

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

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Gaurang Kanth

***M.A.T. 836 of 2024
(CAN 1 of 2024)***

***Jayanta Nath Roy
-Vs-
The State of West Bengal & Ors.***

For the Appellant : Mr. Sobham Majumder, Adv.

For the State : Mr. Swapan Banerjee, Id. A.G.P.
Mr. Soumen Chatterjee, Adv.

Heard on : 01.08.2024 & 05.08.2024

Judgment on : 05.08.2024

Joymalya Bagchi, J. :-

1. Appellant has assailed judgment and order dated 24.04.2024 passed by the Hon'ble Single Judge whereby his prayer for appointment to the post of VLE/LDO in the Gram Panchayat had been turned down.

2. Appellant's case before the Hon'ble Single Judge is as follows :-

Appellant had been appointed as a Data Entry Operator under the MGNREGA scheme in the Gram Panchayat in 2008. The

contract of appointment clearly shows that the engagement was purely on a temporary basis and the engagement could be terminated upon giving fifteen days' notice to the appointee. In 2015 a criminal case was registered against the appellant being Kotwali Police Station Case No. 570 of 2015 dated 28.08.2015 alleging misappropriation of funds under the scheme. Appellant was arrested and by official communication dated 02.09.2015 he was dispelled from contractual engagement. In 2021 he was acquitted of the charge. In 2022 he made a representation for re-engagement. The representation was turned down by order dated 11.01.2023 which came to be challenged in the writ petition.

3. Hon'ble Single Judge, inter alia, held appellant had been engaged temporarily under the MGNREGA scheme and not against substantive post. Accordingly, upon acquittal he could not have been re-engaged.

4. Learned Advocate for the appellant contends engagement of the appellant was terminated without giving him an opportunity of hearing. As a result, the termination was illegal and he should be reappointed under the MGNREGA scheme.

5. Learned Additional Government Pleader opposes the prayer and contends due to paucity of funds, no work under the MGNREGA scheme is presently being undertaken by the Gram Panchayat concerned. Moreover in terms of Memo No. 1864(21)-RD/O/NREGA/18S-07/06

dated 31.03.2017, the Panchayat is debarred from engaging skilled technical person like the appellant under the scheme.

6. We have given anxious consideration to the case of the appellant.

7. Appellant was not appointed against any substantive post. He was temporarily engaged under the MGNREGA scheme. His contract of appointment shows he could be terminated with fifteen days notice. When appellant was arrested in connection with a criminal case alleging misappropriation of funds, his contractual service was terminated in 2015. He did not challenge his termination. Only upon an order of acquittal being passed, he raised his claim for re-engagement under the scheme.

8. Respondent authorities turned down his prayer, inter alia, referring to Government Memo No. 1864(21)-RD/O/NREGA/18S-07/06 dated 31.03.2017 whereby the Panchayat concerned had been debarred from engaging skilled technical person under the MGNREGA scheme.

9. Materials have also been placed on record before us due to paucity of funds, no work/project under the scheme is being undertaken by the Panchayat concerned. Appellant was temporarily engaged under the MGNREGA scheme. Upon being arrested, he was dispelled from contractual engagement. Upon being acquitted, he cannot claim a higher right and seek re-engagement when he was never appointed against substantive post.

10. Authorities¹ relied upon relate to cases of employees who had been appointed on probation or otherwise against substantive posts. This is not the case of the appellant in the present case.

11. For the aforesaid reasons, we are of the opinion appellant is not entitled to re-engagement and the order impugned does not call for interference.

12. The appeal is accordingly, dismissed.

13. In view of dismissal of the appeal, connected application being CAN 1 of 2024 is also disposed of.

14. There shall be no order as to costs.

15. Photostat certified copy of this judgment, if applied for, be given to the parties on compliance of all formalities.

I agree.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)

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¹ 1. Radhey Shyam Gupta vs. U.P. State Agro Industries Corporation Ltd. & Anr.; (1999) 2 SCC 21

2. Mangal Singh vs. Chairman, National Research Development Corporation & Ors.; 2009 SCC OnLine Del 2345

3. Feroz Ahmed Sheikh & Ors. Vs. Union Territory of J&K through Commissioner/Secretary/Additional chief Secretary, Industries & Commerce Department & Ors.; 2023 SCC OnLine J&K 1095