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Ct. No. 08

Ab

MAT 725 of 2021
IA No. CAN 1 of 2021

Unnati Mal
Vs.
State of West Bengal and others.

Mr. Rajendra Banerjee,
Mr. Souvik Ganguly,
Mr. Dip Jyoti Chakraborty.
... for the appellant.

Mr. Subhrangsu Panda
... for the respondent no. 10.

At the very outset, we must record that the aspersion made by the Single Bench in the impugned order percolating a sense of threat upon the authorities to be dealt in a contempt proceeding, which would be initiated *suo motu* on the mentioning of the learned Advocate, is not in tune with the discipline maintained by the Court. The Court should restrict the decision on the merit of the case both on fact and in law, but should not permeate the sense of threat into the authorities that in the event the order is not complied with they would immediately be dealt with under the Contempt of Courts Act. The right of appeal gets diluted if such an observation or the direction is passed in the order and despite being aggrieved by the said order, it would compel the authorities to succumb to the order on the fear of being punished.

We do not intend to go much deep into the aforesaid aspect and invited the parties to address us on merit.

The appellant has approached the Court assailing the judgment and order dated 29th July 2021 passed by the Single Bench challenging the action of the authority dated 7th August 2019 by which the engagement of the

appellant as 4th Sahayika was directed to be recalled and one Shelly Ghosh (Kabiraj), who was appointed as 4th Sahayika, was permitted to be reinstated.

The said letter dated 7th August 2019 does not appear to be an order passed by a competent authority, but a communication that the competent authority has already taken a decision wherein the appointment of the appellant was found to be palpably illegal and the nepotism of the Members of the Managing Committee in removing the erstwhile 4th Sahayika and engaging the present appellant in her place, is found evident.

The Single Bench after noticing the findings returned by the competent authority in its order dated 7th July 2011 and a subsequent communication having made on 7th August 2019 held that the appointment of the appellant as 4th Sahayika and subsequent engagement of Shelly Ghosh (Kabiraj) on the basis of the order dated 7th July 2011 cannot be interfered with and directed the Mandamus upon the authorities to comply the mandate given in the letter dated 7th August 2019.

It is an apparent case of favouritism and nepotism at the behest of the Managing Committee in engaging the appellant as 4th Sahayika in the said SSK. Admittedly, one Shelly Ghosh (Kabiraj) was engaged as 4th Sahayika and her engagement was till 31st May 2007, which is apparent and evident from the documents annexed to the instant application for stay, wherein the said Shelly Ghosh (Kabiraj) was shown to have been discontinued in the said post of 4th Sahayika and the Managing Committee engaged the appellant in her place.

Interestingly, the appellant submits that there is no removal or termination of an engagement. According to the appellant, the tenure of the engagement expires and because of the poor and unsatisfactory performance shown by the private respondent, such engagement was not renewed.

It is sought to be contended that once she has been engaged after the expiration of tenure of engagement of the private respondent, the authority has committed an error in this regard. It is further submitted that at the time of passing an order dated 7th July 2011, no opportunity of hearing was given to the appellant. The private respondent has taken a plea that the then Managing Committee have illegally and wrongfully terminated the engagement and surreptitiously, with some design motive, engaged the appellant as 4th Sahayika.

We had taken to an order dated 7th July 2011 passed by the competent authority when the private respondent raised an alarm over the misdeeds of the then Managing Committee. It appears from the said order that the Secretary and the President of the said SSK produced the register maintained with regard to the attendance of the Sahayikas wherefrom it appears that the old register was discontinued on and from 15th May 2007 and a new register was prepared showing the signature of the appellant as 4th Sahayika. It further transpires that the said private respondent signed in the attendance register till 14th May 2007 and since the new register was opened on and from 15th May 2007, the signature of the appellant was put therein.

There appears to be a fallacy in the submission of the appellant that the private respondent was not removed from service, but was denied reengagement after completion of the tenure of engagement. The letter of engagement reveals that the private respondent was engaged for a period of one year, which would expire on 31st May 2007. If the case of the appellant is accepted, how the appointment or engagement can be made from 15th May 2007 i.e. before 31st May 2007.

It would be a farcical exercise if a technical point of violation of natural justice is accepted at the stage as the

very engagement appears to be illegal on the face of the record and giving an opportunity of hearing is merely an idle exercise as the appellant cannot elevate her status in this regard.

Interestingly, in the order dated 7th July 2011, the authority noticed the alarming fact that in the register where the appellant was permitted to put her signature on and from 2nd May 2007 also shows a glaring illegality committed by the then Managing Committee in order to favour the present appellant.

After noticing of such illegalities from the records produced before it, the competent authority found that the private respondent was illegally terminated and/or disengaged and directed the reinstatement of the private respondent in the post of 4th Sahayika. The said order has not been assailed anywhere obviously the reason being that the Managing Committee in complete defiance of the said order continued with the engagement of the appellant till 2019 when the letter was written on 7th August 2019 directing the Managing Committee to reinstate the private respondent without any delay. Such letter is assailed in the writ petition, but the foundation of the decision being order dated 7th July 2011 does not appear to have been assailed before the Court.

Obviously, the moment the authority found a flagrant violation of the statutory Rules and the illegality committed by the then Managing Committee, it is evident from the record produced before it, the person being a beneficiary of such nepotism and favouritism could not be permitted to reap the benefit of the illegality.

It is evident from the facts discerned from the record that the private respondent was, in fact, removed from such engagement and not disengaged after completing the tenure and the moment such removal is found to be illegal, it does not create any right into a subsequent appointee to remain in such post.

Since the private respondent has already been reinstated in the post of 4th Sahayika and is discharging her duties, we do not intend to interfere with the impugned order. The appeal and the connected application being CAN 1 of 2021 are dismissed.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)