

01.05.2025
Sl. No.43(DL)
Ct. No.39
srm/Mithun

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. No. 14274 of 2024

Masidur Rahman

Versus

The State of West Bengal & Ors.

Mr. Gangadhar Das,
Mr. Tanmoy Chattopadhyay,
Ms. Shreya Banerjee

...for the Petitioner.

Mr. Jayanta Samanta,
Mr. Supriya Majumder

...for the State-respondents.

This writ petition has been filed for setting aside and/or cancelling the order directing for termination of service of the petitioner issued vide letter under Memo No.176(A)/13-Comp/R-II dated 10th March, 2022 of the respondent No.4, Additional District Magistrate (General) & Additional District Program Co-ordinator, MGNREGS, Malda as well as order of termination issued vide letter under Memo No.591/R-II dated 16th March, 2022 of respondent no.8, Programme Officer, MGNREGS & Block Development Officer, Ratua-II, Malda.

The petitioner contends that he was appointed by the competent authority to the post of Village Level Entrepreneur (*in short VLE*) of Sirpur-II Gram Panchayat under Ratua-II Panchayat Samiti, Malda in the year 2009 under Mahatma Gandhi National Rural Employment Guaranteed Scheme (*in short MGNREGS*).

The petitioner performed his duties sincerely and diligently to the satisfaction of the authorities. However, while discharging his duties as VLE of the said Sirpur-II Gram Panchayat the petitioner was all on a sudden served with a notice of show cause *vide* Memo No.71/R-II dated 14th January, 2022 by respondent No.8, Block Development Officer, Ratua-II Development Block on the ground of lapses on his duty assigned for execution of certain MGNREG Scheme. On 17th January, 2022, the petitioner duly replied to the aforesaid show cause notice. However, the respondent No.4, Additional District Magistrate (General) & Additional District Program Co-ordinator, MGNREGS, Malda directed the respondent no.8, Programme Officer, MGNREGS & Block Development Officer, Ratua-II, Malda to terminate the service of the petitioner *vide* Memo No.176(A)/13-Comp/R-II dated 10th March, 2022 without considering any aspect of delinquency or non-compliance on the part of the petitioner. Accordingly, the respondent no.8, Programme Officer, MGNREGS & Block Development Officer, Ratua-II, Malda terminated the service of the petitioner vide Memo No.591/R-II dated 16th March, 2022. Being aggrieved by and dissatisfied with the aforesaid action of respondent authorities, the petitioner has preferred this writ petition for setting aside of the aforesaid letters issued for termination of service of the petitioner.

Mr. Tanmoy Chattopadhyay, learned Advocate for the petitioner submits that the petitioner joined as VLE on contractual basis and discharged his functions satisfactorily. However, the service of the petitioner was terminated on 16th March, 2022 without being heard. The Department of Panchayat and Rural Development *vide* notification under Memo No.4595-PN/O/I/35-19/14 dated 29th September, 2014 has laid down the guidelines in the matter of termination/continuation of contract of all contractually engaged personnel under the MGNREGS. The authorities while terminating the service of petitioner has not adhered to the rules laid down *vide* the aforesaid notification of giving opportunity of hearing which is arbitrary and illegal. The action of the respondent authorities is violative of the natural justice and victimisation of the petitioner. He seeks that the impugned letters of respondent nos.4 and 8 terminating the service of the petitioner be set aside and the petitioner be reinstated to his post and direction be issued upon the respondent authorities for entitling the petitioner to draw regular wages as well as back wages. To buttress his contention he relies on the following decisions:

- (1) ***Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalaya (D.ED.) & Ors.*** reported in **2013 (10) SCC 324**,

- (2) ***Dinabandhu Rai versus State of West Bengal & Ors.*** reported in **2019 SCC OnLine Cal 1000** and
- (3) ***Sk. Abdul Ahad Ali versus State of West Bengal & Ors.*** reported in **2024 SCC OnLine Cal 9254.**

Further the abrupt termination of the service of petitioner without following the procedure and guidelines laid down in the notification is violative of fundamental principles of the natural justice and he relies on the decision of Hon'ble Supreme Court passed in ***Jaggo versus Union of India & Ors.*** reported in **2024 INSC 1034.**

On the contrary, Mr. Jayanta Samanta, learned Advocate for the State submits as follows.

The writ petition is not maintainable in the eye of law since the issue raised by the petitioner cannot be brought within the fold of Article 226 of the Constitution of India as the service of the petitioner is purely contractual in nature and no subsisting legal and enforceable right is in favour of the petitioner. To buttress his contention, he relies on the decision of this Court passed in ***Nurjahan Khatun versus State of West Bengal*** reported in **2019 SCC OnLine Cal 9241.**

There has been unexplained delay in filing of the writ petition and therefore the writ petition should be dismissed *in limine*. In support of his contention, he

relies on the decision of this Court passed in ***Joydip Mondal versus Kolkata Municipal Corporation*** reported in ***2023 SCC OnLine Cal 1032***.

The State has applied the guidelines framed by the authority to certain extent, save and except clause 5, dealing with supply of article of charges to the delinquent which has not been complied with. Therefore, it cannot be said that the State has not complied with the guidelines at all.

