

09.04.2024
Item No.14
Court No.6.
S. De

M.A.T. 1265 of 2023
With
I.A. No. CAN/1/2023

Chandra Pratihar.
Vs.
The State of West Bengal & Ors.

Mr. Abhimanyu Banerjee,
...for the appellant.

Mr. Suddhadev Halder,
Ms. Richa Pramanik,
...for the Municipality.

By consent of the parties, the appeal and the connected application are taken up together for hearing.

A judgment and order dated June 21, 2023, whereby the writ petition of the appellant being WPA 28892 of 2017 was dismissed by a learned Judge of this Court, is the subject matter of challenge in this appeal at the instance of the writ petitioner.

The short case of the writ petitioner before the learned Single Judge was that she worked as a contractual employee in connection with a scheme which came to be known as National Urban Livelihood Mission (NULM). According to her, she was initially engaged vide letter dated March 5, 1999, with effect from March 15, 1999. After rendering service for a very long period of about eighteen years, suddenly,

without any prior notice, the authorities prevented her from discharging her duties with effect from November 2017. Her remuneration from June 2017 has also not been paid.

The learned Judge noted that two show-cause notices had been issued against the writ petitioner and she had replied to both the notices. She contended that these notices were motivated and contained false allegations. The learned Judge also noted that it was the writ petitioner's case that before termination of her service, she should have been granted an opportunity of hearing following the principles of natural justice.

On behalf of the Municipality it was argued before the learned Judge that the writ petitioner was a Project Worker who had been initially appointed purely on a temporary basis for a period of six months. According to the Municipality, there was no requirement of observing the principles of natural justice or initiating any disciplinary proceeding prior to discontinuing with her service.

The learned Judge dismissed the writ petition with the following observations :

“This Court on considering the nature of engagement made in favour of the petitioner finds that both the engagement letters dated 5th March, 1999 and 21st November, 2008 depicts

petitioner's engagement in connection with a project that too for a period of six months against a fixed remuneration on temporary basis. Petitioner may have rendered service for a considerable period of time but being project employee who was appointed initially for a period of six months against fixed remuneration; termination of service of such employee does not call for initiation of disciplinary proceeding.

This Court has also posed query to the learned advocate representing the petitioner whether there is any statutory prescriptions requiring the appointing authority to initiate disciplinary proceeding against the petitioner before termination. However, this Court does not get any satisfactory answer relating to existence of statutory prescriptions/rules.

In view of aforesaid scenario and in consideration of nature of engagement it appears same does not confer any enforceable right upon her requiring initiation of disciplinary proceeding before termination. Since no right is accrued in favour of the petitioner warranting

issuance of mandamus in order to protect her service this Court is not inclined to interfere with the steps taken by the concerned respondent authorities.”

Being aggrieved, the writ petitioner has come up by way of this appeal.

Various points have been sought to be argued on behalf of the appellant which are factual in nature. It has been contended that her service was never terminated. Under the relevant government orders she had and still has the right to continue till the age of sixty years. The accounts of the Municipality would show that even in the year 2020, the Municipality had received funds from the State Urban Development Authority (SUDA) on account of the writ petitioner's salary. This would clearly show that even till the end of 2020, the writ petitioner was in service. In any event, there is no dispute that she rendered service till June 2019. Her remuneration till that period cannot be withheld.

Learned advocate for the Municipality strongly disputes that the writ petitioner rendered service till June 2017. He however, fairly submits on instructions that though a termination letter dated June 24, 2019 appears to have been issued by the Municipality, there is nothing on record to show that the same was ever served on the appellant.

He however, submitted that the Municipality returned to SUDA the entire money that the Municipality received on account of salary/bonus of the writ petitioner/appellant. He also submitted that there were several complaints as against the appellant. That is why, a decision was taken not to continue with her service and terminate her service.

We have given our anxious consideration to the rival contentions of the parties. It cannot be disputed that the appellant was a contractual employee. Her service may have been governed by the relevant government orders. Such orders were issued only to give some certainty to the terms and conditions of service of contractual employees till regular rules and regulations were framed. A contractual employee, as is well known, has no vested right to continue in service after the contractual period of engagement is over. However, such an employee cannot also be driven out at the whims of the concerned authority.

In the present case, the Municipality admits that no termination notice was served on the appellant. Therefore, whether or not the appellant was entitled to continue in service is something to be decided. This would also involve certain factual issues, which the writ Court may not be well equipped to decide.

Accordingly, we are of the view that the appellant should ventilate her grievance before a

responsible officer in the administration who shall take an informed decision in accordance with law after hearing both the parties.

Accordingly, we grant liberty to the appellant/writ petitioner to make a detailed comprehensive representation to the respondent no.5 herein within a fortnight from date (April 23, 2024). If such a representation is made within the time period prescribed, the respondent no.5 shall take a reasoned decision thereon, in accordance with law and applicable rules and regulations, if any, within a period of eight weeks from the date of receipt of the representation, after granting opportunity of hearing to both the appellant and the Municipality. Depending on the decision, further action may be taken by the respondent no.5.

We make it clear that we have not adjudicated the merits of the appellant's case. The respondent no.5 shall take an independent unbiased decision in the matter.

The order under appeal is set aside.

It is clarified that the appellant will be at liberty to include her claim on account of arrear salary in the representation to be made to the respondent no.5.

MAT 1265 of 2023 is disposed of along with the application being I.A. No. CAN 1 of 2023.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)