

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

Present:

The Hon'ble **Justice Harish Tandon**

And

The Hon'ble **Justice Prasenjit Biswas**

MAT No. 595 Of 2023

With

CAN 2 of 2023

Minoti Mondal @ Mina Mondal (Sarkar)

-Versus-

The State of West Bengal & Ors.

For the Appellant : **Mr. Debarata Mondal,**
Ms. Sreetama Neogi.

For the Respondents : **Mr. Santanu Mitra,**
Ms. Anandamayi Ghosh.

Hearing Concluded on : **16.07.2024**

Delivered on : **20.09.2024**

Prasenjit Biswas, J:-

1. The order dated 03.02.2023 passed by the learned Single Judge in WPA No. 22938 of 2017 is assailed in this appeal.

2. By passing the impugned order learned Single Bench declined to interfere the order of termination of engagement of this appellant recommended by Shiksha, Sanskriti, Tathya-O- Krira Sthayee Samity. Being aggrieved and dissatisfied with the said impugned order the writ petitioner/appellant has preferred this instant appeal.

3. In response to an advertisement dated 20.11.2006 issued by the Secretary, Jagaipur Mothbari, Sishu Shiksha Kendra, this appellant made an application seeking engagement as Sahayika in that Kendra. The application made by this appellant was considered by the selection committee and she was selected and engaged as a Sahayika in Jagaipur Mothbari Sishu Shiksha Kendra. Her engagement was challenged by the respondent no. 8 of the writ petition by filing a petition being no. WP 1177(W) of 2008 before this Court. The said writ petition filed by the respondent no. 8 Serina Khatun Bibi was disposed of and direction was given upon the Block Development Officer, Nowda Block, District Murshidabad to make necessary enquiry and to submit a report after giving opportunity of being heard to the authority of the Kendra and any other person or authority that may be effected by that order. The enquiry was made by the Block Development Officer and decision was taken to that effect that the procedure which was followed in the matter of engagement of this appellant at Sahayika Jagaipur Mothbari, Sishu Shiksha Kendra was not in accordance with the guidelines issued by the department of Panchayats and Rural Development, dated 8th November, 2004. The order passed by the Block Development Officer was duly intimated to the District Nodal Officer, SSK and MSK, Murshidabad

on which a meeting was convened and they took a decision to terminate the engagement of this appellant as the said engagement was made in violence of the guidelines as made by the Department of Panchayats and Rural Development, Government of West Bengal.

4. This appellant challenged the said order of termination by filing a writ petition before this Court on the ground that she was not provided any opportunity of hearing and as such the order of the Block Development Officer and the decision taken by Shiksha, Sanskriti, Tathya-O- Krira Sthayee Samity terminating his engagement is not in accordance with law and as such the same deserves to be set aside.

5. In pursuance of the direction passed by the learned Single Bench of this Court in connection with 1177(W) of 2008 an enquiry was made by the Block Development Officer who came into the finding that the procedure followed in the recruitment of 4th Shayika at Sishu Shiksha Kendra was not in accordance with the guidelines issued by the Department of Panchayats and Rural Development, dated 8th November 2004 which was in vogue at the time of engagement of this petitioner/appellant. It is categorically observed in the enquiry report that the notice of the recruitment was received by the Liberian, Raghunathpur and by the local SKUS but it was never received by the Pradhan of the Gram Panchayat.

6. The guidelines which was prescribed by the Department of Panchayats and Rural Development dated 8th November, 2004 is hereby quoted for the better understanding of the procedure in the matter of engagement of any Sahayika in a Sishu Shiksha Kendra.

“Therefore, the Governor has been pleased to lay down the following procedure for engagement of Sahayika, for strict compliance by the Managing Committee if the said Managing Committee of the SSK intends to

obtain financial support from the State Government under this Karmasuchi:

I) A Managing Committee intending to engage any Sahayika shall publish a notice at least fifteen days in advance, inviting applications along with required documents, in the SSK premises and in the office of the concerned Gram Panchayat. The notice itself shall contain the date, time and venue of the interview to be taken by the Managing Committee.