Relying to the decision of the Hon'ble Supreme Court passed in ***Adani Power (Mundra) Limited versus Gujarat Electricity Regulatory Commission & Ors.*** reported in ***(2019)19 SCC 9***, he submits that documents are to be read as a whole.

He also indicates that the back wages were directed to be paid in *Sk. Abdul Ahad Ali (supra)* since the Court found that there was no sufficient compliance of natural justice which is distinguishable to the facts of the present case.

It is settled that principles of natural justice must not be stretched too far. The principles of natural justice are not inflexible and may differ in different circumstances. Rules of natural justices cannot remain the same applying to all conditions.

Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form features and the fundamentals of

such essential processual propriety being conditioned by the facts and circumstances of each situation. No breach of natural justice can be complained of. Unnatural expansion of natural justice without reference to the administrative realities and other factors of a given case, can be exasperating. One can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt that is the conscience of the matter.

In the facts and circumstances of this case, there is no such palpable violation of principles of natural justice. In support of his contention, he relies on the following decisions of the Hon'ble Supreme Court:

- (1) ***Chairman, Board of Mining Examination and Chief Inspector of Mines & Anr. versus Ramjee*** reported in **(1977) 2 SCC 256**,
- (2) ***Shiv Sagar Tiwari versus Unjion of India & Ors.*** reported in **(1997)1 SCC 444** and
- (3) ***Secretary/Correspondent, St. John's College & Anr. versus Dr S. Wilson & Ors.*** reported in **(2020)18 SCC 752**.

The employee is entitled to assess the suitability of an appointee and has a right to terminate the services if the services are found to be unsatisfactory. Since the service of the petitioner is found to have certain lapses on his part, the authorities have right to

terminate him. In support of his submission, he relies on the decision of this Court passed in ***Dr. Kausik Paul versus Seacom Skills University and Others*** reported in ***2022 SCC OnLine Cal 523***.

In light the above, he submits that the petitioner is not entitled to back wages, however, the authority be directed to proceed in terms of the guidelines of the notification.

Having heard learned Advocates for the respective parties, the only issue which falls for consideration is whether the termination of the service of petitioner from the post of VLE is done in accordance with existing Rules.

In order to examine the aforesaid issue, it would be profitable to reproduce the relevant guidelines issued by Panchayat & Rural Development Department, Government of West Bengal (Annexure P7) at page 26 of the writ petition:

“Memo No.4595-PN/O/I/35-19/14. Dated 29.09.2014

From : Dibyendu Sarkar
Commissioner MGNREGA

To: The Principal Secretary, GTA
The District Magistrate & District Programme
Coordinator (All Districts)
The Additional Executive Officer, Siliguri,
Mahakuma Parishad.

Sub: Guidelines in the matter of termination/continuation of contract of all contractually engaged personnel under the MGNREGA.

Madam/Sir,

Whereas the issue of indiscriminate termination of the contractually engaged personnel under MGNREGA set up in the State by the respective authority creating an adverse impact on the job security of the personnel was one of the issue raised by the petitioners in W.P.No.5076(W) of 2014 filed by the Block Social Audit Coordinator, Junior Programme Officer, Programme Officer (SA & G), Programme Manager (Accounts), PM (MIS), it has been decided to issue a comprehensive set of guidelines in the matter of

termination/continuation of contracts of all contractually engaged personnel under the MGNREGA set up at different level.

- 1) *The proceeding of termination will be initiated by the appointing authority only.*
- 2) *The employee concerned will be issued a show-cause notice clearly specifying the charges.*
- 3) *The employee will be given an opportunity to submit written reply within seven working days of receipt of such show-cause notice.*
- 4) *If the Appointing Authority is satisfied with such reply, she/he will drop the proceeding with intimation to the employee concerned.*
- 5) *If the Appointing Authority is not satisfied with such reply, he will serve the Article of Charges with supporting documents fixing date of hearing (giving 15 days time) where the employee will be heard. He will also be allowed to submit a written reply to the Article of Charges.*
- 6) *Thereafter, the Appointing Authority shall communicate its reasoned order of termination or dropping of charges in writing.*
- 7) *If the Employee likes to appeal against the order of termination, he has to appeal to District Magistrate against the order, where BDO/SDO is Appointing Authority, to Commissioner MGNREGA, where the District Magistrate is the Appointing Authority and to Principal Secretary Panchayats and Rural Development Department where Commissioner is appointing authority. The appeal shall have to be filed within 15 days of receipt of the order of termination.*
- 8) *Appellate Authority will dispose of the petition within one month of receipt of such appeal petition.*
- 9) *The order of the Appellate Authority will be final.*
- 10) *This procedure is applicable for termination within the period of a live contract.*
- 11) *In case of yearly renewal of contract, the renewal will generally be ordered unless there are specific grounds for non-renewal. In such cases, the Appointing Authority should serve the employee with a Dossier of grounds for non-renewal.*
- 12) *Once the Dossier is received, the employee will be given an opportunity of being heard and also submitting written representation.*
- 13) *Once the hearing is concluded and the written representation is examined, the Appointing Authority shall issue a reasoned order specifying continuation non-renewal of the contract.*
- 14) *The reasoned order of the said proceeding, in case of non-renewal of contract after completion of the period of the existing contract will be final and there will be no scope of appeal in such cases."*

