

Form No. J (2)  
Item No.16  
Court No.26

**IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE**

Present:

**The Hon'ble Justice Debangsu Basak**

And

**The Hon'ble Justice Md. Shabbar Rashidi**

**F.M.A. 693 of 2021  
IA NO: CAN/2/2021**

**Sri Utpal Chakraborty  
VS.  
The State of West Bengal & ors.**

For the Appellant : Mr. Pratip Kumar Chatterjee  
Advocate

For the State Respondents : Mr. Tapan Kr. Mukherjee,  
Sr. Advocate & Ld. A.G.P.  
Mr. Somnath Naskar, Advocate

Heard on : 05.09.2024

Judgment on : 05.09.2024

**DEBANGSU BASAK, J.:-**

1. Appeal is directed against an order dated December 9, 2020 passed in WPA 8641 of 2020.

2. By the impugned order, learned Single Judge dismissed the writ petition.

3. Learned advocate appearing for the appellant submits that, the appellant was in contractual service and working for at least 13 years. He refers to the orders of termination of service dated March 6, 2020 and March 31, 2020. He submits that, no enquiry was held as against the appellant. Appellant was not heard prior to issuance of the order of termination from services. In support of his contention, he relies upon **1999 AIR SCW 207 (Radhey Shyam Gupta v. U. P. State Agro Industries Corporation Ltd.), (2006) 9 SCC 167 (Hari Ram Maurya v. Union of India)** and **2024 SCC Online SC 2139 (Swati Priyadarshini versus State of Madhya Pradesh and others).**

4. The State is represented.

5. Appellant was engaged as Data Entry Operator under Mahesail B.P.H.C. Suti-II Block, Murshidabad under Health Mission Scheme on contractual basis. Appellant joined the post on June 27, 2008. Appellant was transferred as Data Entry Operator to Khangsar BPHC on July 30, 2008.

6. Appellant was transferred on February 17, 2017 to Farakka B.P.H.C, Murshidabad. Appellant was directed to function as Data Entry Operator at Khargram Rural Hospital by a writing dated March 2, 2017. Thereafter, appellant was asked to work as Data Entry Operator at the office of Deputy Chief Medical Officer-I, Murshidabad by a writing dated April 6, 2017. Appellant was transferred thereafter, from time to time.

7. A show cause notice dated March 30, 2016 was issued as against the appellant in which, it was alleged that, appellant was not regular in

updating the entries at the relevant portal, appellant was performing his duties with inordinate delay, his incapacity to work was affecting the work culture and that, the acts and omissions of the appellant amounted to gross negligence. A further show cause notice was issued to the appellant on September 20, 2016. There is a complaint of the Block Medical Officer dated September 16, 2016 as against the appellant.

8. An enquiry report was submitted on May 25, 2017 where, six area of misdemeanor were noted.

9. Repeated transfer of the appellant from one post to the other did not assist in the appellant improving his behavior or performance at the office.

10. Consequently, two show cause notices were issued on July 9, 2018 and August 31, 2018 the second being the reminder of the first to the appellant. Another show cause was issued on September 16, 2019 to the appellant.

11. Appellant responded to one of the show cause notices by a writing dated June 20, 2017. Thereafter, the authorities issued the impugned letter of termination of service dated March 6, 2020 and March 31, 2020.

12. ***Radhey Shyam Gupta (supra)*** is of the view that, termination of services of a temporary servant or probationer on the basis of adverse entries or on the basis of assessment that his work is not satisfactory will not be punitive inasmuch as such facts are merely the motive and not the foundation. In cases where the termination is preceded by an inquiry and evidence is received and findings as to misconduct of a definite nature are

arrived at behind the back of the officer and where on the basis of such a report, the termination order was issued, such an order will be violative of principles of natural justice.

13. In ***Hari Ram Maurya (supra)*** Supreme Court found in the facts of the case that no inquiry was conducted.

14. In ***Swati Priyadarshini (supra)*** Supreme Court considered the plight of a contractual employee whose service was terminated without the due process of law and directed reinstatement.

15. It noted a Five Bench Judgment of the Supreme Court rendered in ***1957 SCC OnLine SC 5 (Parshotam Lal Dhingra v. Union of India)*** and concluded in paragraph 28 thereof that any and every termination of service is not removal or reduction of rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal.

16. In the facts of the present case, appellant was issued repeated show cause notices. He was afforded reasonable opportunity to improve himself. He was transferred from post to the other in order to allow him to improve himself. His performance did not improve. He replied to one of the show cause notices. Thereafter, the respondent authorities found it prudent not to continue the services of the appellant by the writing dated March 6, 2020 and March 31, 2020. What is claimed to be the order of termination, is essentially one where, the authority decided not to renew the contract which is evident from the letter dated March 6, 2020.

17. We are unable to arrive at a finding that, in the facts and circumstances of the present case that there was any breach of principles of natural justice causing any prejudice to the appellant. As noted above, he was issued repeated show cause notices in respect of one of which, he responded. Receipt of the show cause notices is denied by the appellant. Thereafter, the authorities took the decision of not extending his contractual period. Admittedly, appointment of the appellant was on contractual basis.

18. Learned Single Judge did not find any ground to interfere with the order of termination after noting the charges as against the appellant being established.

19. In such circumstances, we find no merit in the present appeal.

20. F.M.A. 693 of 2021 along with connected application being CAN/2/2021 is dismissed without any order as to costs.

21. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

**(Debangsu Basak, J.)**

22. I agree.

**(Md. Shabbar Rashidi, J.)**

*CHC*