

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

IN THE MATTER OF

WPA 6357 (W) of 2020

Anindita Maity (Mitra)

Vs.

State of West Bengal & Ors.

For the Petitioner : **Mr. Ujjal Ray, Adv.,
Mr. Arpa Chakraborty, Adv.
Mr. Sk. Abdur Rahim Adv.**

**For Vidyasagar
University** : **Ms. Debjani Sengupta, Adv.
Ms. Koyel Bag, Adv.,
Mr. Abhijit Chatterjee Adv.**

**For the respondent Nos.
6 & 7** : **Mr. Billwadal Bhattacharyya, Adv.
Mr. Anish Kumar Mukherjee, Adv.
Mr. Tamaghna Pramanick Adv.**

For the State : **Sk. Galib, Adv.
Mr. Kapil Guha Adv.**

Reserved on : **15.01.2025**

Judgment on : **24.02.2025**

Subhendu Samanta, J.

1. Writ petitioner joined Deshapran Mahavidyalaya (represented by respondent No. 6 and 7) to the post of contractual lecturer in Sanskrit, purely on temporary basis in consideration of Rs 100/- for each lecture with a provision on further renewal. Engagement of petitioner was renewed time to time. She gave birth a child in the month of September 2016 and apply for child care leave from 06.08.2016 to 30.11.2016. The said leave was approved, later it was

extended till 30st January, 2017. It is the further case of the petitioner that she had to proceed out of State for the treatment of her child. Thereafter petitioner expressed her desire to joined service vide letter dated 11.12.2019. but the College Authority denied the petitioner to join the service by citing reasons that the Managing Committee has already taken a decision for termination of her services.

2. Hence this writ challenging decision of college authority.

3. It is the submission of Learned Counsel for the petitioner that child care leave was extended up to 30st January 2017. Thereafter the leave was not cancelled automatically by further extended. He submits that the Governing Body has adopted a decision on July 2017 referring not renewal of the service of the petitioner, that tantamount till July, 2017 her service was in existence. He submits that the decision of the authority was not intimated or communicated to the petitioner. Uncommunicated resolution cannot be acted upon the petitioner. The petitioner was always ready to join. It is the argument on behalf of the petitioner that before termination of the service petitioner must have given reasonable opportunity of being heard. Learned Counsel for the petitioner referred the decision of **Menaka Gandhi Vs. Union of India AIR 1978 SC 597** and argued that the Hon'ble Supreme Court held that principal of natural justice include proper communication of decisions that affect individuals. Non-communication of the approval of child care leave deprived the

petitioner of an opportunity to seek an extension or clarify her employment suggest thus violating her rights.

4. He also referred a decision of Supreme Court passed in **M/s Gorkha Security Service Vs. Government (NCT of Delhi) AIR 2014 SC 3371** wherein the Apex Court has emphasised the principle of Audi Alterem permer. It is the argument of the Learned Counsel for the petitioner that petitioner was neither informed of resolution affecting her employment that granted an opportunity to be her before adverse decision were taken. It is further argued that the principle of natural justice has been violated and petitioner is entitled to join the services. He also referred a decision of Honourable Supreme Court in **UP State Road Transport Corporation Vs. Brijesh Kumar.**

19. The services of the respondent have been determined solely on the ground of misconduct as alleged but without holding any regular inquiry or affording any opportunity of hearing to him. The termination order has been passed on the basis of some report which probably was not even supplied to the respondent. Now show cause notice appears to have been issued to the respondent. Therefore, the order of termination of his services, even if on contractual basis, has been passed on account of alleged misconduct without following the Principles of Natural Justice. The termination order is apparently stigmatic in nature which could not have been passed without following the Principles of Natural Justice.

5. Learned Counsel for the petitioner also referred a decision of Hon'ble Kerala High Court in **Vandana Srimedha Vs. State of kerala** wherein the Honble Single Judge of the Kerala High Court in identical circumstances directed the State Authority to allow the petitioner to join in the service.

6. Answering Respondent No. 6 and 7 (college authority) used affidavit-in-opposition and submits that since July 2016 the petitioner started to become irregular, in August 2016 petitioner attended college in one day on 5th August 2016 and submitted the application of maternity leave for the period on 06.08.2016 to 30.11.2016. It is the case of the of the respondents that her application was considered and the child care leave was approved by the Governing Body on 19.06.2016 the petitioner made another application for child care leave from 1.12.16. to 31.12.2017 governing body of the college vide resolution dated 04th February, 2017, post facto approved petitioners child leave, but without pay. Thereafter, petitioner never filed application or communication to the College authority or she never contact over telephone regarding her unwillingness to join the service and failed to give any assurance with regard to her re-joining. It is the further case of the college authority on 15.07.2017 in the Governing body meeting the absence of petitioner from her service was finally discussed and it was unanimously resolved not to renew contract of the petitioner on the ground of irresponsible, irregular and delinquent attitude on the part of the petitioner.

