

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Sujoy Paul

And

The Hon'ble Justice Smita Das De

FMA/435/2025

Chaitali Sarkar

Vs.

The State of West Bengal & Ors.

With

FMA/128/2025

State of West Bengal & Ors.

vs

Chaitali Sarkar

For the Appellant : Mr. Tanmoy Chattopadhyay

For the State : Mr. Dipanjan Datta, Ld. Sr. Govt. Adv.
: Mr. Sayan Datta

Reserved on : **06.08.2025**
Judgment on : **22.08.2025**

Smita Das De, J.:-

1. The instant appeal is preferred by the appellant in WPA No. 14546 of 2024 against an Order dated December 10, 2024 passed by the Learned Single Judge. The admitted facts between the parties are that the petitioner (being the appellant herein) joined as a facilitator vide Engagement letter dated March 6, 2006 in the Positive Deviance

Programme attached to the office of the District Magistrate, Uttar Dinajpur purely on contractual basis for a period of one year with a condition the term shall be extended by signing a further agreement subject to the satisfactory performance of the appellant.

- 2.** On August 30, 2006 the appellant was transferred to the Itahar ICDS Project with effect from September 1 ,2006 vide Memo No. 506/1(18)DPO(UD) issued by the Additional District Magistrate. Subsequent thereto, a further agreement was executed between the Registrar and the appellant on March 1, 2007 as per the similar terms of engagement mentioned in the earlier agreement dated March 6, 2006. No notice of termination was served upon the appellant while discharging the duties as a facilitator in the Positive Deviance Programme. Till November 2022 the appellant was remunerated per month in cash but subsequently the payment was enhanced and was credited directly to the appellant's bank account accordingly.
- 3.** On July 10, 2009 the District Programme Office (DPO) issued the transfer memo of the appellant to Hemtabad ICDS Office and accordingly assumed the charge on August 17, 2009. The DPO, ICDS granted a certificate to the appellant endorsing that the appellant has been in continuous service since March 6, 2006 till the date of signing of the certificate dated December 13, 2010. Thereafter on August 8, 2013 the DPO, ICDS by a Memo No. 474 ordered the appellant to perform the roster duty during the Puja Holidays falling

in the year 2013. On December 16, 2014 the CDPO, ICDS, Hemtabad informed in writing to the DPO, ICDS, Uttar Dinajpur with regard to the details of the appellant being engaged in the programme of PD. On July 5, 2016 the Office of the CDPO, ICDS, Project, Hemtabad received an application dated June 17, 2016 from the appellant and granted her maternity child care leave. Subsequently the appellant was allowed to resume her job as per her joining letter issued on October 5, 2016.

4. The appellant made various representations on various dates before the CDPO, Hemtabad ICDS, Project, for the reason as to why the appellant's salary was abruptly stopped not being credited on and from December 2022. A further reminder was given to the DM, Uttar Dinajpur on two occasions but the same remained unconsidered. Thereafter the DPO, Uttar Dinajpur vide Memo No. 84/DPO/UD passed a reasoned order thereby rejecting the appellant's prayer with an observation that the salary was stopped due to un-availability of funds.
5. Being aggrieved, by the decision taken by the DPO, ICDS, the appellant filed a Writ Petition being WPA No. 23981 of 2023, challenging inter alia, the reasons of stopping the payment of salary since December 2022. The matter was heard and disposed of by an order dated October 17, 2023 directing inter alia, the District Magistrate, or any other authority delegated by him, including the

DPO, to consider the representation within eight weeks from date upon giving a personal hearing and shall pass a reasoned order and communicate the same to the appellant within two weeks thereof. In pursuance of the order passed by this Hon'ble Court, the Finance Department by a Memo dated July 15, 2019 was directed to consider the representation of the appellant with certain other consequential reliefs. In the meantime the typographical mistakes which had crept in the Order dated October 17, 2023 was subsequently corrected by an Order dated December 11, 2023 keeping the other parts of the Order dated October 17, 2023 unaltered.