II) As provided in the guidelines (as amended) the candidates must have the following qualifications.

a) Women of at least 40 years of age and having passed Madhyamik Examination of the West Bengal Board of Secondary Education or its equivalent examination will be eligible for consideration.

b) The candidates must be resident of the Gram Samsad in which the SSK is located or in its absence of the adjoining Gram Samsads.

c) In case any qualified candidate is not available in the area as stipulated above, age may be relaxed for qualified candidates.

III) The Managing Committee shall consider all the applications on merit. The candidate having highest qualification should be considered first subject to fulfillment of condition of Para (ii) above.

IV) *In the event of the candidates have identical qualification the one securing highest marks should be considered by the Managing Committee.*

V) *In case all the eligible candidates are less than 40 years of age, oldest candidate having requisite educational qualification should be considered, with the prior approval of the concerned Panchayat Samity. However, no candidate of less than 18 years of age shall be considered.*

VI) *All such engagements should be for one academic session only commencing from the date of engagement up to 30th April next. Engagements shall be made by way of execution of an agreement format of which has been appended to the guidelines.*

VII) *In case there is no eligible women candidate, the Managing Committee may engage physically handicapped male candidates having prescribed qualification.*

VIII) *The entire process of selection shall be recorded in writing and attendance of candidates should form part of the record. The Managing Committee of the SSK concerned will be collectively and severally responsible for custody of such records.*

IX) *The procedure so laid down in this order shall not be applicable for renewal of the agreement of the existing Sahayika on the basis of their satisfactory performance in the previous year (Sahayika) and having requisite qualifications.”*

7. It is stipulated in the said notification that the woman of at least 40 years of age and having passed Madhyamik examination of the West Bengal Board of

Secondary Education or its equivalent examination will be eligible for consideration but if all the eligible candidates are found less than 40 years of age then in that situation oldest candidate having requisite educational qualification should be considered but with the prior approval of the concerned Panchayat Samity. From the report submitted by the Block Development Officer it appears that the appellant/petitioner is not the resident of the Gram Sangsad in which the said Sishu Shiksha Kendra is situated. It is admitted position that the present appellant was aged less than 40 years and at the time of engagement of this appellant at that Sishu Shiksha Kendra no prior approval was obtained from the Panchayat Samity. It further appears from the said report that the appellant was engaged as Sahayika of that Sishu Shiksha Kendra without publishing any notice in the office of the concerned Gram Panchayat which is a clear violation of the procedure as spelt out in the notification issued by the Department of Panchayats and Rural Development, Government of West Bengal, dated 8th November, 2004.

8. As the procedure for selection of Sahayika in Sishu Shiksha Kendra as made by the Department of Panchayats and Rural Development was not followed at the time of engagement of this appellant/ writ petitioner at the concerned Sishu Shiksha Kendra so we have no hesitation to hold that the termination of engagement of this petitioner/ appellant as recommended by the Shiksha, Sanskriti, Tathya-O- Krira Sthayee Samity cannot be said to be illegal.

9. The Memorandum dated 8th November, 2004 issued by the Government of West Bengal, Department of Panchayats and Rural Development was in vogue at the time of advertisement seeking application for engagement of Sahayika at the Jagaipur Mothbari, Sishu Shiksha Kendra but subsequently, a Memorandum dated 23.04.2010 issued by the Department of Panchayat came into force in respect of engagement of

Sahayika which entails that such engagement is to be made now by the Sub-Divisional Officer. In such situation, learned Single Bench correctly held that court cannot direct the Managing Committee of the said Sishu Shiksha Kendra and the concerned Block Development Officer as well as of the Executive Officer of the concerned Panchayat Samity to initiate the selection process afresh.

10. In view of above facts and circumstances we are of the view that there is no illegality or material irregularity in the impugned order passed by the learned Single Bench dated 03.02.2023.

11. We are in agreement with the observation as made by the learned Single Bench that the termination of the engagement of this appellant recommended by the Shiksha, Sanskriti, Tathya-O- Krira Sthayee Samity cannot be said to be bad in law. As such the present appeal is devoid of merit and is liable to be dismissed.

12. Hence, the appeal being no. MAT 595 of 2023 is hereby dismissed but without any order as to const.

13. Connected application, if any, is hereby also dismissed accordingly.

14. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)