

(2014) 10 CAL CK 0012
In the Calcutta High Court
Case No : W.P. No. 14845 (W) of 2009

Abul Kalam Azad

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 29-10-2014

Acts Referred:

Citation : (2015) 1 WBLR 1029

Hon'ble Judges : Ashim Kumar Roy, J

Bench : Single Bench

Advocate : Siddhartha Shankar Mondal and Niladri Narayan Roy, Advocates for the Appellant; Jyotosh Majumder and Aniruddha Mohanta, Advocates for the Respondent

Judgement

Ashim Kumar Roy, J.—The writ petitioner, on and from December 26, 2005 was appointed as an Additional Para Teacher in Jhinaidanga Amasudas High School, on a purely temporary and contractual basis, for a period of one year, vide Annexure "P-2" to this writ petition. Now, the learned counsel for the petitioner submitted that after expiry of such agreement, the same was once again renewed with effect from January 2, 2007 and was to remain valid also for a period of one year. He further submitted that on and from August 31, 2007 the writ petitioner became seriously ill and he has to undergo treatment by taking admission in a hospital and his treatment continued from September 1, 2007 to September 12, 2007 and when was discharged from hospital, the writ petitioner was advised to remain on a complete bed rest for one month and as a result he had to refrain from his duties during that period. After recovery on November 15, 2007 when he went to join his duties, the school authorities did not permit him, however, he regularly received his salaries till January 1, 2008. It is then vehemently contended that after November 15, 2007 the writ petitioner repeatedly requested the school authorities for permitting him to join his duties but he was never allowed. Thereafter, on and from January 1, 2008 his service was terminated but before termination, neither any opportunity of hearing was given to him nor any reason was communicated for such termination. It is then

pointed out, finally, the writ petitioner made a representation to the District Magistrate, Cooch Behar, the Ex Officio District Project Officer, Sarba Siksha Mission but such representation was never responded. The learned Counsel for the petitioner lastly contended, when the respondent authorities never responded to his repeated representations, no useful purpose will be served by sending the matter back to the District Project Officer, Sarba Siksha Mission for reconsideration and this would be just and proper for this court to direct the respondent authorities to recall the order of termination and to allow the writ petitioner to continue with his service. Lastly, he added that this is a case where there is blatant violation of the principle of natural justice by not giving him any opportunity of hearing before termination of his service. Therefore, the order of termination cannot be sustained.

2. On the other hand, the Additional Government Pleader, vehemently opposed this application. He submitted that this writ petitioner was appointed in the post of Additional Para Teacher on a purely temporary and contractual basis and in case of contractual appointment, the appointment comes to an end after expiry of period of such contract and after the contract comes to an end, no right can remain vested with the incumbent for being re-appointed in the said post or for renewal of the employment contract.

3. In this regard he relied on the decision of the Constitutional Bench of the Hon"ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, and in the case of Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, . The learned Additional Government Pleader then submitted having regard to the facts this is a case where service contract has come to an end automatically after expiry of the stipulated period and not on termination of service during its tenure, the question of giving any hearing to the writ petitioner does not at all arise. He contended that this is purely a case of non-renewal of the contractual agreement of service. Inviting attention of this court to Annexure "P-2" to this writ application and also to other documents produced at the time of hearing and more particularly to the agreement executed on January 2, 2007, he submitted that from those documents it is abundantly clear that the writ petitioner's service was purely temporary in nature and on contractual basis. He then pointed out that the claim of the writ petitioner that on November 27, 2007 after his recovery, he had been to the school to join his duties but the school authority did not permit him, is not borne out by any materials on record and is not admitted and that being a pure question of facts, cannot be gone into in this writ application. He further contended from the side of the writ petitioner no allegation is forthcoming till the end of service contract he did not receive his salaries and here without doing the job he received the full payment. He also contended that in this regard the letter to which the writ petitioner relied upon in support of his contention that on November 15, 2007 the school authorities refused to allow him to join his duties, could not at all be acted upon, since the same is not an authenticated document showing that such representation was

actually received by the school authority and submitted that the same is a manufactured one.

4. He further submitted that so far as, the Annexure "P-5" to this writ petition and what is contained in Columns "A" and "C thereof are concerned, the same has no manner of application in the background facts of the present case, as the said office order was issued on January 2, 2009 and is restricted to those Additional Para teachers, who were in same and not in case of an Additional Para Teacher, who is no more in service and whose service agreement had already lost its force much earlier. Lastly, he referred a circular issued under Memo. No. 278 (20)/Ped/PBSSM/10 dated 27th March, 2010 and submitted that this writ application has otherwise become infructuous as pursuant to such circular, appointment of para teacher in the primary and upper primary schools has been stopped. He then invited the court's attention to the last but one paragraph of the said circular, where it is stated "If any para-teacher engaged previously in any schools, leaves the job or has already left the job or if his post falls vacant due to any other reason, the vacant post shall not be filled up by engagement of Para Teachers and the post shall lie sine a die till such post is filled up through regularly recruited teachers" and submitted that the said order took effect from the date it was issued. He therefore, submitted that this writ application be dismissed at once with costs.

5. Heard the learned counsels appearing on behalf of the parties. Considered their respective submissions. Perused the materials on record.

6. On contractual basis and in terms of an agreement dated December 26, 2005, the petitioner was appointed in the post of Additional Para Teacher for teaching in an Upper Primary School, Jhinaidanga Amasudas High School. He was so appointed purely on temporary basis for a specific period of one year with a clear stipulation that after expiry of such period his service will be terminated automatically without any further notice. Nothing contained in the said contract of service providing for renewal of the same. Subsequently, after expiry of one year, once again a fresh agreement was executed on January 2, 2007 and the petitioner was appointed afresh in the same post, in the same School, on contractual basis and temporarily for a period of one year. This time also in the contract of service, there was clear stipulation as earlier that after expiry of one year, his service will be automatically terminated without any further notice and the agreement did not contain any provisions for renewal. Admittedly, after the second agreement was expired on January 1, 2008, no fresh agreement was executed between the petitioner and the respondent-authorities on that score and nearly one and half year after the expiry of agreement, sometime in July, 2009 the writ petitioner claimed to have approached the District Magistrate, Cooch Behar praying for his further appointment in the said post and then the other respondents. It goes without saying any contractual appointment purely on temporary basis for some specified period, shall always remain temporary and come to an end after the expiry of such period without any further action. No

legal right for appointment in any post is conferred on the incumbent, when the appointment was on contractual basis and purely temporary in nature. The appointee does not acquire any right to be re-appointed in the post after the expiry of his tenure of service nor can claim any right for renewal of the agreement.

7. Here in this case, it has already been found the petitioner's appointment in the post of Additional Para Teacher was purely on contractual basis and temporarily for a period of one year. While there was a clear stipulation in the contract of service that such agreement shall be terminated automatically after expiry of one year, there was no provision for renewal. Thus, the petitioner has never acquired any right to be re-appointed in the said post after the contract of service comes to an end and is not entitled to the relief sought for in this writ application.

8. Furthermore, according to the circular referred from the side of the State issued on March 27, 2010 and took effect from self-same day, all appointments of Para Teachers have been stopped and in the said circular it was categorically stipulated if any Para Teacher engaged in any school, has left the job or if post falls vacant due to any other reason, the vacant post shall not be filled up by engaging Para Teacher and the post shall lie sine die till such post is filled up through regular recruited teachers. This writ application has no merit and accordingly stands dismissed and disposed of.