- 6.** Thereafter, the Block facilitator, Hemtabad ICDS Project communicated the said order to the District Magistrate for taking necessary steps and in pursuance of the order passed by this Hon'ble Court, a Notice dated January 16, 2024 was issued to the appellant, fixing the personal hearing with the original documents on January 22, 2024.
- 7.** The appellant further being aggrieved by the order of the concerned officer filed a Writ Petition being No. 14546 of 2024 and the same was heard on May 28, 2024 and the matter was adjourned and subsequently the matter was taken up for effective consideration again on July 10, 2024 and the prayer for interim relief was refused, holding inter alia, that the preliminary issue of maintainability was kept open and the state respondents were directed to file a report in

the form of an affidavit dealing with the principle grievances of the appellant. The matter was finally taken up for hearing, wherein, this Hon'ble Court was pleased to direct the respondents to pay the applicable remuneration to the appellant for the period from December 1 ,2022 to November 30 ,2024 with all emoluments, if any and deductions thereto. However, for the period after November 30, 2024 the Learned Single Judge refrained from making any observation with regard to continuity of the service of the appellant, since no materials were available on record to show whether the appellant was in continuous service or was disengaged. Being aggrieved by such observation the appellant preferred this instant appeal.

8. Against the backdrop of the instant case the issues which arises are as follows:

- i) Whether the appellant at all in the factual context of the case be considered to have rendered continuous service since December 2022 in absence of any documents to support the continuous service from 2022 till date.
- ii) Whether the order of the learned Single Judge can be modified to the extent, by altering the period of continuous service as prayed for by the appellant.

- 9.** The Learned counsel for the appellant , submits that the service of the appellant was continuously utilized by the state respondents and the enhancement of the monthly remuneration since 2011 had also been admitted by the state respondents. It was further contended that without assigning any reason the state respondents had abruptly stopped paying the salary since 2022 despite the fact that the service of the appellant was utilized in terms of the contract entered between the appellant and the District Magistrate. It is an admitted fact that the appellant is a contractual employee and not on daily basis. The appellant was all along being paid monthly consolidated amount and not on daily basis. There was no separate engagement letter issued subsequent to the expiry of one year period as per the letter dated March 1, 2006.
- 10.** It was submitted on behalf of the appellant that there were two agreements, one for the initial period between March 6, 2006 and February 28, 2007 and another agreement dated March 1, 2007 upto February 28, 2008 which were being executed by and between the parties. After the expiry of the agreement which was valid upto February 28, 2008, it has been submitted that the appellant continued to work without any fresh engagement letter or agreement executed between the parties. Since it was an admitted position that the appellant worked till November 2022 and has been paid the remuneration which has been enhanced time to time by the

authorities concerned which amply proves that even after 2022 in absence of any such agreement, the appellant continued to be in service.

11. Since there was a change in the policy for making payment to the appellant from one head to the other head, the appellant remained unpaid due to non-availability of funds under the head which was prevailing at that relevant point of time. The Memorandum of Finance Department dated July 15, 2019 which he referred and/or mentioned in the order of the District Magistrate was not applicable in the case of the appellant. Inadvertently, the Memo under reference was mentioned in the letter referred to the District Magistrate, therefore, the District Magistrate considering the issue in the context of the Memo dated July 15 ,2019 was pleased to arrive at a finding that the said Memo applied to those employees who were redeployed to their entities or organization. The Memo which is applicable in respect of the appellant's case is the Memo dated September 16, 2011 being Memo No. 9008F (P) dated 16.09.2011.

12. It was further submitted that after rendering a continuous service for more than 10 years, the question of application of the Memo of 2019 by no stretch of imagination is applicable in the case of the appellant. It is further submitted that non-payment of the salary dues after November 2022 due to non-availability of the funds is unsustainable in the eye of law since it is no longer *res integra* that unavailability of

fund cannot be a valid ground to deny salary to its employees of the State being the model employer. It is a trite law that the issue of 'non-consideration of the correct Memo' for establishing the factum of continuity of service cannot be a ground to deprive the appellant from getting her legitimate claim and such action of the authority runs contrary to the principles of natural justice.

