

10.12.2024
D.L.03
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 14546 of 2024

Chaitali Sarkar
Vs.
The State of West Bengal & Ors.

Mr. Gangadhar Das,
Mr. Tanmoy Chattopadhyay
.....for the petitioner.

Mr. Swapan Banerjee,
Mr. Dipanjan Datta,
Mr. Soukteya Ganguly
.....for the State.

The petitioner was engaged as Facilitator in the Positive Deviance Programme attached with the office of the District Magistrate, Uttar Dinajpur (Dist. ICDS Cell) purely on contractual basis for a period of one year at a consolidated pay of Rs.2,000/- only per month. The period on contract as stated in the engagement letter dated 1st March, 2006, annexed at page 24 of the writ petition, being Annexure - 'P-1' thereto also says that the contract may be extended subject to satisfactory performance as per the agreement to be signed by the petitioner. The petitioner was requested to join by 8th March, 2006.

It is the case of the petitioner that since then the petitioner has been continuously working in the subject project and till up to November, 2022 the monthly remuneration was paid as enhanced from

time to time. There was no separate engagement letter issued subsequent to the expiry of one year period as indicated in the engagement letter dated 1st March, 2006. However, two agreements, one for the initial period between 6th March, 2006 and 28th February, 2007 and another agreement dated 1st March, 2007, the tenure whereof was up to 28th February, 2008 were executed by and between the parties. After expiry of the agreement which was valid up to 28th February, 2008, the petitioner continued to work without any fresh engagement letter or agreement being executed between the parties. It is an admitted position that the petitioner worked till November, 2022 and has been paid the remuneration which stood enhanced from time to time.

On behalf of the State, it is urged that after November, 2022 the services of the petitioner was never availed, and as such, the question of paying any remuneration for any period subsequent to November, 2022 did not arise.

To rebut this contention, the petitioner had relied upon the photocopies of attendance register for the period from 1st December, 2022 till 30th April, 2024. By relying upon such document, the petitioner discharged her primary obligation that she was engaged even after November, 2022.

In this background, the State was directed to produce the original document including the attendance register, the photocopies whereof are annexed to the writ petition and relied upon by the petitioner to contend that even after November, 2022 the services of the petitioner was availed.

The State has produced the original register which records the attendance of the petitioner from 1st October, 2019. The register at the first page is certified to be the attendance register bearing containing page no.1 to 216.

On a perusal of the original register produced by the State, it appears that the signature of the petitioner appears up to 26th November, 2024 which is at page 62 of the said register.

On behalf of the State, it is submitted that on a perusal of the pages starting from page 1 up to page 38, the pages have been signed by a competent officer by inserting the date beneath it and putting the seal. It is further submitted on behalf of the State that the subsequent pages from 1st December, 2022 till 30th November, 2024 does not bear the signature of the competent officer. In absence of such certification it cannot be said that the petitioner had attended the office or her services were availed even after November, 2022. That apart and in any event, it is

contended by the State that the engagement was on daily basis, and as such, at the end of the month the register was countersigned to compute the number of days the petitioner had attended the job and payment was released commensurate to the same. It is also submitted by the State that the register is not an official register which was kept at the office, and as such endorsement of signature in support of attending the office can also or could have been put in by the petitioner very easily without even attending the job.

Referring to this disputed question of fact, it is argued on behalf of the State that the writ Court should not venture into such disputed question of facts to ascertain whether the petitioner had worked after November, 2022 and consequently as to whether the petitioner is entitled to any remuneration as claimed in the writ petition.

On behalf of the petitioner, in reply, it is submitted that the engagement letter clearly shows that the engagement of the petitioner was on contractual basis and not on daily basis. The petitioner has been paid monthly consolidated amount and not on daily basis. The order of concerned District Magistrate also clearly demonstrates that the petitioner was under

contractual employment and not employed on daily basis.

After hearing the parties and considering the materials on record including the register produced by the State, it is clear that the endorsement on the first page of the said register with seal and signature of the Child Development Project Officer, Hemtabad ICDS Project, Hemtabad, Uttar Dinajpur clearly shows that the same is the attendance register and maintained officially in usual course of business.

On a perusal of the different pages of the register, it is clear that the petitioner has signed on the dates when she apparently attended the office as the register even in the pages the authenticity whereof is admitted by the State is found to be absent on certain dates.

The contention of the State that the register was not an official one or was not maintained on usual course of business is, therefor, negated from the existence of the register, the parts whereof have been admitted by the State.

So far as the control of the attendance register is concerned, the argument made by the State is also not acceptable inasmuch as it was the responsibility of the authorized officer to keep the attendance register in his/her custody without placing the same

continuously in open space for anyone to come and make endorsement therein as contended by the State. The register from page 39 to page 62 also contains the signature of the petitioner on regular basis. There are dates when the signature of the petitioner is absent. The register shows that till 26th November, 2024 the petitioner had endorsed her signature. The register has been produced from the custody of the State, and as such it cannot be said that the same was either controlled by the petitioner or retained by the petitioner after putting her signature. The obvious presumption is that for the dates wherein the petitioner had endorsed the signature the petitioner had attended the office. The presumption is based on illustration (d) and (f) under Section 114 of the Indian Evidence Act, 1872 now illustration (d) and (f) under Section 119 of the Bharatiya Sakshya Adhiniyam, 2023 or principles analogous thereto. The absence of the signature of the competent authority in the pages 39 to 62 does not confirm that the petitioner did not attend the office or her services were not availed. No corroborative evidence has been produced from the side of the State. On the contrary, it may be the procedure of the competent authority to put his/her signature in the register when the remuneration of the petitioner was computed and paid.

There is no contemporaneous complaint or letter has been produced from the side of the State assuming without admitting that the petitioner had continued to put her signature on and from 1st December, 2022 till 26th November, 2024 in an unauthorized manner by giving access to the register. No complaint was ever lodged against the petitioner alleging trespass into the office, acceding to the official document and endorsing the signature.

The only complaint as submitted by the State has been made on 4th December, 2024, that is, subsequent to filing of the writ petition and subsequent to the order dated 7th October, 2024.

In absence of all these events which otherwise would have taken place considering the engagement to be in a public office where access to records are alleged to have been the normal procedure as contended by State, it has to be presumed that the petitioner attended the office up to 26th November, 2024 from 1st December, 2022. Although, the petitioner says that she is still continuing in service but in absence of any document being placed before the Court to conclude that the petitioner is still continuing, it will not be prudent for this Court to hold that the petitioner is still in continuous service.

In the aforesaid facts and circumstances, the respondents and each one of them are directed to pay the applicable remuneration to the petitioner for the period from 1st December, 2022 till 30th November, 2024 with all emoluments, if any, and deduction thereto.

So far as the period after 30th November, 2024 is concerned, this Court refrains from making any comment or observation as no material is available before this Court to either hold that the petitioner is in continuous service or the petitioner has been disengaged.

The payment of the petitioner's remuneration for the period from 1st December, 2022 till 30th November, 2024 should be made within 15th January, 2025, failing which interest will accrue on the entire amount @ 6% per annum from the date it remained unpaid.

All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court without insisting upon production of a certified copy thereof.

Nothing further remains to be adjudicated in this writ petition. The same is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Arindam Mukherjee, J.)