

05.05.2025
Item No.04
Ct. No.1
RP/SM

F.M.A. 237 of 2024
with
I.A.No. CAN 1 of 2024

JAYANTA PATHAK
VS.
STATE OF WEST BENGAL AND ORS.

Ms. Payel Shome, Adv.
Mr. Saikat Mallick, Adv.

...for the Appellant.

Mr. Arjun Roy Mukherjee, Adv.
Ms. Tuli Sinha, Adv.

...for the State.

Mr. Suman Sengupta, Sr. Adv.
Mr. Anand Farmania, Adv.

...For the Respondent No.6.

1. This intra-court appeal is directed against the order dated 28th July, 2023, passed in WPA 12079 of 2019. The writ petition was filed challenging a memo issued to the appellant/writ petitioner dated 4th April, 2018, issued by the Chief Medical Officer of Health, Government of West Bengal, Purba Bardhaman. By the said communication the service of the appellant, who was appointed and serving as Laboratory Technician, was terminated with effect from 5th April, 2018. Initially the appellant approached the West Bengal State Administrative Tribunal by way of filing O.A. No.525 of 2018, which was dismissed on the ground that it was not maintainable before the learned tribunal giving liberty to the appellant to move before the appropriate forum for ventilating his grievance. Therefore, the appellant approached this court and filed the writ petition challenging the order of termination. The learned Single

Bench by the impugned order dismissed the writ petition and aggrieved by the same the present appeal has been filed.

2. We have heard the learned advocates for the parties.
3. The appellant had undergone a Diploma in Medical Lab Technology course from Indian Medical Association with its headquarter in New Delhi. The course was conducted by the Society for the School of Medical Technology, Kolkata, which is recognised by the Government of West Bengal, Department of Health and Family Welfare having registration number HF/0/MS/252/4C-04/2002 under Clinical Establishment Act, 2003. From the statement of marks it is seen that the appellant scored an aggregate of 40% in all the practical and theory papers and successfully completed the course. The statement of marks was duly signed by the Dean, Para-Medical Course, IMA, Chief Coordinator, Para-Medical Courses, IMA and on behalf of Indian Medical Association (Headquarter) New Delhi. A diploma certificate was also issued to the appellant which was signed by all the above-mentioned officials as well as the Honorary Secretary General, Indian Medical Association, New Delhi. A diploma secured by the appellant on 18th November, 2017. The respondent, namely, the Chief Medical Officer of Health, District Health and Family Welfare Samity, Purba Bardhaman, issued a notification dated 13th July, 2017, for recruitment of Lab Technician purely on contractual engagement under WBSAP & CS,

Purba Bardhaman and one of the posts was being the post of Lab Technician. The total number of vacancies was three. Out of three, two posts were for unreserved candidate and one for Scheduled Caste on monthly consolidated remuneration of Rs.13,000/-. The eligibility criteria contained in the notification states that a degree in Medical Laboratory Technology (MLT) or a diploma in Medical Laboratory Technology (DMLT) and the candidate should have completed 10+2 before obtaining the degree or diploma. The degree or diploma should be from a university or institution recognised by the Central Government or State Government. The candidate should be registered with the concerned Para-Medical Council, if applicable and he/she should possess knowledge of Computer. The appellant applied for the said contractual post and upon scrutinizing all the credentials of the appellant and being satisfied with the same, an admit card was issued for the written test, computer test and interview for recruitment to the post of Lab Technician. The written examination was held on 17th November, 2017, the Computer test was conducted on 23rd November, 2017 and Interview was held on 24th November, 2017. The appellant was found to possess requisite qualification and was selected and an order to the said effect on 8th January, 2018, was issued by which the appellant was posted as Blood Bank Lab Technician at Katwa Sadar Hospital. The appellant joined the said post on the very same post on 9th January, 2018 and the

joining report was duly endorsed by all the authorities. The Superintendent, Katwa S.D. Hospital, Purba Bardhaman had issued a certificate certifying that the appellant was working at Hemraj Blood Bank, Katwa S.D. Hospital, Purba Bardhaman as Laboratory Technician from 1st April, 2013, till the issuance of the said certificate and his performance at Katwa S.D. Hospital, Purba Bardhaman was excellent and very much satisfactory. He was well-behaved and obedient and wished him all success in life. After a considerable period of time there appears to be a communication sent by the Secretary of the State Medical Faculty of West Bengal to one Saptarshi Ghosh, Human Resource Officer, Department of Health and Family Welfare, West Bengal State Aids Prevention and Control Society, Kolkata-799091. In the reference column the names of three institutions have been mentioned, (1) Council For Advancement of Medicines in Alternative Process (2) I.C.O.P.M.S., West Bengal and (3) Indian Medical Association. The said communication states that none of the aforesaid three institutes have ever been affiliated by the State Medical Faculty of West Bengal nor have the diploma certificate in DMLT (Tech) course as issued to different candidates by this institute been endorsed by this faculty at any time. This appears to have been the basis of issuance of termination dated 4th April, 2018.

4. In our considered view, the letter of termination is flawed and unsustainable in law for several reasons. Firstly, the

appellant was not afforded any opportunity by way of issuing show-cause notice. Secondly, the appellant was not furnished the copy of the communication sent by the State Medical Faculty of West Bengal. Thirdly, the Society which appears to be the basis of termination of his employment. Thus, it will clearly show that the order of termination is in violation of principle of natural justice and illegal. The fourth aspect is that the letter sent by the State Medical Faculty of West Bengal that the Indian Medical Association is not affiliated by the State Medical Faculty of West Bengal, this is not a requirement for being eligible to apply for the Laboratory Technician post as the degree or diploma should be from university or institution recognised by the Central Government or the State Government. Prima facie it is clear from the certificate that the institution is recognised by the Government of West Bengal, department of Health and Family Welfare. Apart from that, the Association has its head office in New Delhi. Therefore, the communication from the State Medical Faculty of West Bengal could not have been the basis for termination of the appellant's employment and lastly, the appellant had been working on daily wage basis from 1st April, 2013 and found to be fit and excellent in discharging all his duties and his behavior was also certified to be good by the Superintendent of Katwa S.D. Hospital. Thus, for all the reasons aforesaid, we are of the view that the order of termination of the appellant's contractual employment by

the order dated 4th April, 2018, is unsustainable in law and calls for interference.

5. We have come to the conclusion that the order of termination of his contractual employment to be unsustainable on the ground that the appellant was not given an opportunity as there is imputation against the appellant assuming it is a termination of service simpliciter, a stand can be taken that a formal charge memo or show-cause notice is not required. If there is imputation against an employee, it goes without saying that the employee is entitled to an opportunity before any action is taken.
6. Accordingly, the appeal and the connected application are allowed. The order passed by the learned Single Bench dismissing the writ petition is set aside. Consequently, the writ petition is allowed and the appellant is directed to be reinstated in service as Lab Technician in a vacant position of Katwa S.D. Hospital, Purba Bardhaman, on the contractual basis. In the event, there are no vacancies available in the Katwa S.D. Hospital, Purba Bardhaman, then the appellant shall be appointed in any other neighbouring hospital or blood bank. This direction be complied with by the appropriate authority of the respondent within three weeks from the date of receipt of server copy of this order. However, during the period when the appellant was out of employment he shall not be entitled for any wages.

7. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

[CHAITALI CHATTERJEE (DAS), J.]