7. It is the further case of the college authority that vide GO being 1081 dated 13.07.2019 issued by Jointed Secretary, Department of Higher Education, Government of West Bengal, Colleges directed not to give appointment any teacher on temporary basis; and; subsequently vide memo 1368 dated 13.09.2019 directions were given to submit names existing teachers who have been engaged in the

Govt. aided colleges on temporary basis till date. It is the case of college authority that in pursuance to the direction education department in GO dated 13.7.2016 the college authority can not allow the petitioner to rejoin services vide letter dated 11.12.2019.

8. The university represented by the Learned Counsel Mr. Ray submits for the petitioner was appointed as contractual lecturer on purely temporary basis for 06 months, her appointment was extended time to time she got remuneration up to August 2016. From 6th August 2016, to 30th November 2016 thereafter 1st December 2016 till to 31st January 2017, her maternity leave was granted. She made prayer for joining on 15th December 2019. University submits petitioner engaged on the basis of non-sanction post, it was a contractual arrangement between the college and contractual lecturer, the contract was purely temporary basis and only can be renewed under certain terms and conditions. If the college authority did not renew the contractual appointment, such appointment was terminated automatically after expiration of contract period. Petitioner had no right to claim of the order of termination as she was appointed in temporary basis.

9. The state authority has filed a report and submits that since 12th September of 2017 the state did not allow any college authority to engage any contractual or guest lecture. The appointment of the petitioner as a contractual lecture is purely temporary basis and out of the own fund of college authority, it is a stop gap arrangement on contractual basis for a period from November, 2011 to August 2016.

10. It is further submission of State authority that, the State Government is no way involved in appointment of part time teachers or contractual teacher in state aided college. It is the further statement of the State authority that state has adopted a specific guideline to set out a rule of contractual /part time teachers or guest teachers of college authority for restructuring their service conditions vide order No.1368 dated 03.09.2016. The petitioner cannot consider under the category SACT without communication/authentication from the concerned state aided colleges.

11. Having heard the Learned Counsel for the parties it appears that the petitioner was appointed solely on contractual manner purely on temporary basis. Her appointment was renewed time to time till July 2016. Since August, 2016 to August, 30th January 2016 she was in child care leave, without pay, on the prayer of the petitioner; since then petitioner never filed any application, nor made any communication with college authority. Suddenly, she approach the college fast time in the month of December 2019. The writ petition is silent about the fact as to why the petitioner did not make any prayer to the authority concern since February 2017 to December 2019. The petitioner was on contractual service purely temporary basis for a particular period. In absence of the petitioner from the college, automatically determined the contract after contract period is over. The petitioner cannot challenge or blame the decision of the college authority, since it was only due to the reason of non- communication of the petitioner regarding her willingness to rejoin the service.

12. In **Gorkha Security Service (supra)** proper show cause notice was moot question before the Hon'ble Supreme Court, wherein the authority concern had blacklisted petitioners firm without giving proper show cause notice. The facts and circumstances of **Gorkha Security Service** is not similar to this case.

13. In **UP State Road Transport Corporation** the service of the respondent have been determined solely on the ground of misconduct without holding in regular enquiry any opportunity of hearing to meet. In the present case the petitioner was a temporary employee and her employment was terminated by efflux of time. Thus the principle of **UP State Road Transport Corporation (Supra)** is not applicable.

14. The Hon'ble Kerala High Court, in **Vandana Srimedha Vandana Srimedha**, has considered the act of the authority who have terminated service of the petitioner on the allegation that she was on unauthorised absence. In the case before Hon'ble Kerala High Court, the petitioner therein has prayed for leave but, it was not considered and rejected. In the citing facts thereto the Hon'ble bench of Kerala High Court has allowed the writ petition assailing the conduct of the respondent authority for not allowed her rightful leave application. The facts and circumstances of the present case is dissimilar to that of the case of Hon'ble Kerala High court. There is no such leave application in this case. Thus, it is distinguishable

15. Under the above observation I am of a view that the act and action of college authority is not illegal, arbitrary or unreasonable. The

order of termination was based upon proper finding which appeared to me justified in the present facts and circumstances of the case.

16. Under the above circumstances the instant writ petition is dismissed and disposed of as devoid of merit.

17. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)