several occasions, decided not to renew the petitioner's service after January, 2022 albeit for the wrong reasons. For the wrong reasons advanced the petitioner has been compensated by this Court as directed above. Since the respondents have repeatedly refused to renew the contract of employment of the petitioner, no useful purpose will be served in remanding the matter back to the authorities for any fresh decision. The petitioner's contract of engagement as a "State Statistical Manager" must be deemed to have come to an end with effect from 30th January, 2022.
17. With the aforesaid directions, observations and findings, the writ petition is disposed of.
18. There will be no order as to costs.
19. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)