

06.11. 2024
item No.3
n.b.
ct. no. 24

WPA 8686 of 2022

Samiran Maity.
Vs.
State of West Bengal & Ors.

Mr. Anil Kumar Chattopadhyaya,
..... for the petitioner.
Mr. Swapan Kumar Dutta,
Mr. Tapas Kr. Mandal,
..... for the State.
Ms. Debjani Sengupta,
Ms. Kayel Bag,
Mr. Abhijit Chatterjee,
Ms. Shahina Haque,
..... for the Vidyasagar University

The instant writ petition was filed challenging the order of termination dated 19.7.2021 passed by the Registrar, Vidyasagar University against the present petitioner and also order dated 13.4.2022 by the said Registrar, Vidyasagar University informing the petitioner that his representation was declined.

It is the case of the petitioner that he was appointed in the post as Junior Peon (Group-D staff) in Vidyasagar University; he initially jointed his duty but could not continue due to sufficient reason. The University authority issued show-cause notice due to the absent of the petitioner from duty. His representation was not considered and without initiating any proceeding. The university has termination the petitioner.

Learned counsel for the petitioner submits that the order of termination was challenged before this Court in earlier writ petition; during the hearing of the matter in WPA 7017 of 2022 a co-ordinate bench on May 4, 2022 has allowed the petitioner to challenge one letter of intimation dated 13.4.2022 issued by the Registrar Vidyasagar University.

Learned counsel for the petitioner further submits that petitioner is under special category of land-looser and he could not join the duty for sufficient reason, at this juncture, the letter issued by the university on 13.4.2022 as well as the order of termination dated 19.7.2021 is illegal and need be quashed.

Learned counsel appearing on behalf of the university submits that the petitioner was joined as a junior peon with effect from 29.6.2020 on probation. His service was not confirmed and during that period was absent from duty without any reason. It is the submission of the learned counsel for the university that the letter of termination dated 19.7.2021 was earlier challenged before the Co-ordinate Bench in WPA 7017 of 2022. The learned co-ordinate bench after hearing the parties had dismissed the writ petition. Thus, the letter of termination dated 19.7.2021 reached its finality. The same order of termination cannot be challenged in subsequent writ. It is barred under the provision of res

judicata provided under section 11 of Code of Civil Procedure.

He further submits that the communication dated 13.4.2022 declining the representation of the petitioner is very much correct and there is no scope for joining a post after termination. He further submits that there is not illegality in the order dated 13.4.2022. Thus, the instant writ petition is not maintainable.

Mr. Dutta, learned counsel appearing on behalf of the State authority submits that the letter of termination has already been disposed of by a co-ordinate Bench of this Court and attained its finality. The petitioner has not preferred any appeal against the order of the co-ordinate Bench dated 4.5.2022. Thus, the letter of termination cannot be challenged in a fresh writ petition.

Mr. Dutta, further argued that the relationship between the employer i.e. Vidyasagar University with the present petitioner as employer and employee has put to an end by the order of termination dated 19.7.2021. Such relationship cannot be revived post-termination. The communication dated 13th April, 2022 is very much legal and effective.

Mr. Dutta, also argued writ petition is barred under the provision of res judicata under Section 11 of the Code of Civil Procedure.

In reply, learned advocate for the petitioner submits that the present petitioner has challenged the order of termination before the Co-ordinate Bench but the matter has not been finally decided by the Co-ordinate Bench. He further submits that the present petitioner may have approached before the Departmental Appellate authority against the order of termination.

Having heard the submissions of the learned advocates for the parties and also considering the impugned order dated 13th April, 2022 as well as order of Co-ordinate Bench dated 4th May, 2022 (W.P.A. 7017 of 2022) it appears to me that legally the Letter of Termination dated 19th July, 2022 signed by the Registrar, Vidyasagar University against the present petitioner was under challenge before the Co-ordinate Bench in W.P.A. 7017 of 2022.

On a plain perusal of the order dated 4th May, 2022 of the Co-ordinate Bench it appears to me that the Co-ordinate Bench has dismissed the writ petition and has not given any liberty to the petitioner to challenge the Letter of Termination in later proceeding.

Thus, in terms of provision under Section 11 of the code of Civil Procedure, the instant writ is not maintainable in respect of Letter of Termination dated 19th July, 2021.

In considering the letter of communication dated 13th April, 2022, it appears that the Executive Council of Vidyasagar University in its 8th Meeting has considered the representation of the petitioner to join his duty in the post of Junior Peon. The Executive Council is of the opinion that there is no scope of joining post-termination. It is true that after order of termination reached its finality, there is no scope for Vidyasagar University to also the petitioner to joint in the duty without setting aside the order of termination. Thus, the present petitioner has legally no scope to further join the same post.

On the above score, I find no justification to interfere with the order dated 13th April, 2022 signed by the Registrar, Vidyasagar University.

Under the above observation, the instant writ petition is dismissed and disposed of.

Learned counsel for the petitioner seeks leave to prefer departmental appeal against the order of termination. It is not clear before this Court that whether any appeal has been preferred or not by the petitioner against the order of termination. However, the petitioner is well within the scope to challenge the order of termination before the appropriate authority according to law.

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

(Subhendu Samanta, J.)