

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

**Present:
THE HON'BLE JUSTICE JAY SENGUPTA**

WPA 24527 of 2023

Johoraton Nesha

Vs.

The State of West Bengal & Ors.

For the petitioner	: Mr. Sabnam Majumder Ms. Kalpita Paul
For the State	: Mr. Supriyo Chattopadhyay Mr. Pinaki Bhattacharyya
For the Mission Director	: Md. Sarwar Jahan Ms. Mousumi Mitra Ms. Tapati Sarkar
Heard on	: 20.03.2025
Judgment on	: 20.03.2025

JAY SENGUPTA, J:

This is an application challenging the order dated 19.04.2023 being Memo No. 499/1(7)-SE-)(Law)P1/5S-58/2023 issued by the Principal Secretary, School Education Department, Government of West Bengal and for a direction upon the respondent authorities to allow the petitioner to join

and continue with her service as Sahayika at the Bandhpara Sishu Siksha Kendra, Malior-I Gram Panchayat, Harischandrapur-II Block, Malda.

Learned counsel appearing on behalf of the petitioner submits as follows. The writ petitioner had passed High Madrasah Examination in the year 1986 and as per her birth date appearing in the admit card she had adequate qualification to join as Sahayika at the Sishhu Siksha Kendra. After establishment of Sishu Siksha Kendra selection process was initiated where the petitioner participated and as per qualification of the writ petitioner, she was appointed as first Sahayika by virtue of an appointment letter dated 24.04.2005 issued by the President of the Managing Committee of the Sishu Siksha Kendra. The writ petitioner joined on 02.05.2005. At that time, the service of the writ petitioner was contractual in nature and every year fresh contracts were issued in favour of the petitioner. Her service continued up to the date of her termination i.e., on 01.11.2010. Initially, when the writ petitioner was appointment i.e., on 24.04.2005, the husband of the writ petitioner was one of the members of the Managing Committee of the Sishu Siksha Kendra, but as the writ petitioner participated in the selection process, the husband did not incorporate himself in the selection committee. The husband subsequently resigned from the Managing Committee and it was accepted by the Managing Committee vide resolution dated 03.05.2005. Subsequently, in the years between 2006 and 2011 when fresh contracts were issued, the husband of the writ petitioner was not a member of the Managing Committee. In 2010, one Sish Mohammad lodged a written complaint against the petitioner with

an allegation that when the petitioner was appointed, her husband was a member of the Managing Committee. The concerned BDO directed the petitioner to appear for hearing on 07.06.2010 when the writ petitioner attended with relevant documents. Finally, the Mission Director by a letter dated 16.09.2010 informed the District Nodal Officer, Malda that the engagement of the writ petitioner was illegal and violative of a Government Order. Pursuant to the said letter, the service of the writ petitioner was terminated by the Managing Committee by the letter dated 01.11.2010. This was in complete violation of Memo No. 2849/PN/0/1/0-6/2003 dated 26.06.2009 issued by the Principal Secretary, Panchayats and Rural Development, Government of West Bengal whereby a procedure for removal of a Sahayika from a Sishu Siksha Kendra was laid down. Subsequently, the order of termination was challenged before this Court and the Division Bench while deciding the appeal being MAT 1576 of 2019 directed the Principal Secretary to take a reasoned decision in accordance with law on the applicability of the Government Order dated 23.04.2010. The Principal Secretary passed an order dated 19.04.2023 whereby the prayer of the writ petitioner was rejected on two-fold grounds - first, the appointment of the petitioner was illegal as the husband of the writ petitioner was a member of the Managing Committee at the relevant time and secondly, the service of the writ petitioner was not considered as satisfactory or not by the respondent authorities.

Learned counsel appearing on behalf of the Mission Director denies the allegations and submits that the initial engagement of the petitioner was

indeed bad in view of the fact that her husband was a member of the Managing Committee of the SSK. However, by the time the termination came, a Government Order had been issued ensuring service up to 65 years.

The impugned order does not appear to have dealt with the question of law whether the procedure laid down for termination of a contract of a Sahayika as per order dated 26.06.2009 was followed or not.

The Principal Secretary seems to have only considered whether the petitioner could have been appointed initially as a Sahayika when her husband was a member of the Managing Committee and whether her performance was shown as satisfactory.

It also appears from the order of the Division Bench that it was of the view that the petitioner was entitled to claim consideration under Memo dated 23rd April, 2020, since it was not disputed before this Court that the appellant/writ petitioner continued to be in service as Sahayika till September 2010, without any objection from any of the parties and admittedly during the period when the last contract was subsisting that is May 1, 2009 to April 30, 2010, the G.O. dated 23rd April, 2010 had come into effect.

These issues have also not been properly taken into consideration by the concerned authority.

In view of the above, the impugned order passed by the Principal Secretary, is set aside and the matter is remanded back to the Principal Secretary for deciding the matter afresh in accordance with law and as

expeditiously as possible, preferably within ten weeks from the date of communication of this order.

With these observations, the writ petition is disposed of.

Urgent photostat certified copy of this judgment may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J)