13. The appellant relied upon the xerox copies of the attendance registers for the period running from December 1, 2022 till April 30, 2024 in order to establish the fact that the appellant discharged her primary obligations of being engaged and remained in service even after November 2022.
14. The appellant relies upon two judgments namely **WPST 78 of 2024** in the case of **Rabindranath Pramanik Vs. The State of West Bengal** passed by the Coordinate Bench of this Hon'ble Court which is distinguishable both in fact as well as in law since the case pertains to the benefit of the Finance Department's Memo No. 9008FP dated September 16, 2011 wherein the appellant's engagement was not made against any sanctioned post as required under the said Memo. In the instant case the appellant failed to draw any inference before the authorities concerned to consider the correct Memo in question. Moreover, the appellant did not bring to the notice of the Hon'ble Court with regard to the issue of referring the applicability of an incorrect Memo for not falling within the purview of

the same. Therefore, the question of the applicability of a Memo which was never an issue to be considered before this Hon'ble Court, cannot become an issue to be considered by the competent authority for releasing the arrears for the period in question. The Learned Counsel also relied upon another judgment of the Hon'ble Supreme Court reported in **2024 INSC 1034** arising out of **SLP(C) 5580 of 2024** in the case of **Jaggo Vs. Union of India & Others**. The appellant relied upon paragraph 26 of the said judgment to establish that the fair and stable employment is imperative for the Government department in cases of engaging workers on a temporary basis for the extended period.

15. Per contra, the state respondents strenuously argued that services of the appellant was never availed of after November 2024, therefore, the question of paying any remuneration for any period subsequent thereto does not arise. As it appears from the original records that the attendance of the appellant appears to be from October 1, 2019 and the signatures of the appellant appears upto November 26, 2024, showing that she was continuing her service but the same was disputed by the authority concerned, since, the pages from December 1, 2022 till November 30, 2024 does not bear the signature of the competent officer. Therefore in absence of any certification by the authority concerned it becomes difficult to prove that the appellant attended the office and/or services had been utilized by the State

respondents could not be established from the available records. The question of applicability of a memo which was not in the context of the appellant's case was never urged or referred at the time of hearing before this Hon'ble Court. It is imperative on the appellant to establish the issue of continuity to be in service after November 24.

- 16.** In conspectus of the above, it appears that although the appellant urged that her service had been utilized by the Department concerned, but no such relevant documents could be produced in order to substantiate the same. However, the appellant made an attempt by drawing the attention towards a Memo which was inadvertently referred to by the appellant for proving her bonafide for rendering service till date, but remained uncontroverted by not challenging the same before any court of law. The records based on by the appellant to establish the fact that the appellant remained to be in service by rendering uninterrupted continuous service from December 1, 2022 upto November 26, 2024 is the moot question to be decided for making payment even after November 30, 2024 as claimed by the appellant. The Learned Single Judge had already taken care of the issue by directing the authority to make payment to the appellant for the period December 1, 2022 till November 30, 2024. Since the appellant could not produce any such documents of her entitlement from November 30, 2024 till date therefore the question whether the appellant was disengaged or continued to

remain in service could not be arrived at. In view of such, we do not find that any interference is warranted in the order passed by the Learned Single Judge. The Learned Single Judge has rightly granted relief to the appellant for the period from December 1, 2022 to November 30, 2024 and the remaining periods cannot be taken into consideration due to the absence of certification from the competent authority. We therefore uphold the order passed by the Learned Single Judge and dismissed the appeal accordingly.

17. The cross appeal filed by the State of West Bengal challenges inter alia the direction towards payment of applicable remuneration of the respondent for the period from December 1, 2022 till November 30, 2024.
18. In view of the observation made in the FMA 435 of 2025, the issue involved in the instant appeal stands vitiated and is dismissed accordingly.
19. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.

I agree

(Sujoy Paul, J)

(Smita Das De, J.)