Admittedly, show-cause notice was issued to the petitioner against which reply has been submitted by the petitioner. Be that as it may, clause 5 of the aforesaid guidelines clearly lays down that if the appointing authority is not satisfied with such reply, it will serve Article of Charges and supporting documents fixing date of hearing (giving 15 days of time) where the

employee will be heard. He will also be allowed to submit a written reply to the Article of Charges. Admittedly, no such Article of charges and supportive documents have been served upon the petitioner fixing a date of hearing and as such there is clear infraction of the Clause 5 of the guidelines of the notification. Therefore, there is illegality and arbitrariness in exercise of power by the authority on the face of it. Referring to *Nurjahan Khatun (supra)* the State contends that the issue raised in the writ petition cannot come within the fold of Article 226 of the Constitution of India since the engagement of the petitioner was purely contractual. In the aforesaid decision the Court observes that unless any palpable illegality or perversity or arbitrariness or *mala fide* exercise of power and/or authority can be clearly shown from fact of the records of the particular case by the writ petitioner any issue arising out of or centring around engagement of an ASHA karmee/worker which is purely contractual in nature does not have the trappings or rigours of public service *per se* cannot be subject matter for adjudication by a Court exercising writ jurisdiction under Article 226 of the Constitution of India. Bearing in mind the aforesaid proposition, since it is found that clause 5 of the guidelines has not been followed and there is illegality and arbitrariness on the part of respondent authorities, the writ petition is very much maintainable under Article 226 of the

Constitution of India. Further as the guidelines laid down by the department while terminating the service of the petitioner has not been adhered to it suggests there is violation of the principles of natural justice, since the petitioner was not given opportunity of hearing as envisaged under the rule.

Mr. Samanta, learned Advocate for the State relying on *Chairman, Board of Mining Examination and Chief Inspector of Mines (supra)*, *Shiv Sagar Tiwari (supra)* and *Secretary/Correspondent, St. John's College (supra)* has tried to impress upon the Court that principles of natural justice should not be stretched too far and it varies from case to case. The principles of natural justice has not been violated in the present case since show-cause has been issued to the petitioner and he has also given a reply. Upon going through the aforesaid decisions of Hon'ble Supreme Court as cited it is found that factually those are distinguishable from the case at hand.

It has been strenuously argued on behalf of the State relying on a decision of this Court in *Dr. Kausik Paul (supra)* that the employer has a right to terminate the services of an employee, if it is found to be unsatisfactory. There may not be any quarrel with regard to the above proposition but the termination of an employee by an employer has to be made in accordance with the existing rules and not otherwise.

Relying on *Joydip Mondal (supra)*, the State argues that the writ petition should be dismissed for unexplained delay. Previously, on the self-same cause of action, a writ petition being no. 9629 of 2022 was filed by the petitioner which was subsequently withdrawn on the ground of incurable defects and liberty was granted by the Court to file afresh on the self-same cause of action. Thus the argument of the State as above falls short of merit.

In light of the above decision, the order directing for termination of service of the petitioner issued vide letter under Memo No.176(A)/13-Comp/R-II dated 10th March, 2022 of the respondent No.4, Additional District Magistrate (General) & Additional District Program Co-ordinator, MGNREGS, Malda as well as order of termination issued vide letter under Memo No.591/R-II dated 16th March, 2022 of respondent no.8, Programme Officer, MGNREGS & Block Development Officer, Ratua-II, Malda is hereby set aside.

The respondent authorities are granted liberty to initiate proceedings in terms of the guidelines dated 29th September, 2014 of the Panchayat & Rural Department within a period of six weeks from date of communication of this order. In the meantime, the petitioner shall be entitled to draw regular wages from office of the respondent authorities.

Now, with regard to the entitlement of back wages, learned Advocate for the State has harped much on the point that since there was no violation of principles of natural justice, hence the question of payment of back wages does not arise.

At the outset, from the above discussion, it has already been held that there is clear violation of principles of natural justice in not adhering to the guidelines.

At this stage, it would be apposite to reproduce relevant paragraph in *Deepali Gundu Surwase (supra)* which is as follows:-

“38.5 The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer’s obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.”

In *Sk. Abdul Ahad Ali (supra)*, a Co-ordinate Bench of this Court held the petitioner to be entitled to back wages since there was no sufficient compliance of principles of natural justice.

Bearing in mind the proposition laid down by the Hon’ble Supreme Court as well as this Court in *Sk. Abdul Ahad Ali (supra)*, the petitioner is also entitled to back wages.

The petitioner is directed to communicate this order to respondent No.4, Additional District Magistrate (General) & Additional District Program Coordinator, MGNREGS, Malda and respondent no.8, Programme Officer, MGNREGS & Block Development Officer, Ratua-II, Malda.

With the aforesaid directions, the writ petition being **WPA 14274 of 2024** stands disposed of.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

There shall be no order as to costs.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent Photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)