

24.06.2024
Sl. No.121.
D/L.
Mithun
Ct.No.551.

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

WPA 10665 of 2018

**Hapsa Bibi
Vs.
The State of West Bengal & Ors.**

Mr. Arka Maiti,
Ms. Ambiya Khatun,
Mr. Enamul Islam

...for the petitioner.

Mr. Nilanjan Adhikari,
Ms. Priyanka Mukherjee

..for respondent Nos.7 to 9.

Md. Sarwar Jahan,
Ms. Mousumi Mitra,
Ms. Tapati Sarkar

...for respondent no.3.

Mr. Jahar Lal De,
Mr. Shamim UL Bari

...for the State.

1. The writ petitioner, the respondent nos.1, 2, 4, 5 and 6, respondent no.3 and respondent nos.7 to 10 are represented by their respective Counsels.

2. In this writ petition the writ petitioner has prayed for issuance of writ of mandamus for setting aside the order dated January 25, 2017 as passed by the Executive Officer, Contai Municipality.

3. In course of his submission, the learned Advocate appearing on behalf of the writ petitioner at the very outset draws attention of this Court to Page

no.181 of the writ petition. It is submitted that on perusal of the Page 181 to 183 of the writ petition it would reveal that the order which is under challenge before this Court cannot be sustained in the eye of law since the Executive Officer of the Contai Municipality is not the appointing authority of the instant writ petitioner and, therefore, the said Executive Officer has got no authority to terminate the service of the writ petitioner by passing the impugned order dated January 25, 2017.

4. It is submitted further on behalf of the writ petitioner that on perusal of the said order dated January 25, 2017, it would reveal further that the enquiry as conducted by the said authority violates the principle of natural justice since in such enquiry the version of the present writ petitioner was not recorded and, further, the versions of various witnesses have been recorded behind the back of the writ petitioner.

5. Drawing attention of this Court to Annexure P-8 at Page 86 of the writ petition, it is argued on behalf of the writ petitioner that before passing the impugned order, the said Executive Officer did not consider the grievance of the writ petitioner as conveyed by the writ petitioner to the appropriate authorities under cover of her letter dated July 13, 2015. It is submitted

further that from the said letter dated July 13, 2015, it would reveal that it has been agitated by the writ petitioner that from July, 2014 to June, 2015, she was entrusted with another work and taking advantage of that she was not allowed to put her signatures on the relevant registers of the relevant Sishuu Shiksha Kendra (hereinafter referred to as S.S.K., in short).

6. It is submitted further that though the petitioner was engaged in the relevant S.S.K. under an agreement but by passing the impugned order, such agreement was not renewed which tantamounts to illegal termination from her service.

7. It is further submitted on behalf of the writ petitioner that in the affidavit-in-opposition as filed on behalf of the respondent nos.7 to 9, the allegations as made out by the writ petitioner in Paragraphs 12 to 14 and 16 have not been specifically denied which also tantamounts to admission of facts on the part of the respondent nos.7 to 10.

8. In course of his argument, learned Advocate appearing on behalf of the respondent no.3 also draws attention of this Court to the order impugned.

9. It is submitted on behalf of the respondent no.3 that in the internal page no.2 of the said impugned order, there is a factual finding of the Executive Officer

of the Contai Municipality that on account of family turmoil, the writ petitioner left her matrimonial home in the month of June, 2014 where the relevant S.S.K. was functional then as a result whereof, the said S.S.K. faced total closure and for which the students of the said S.S.K. had to suffer badly and subsequently they have been reorganized in the self-same S.S.K. by changing the geographical location of the said S.S.K. under supervision of another Sahayika viz; Sabana Begam.

10. It is further submitted on behalf of the respondent no.3 that the contention of the writ petitioner is self-contradictory which can be understood on comparative study of annexure P-8 and annexure P-12 (at page no.97 of the writ petition). It is submitted that in her subsequent representation dated 05.08.2016, the writ petitioner have never disclosed that she was not allowed to put her signature from July, 2014 to June, 2015. It is further submitted that in both the representations, there was no whisper with regard to the shifting of location of relevant S.S.K. on account of her absence.

11. Learned Advocate for the respondent nos.1,2 4, 5 and 6 and learned Advocate for the respondent no.7 to 10 while echoing the version of the learned

Advocate for the respondent no.3 submits before this Court that by no stretch of imagination it can be said that the order dated January 25, 2017 is a termination order. By handing over a photo copy of the enquiry report dated October 3, 2016 as prepared by Deputy Magistrate and Deputy Collector, Contai, it is submitted that prior to the issuance of the impugned order, an enquiry was also conducted by the said higher official of the Government of West Bengal who also find serious allegations as against the present petitioner which duly supports the order which is challenged before this Court.

12. On perusal of the entire materials as placed before this Court and after hearing the learned Advocate for the contending parties, it appears to this Court that the present writ petitioner was engaged to run a S.S.K. on the basis of an agreement and she joined on February 2, 2009. From the order under challenge it reveals that the writ petitioner has allegedly left the said S.S.K. sometimes in June, 2014. There is also no dispute that the petitioner had withdrawn her salary up to June, 2015. There is factual finding on the part of the Executive Officer, Contai Municipality that the writ petitioner remained absent in S.S.K. on and from August 1, 2014. There

are also factual findings with regard to her bad conduct and behavior in running the S.S.K. which is available in the report dated October 3, 2016 of the Deputy Magistrate and Deputy Collector.

13. Since the performance and conduct of the writ petitioner was found to be not satisfactory, the Executive Officer, Contai Municipality by its order dated January 25, 2017 decided not to renew the agreement with the writ petitioner. In considered view of this Court, since the writ petitioner was in engagement in the said S.S.K. on the basis of an agreement, it is the prerogative of her employer to renew or not to renew the agreement which is for a fixed term of one year, however renewable on the basis of performance of the incumbent.

14. This Court thus finds no reason to interfere with the decision impugned and, thus, the instant writ petition is dismissed.

15. There shall be no order as to costs.

16. Urgent photostat copy of this order if applied for be supplied for the parties subject to compliance with all requisite formalities.

(Partha Sarathi Sen, J.)