
(2015) 05 TP CK 0012
In the Tripura High Court
Case No : Writ Petition (C) No. 519 of 2014

Dipankar Saha

APPELLANT

Vs

The State of Tripura and Others

RESPONDENT

Date of Decision : 08-05-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 05 TP CK 0012

Hon'ble Judges : S. Talapatra, J

Bench : Single Bench

Advocate : D.K. Biswas, for the Appellant; T.D. Majumder, GA, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

S. Talapatra, J.—By means of this writ petition, the petitioner has challenged the memorandum under No. F.11(3-9)-SE/SSA/2013(B)/5557-60 dated 04.12.2014, Annexure-6 to the writ petition, whereby the petitioner has been disengaged as Junior Engineer, SSA Rajya Mission, Tripura w.e.f. 05.12.2014 by the State Project Director, the respondent No. 2 herein.

2. From a bare reading of the said memorandum dated 04.12.2014, Annexure-6 to the writ petition, it would exposit that the said order of disengagement is entirely based on the following observation:

"But, his level of performance and efficiency during current tenure as assessed has been found to be unsatisfactory despite the above cautions."

3. It has not been denied by the petitioner that when he was given further extension of tenure of his service for three months by the memorandum No. F.11(3-9)-SE/SSA/2013(B)/3834-40 dated 05.09.2014, Annexure-5 to the writ petition, he was tendered with strict instructions that he has to be much more active, prompt and serious in discharging duty and he has to improve his overall level of performance and efficiency.

4. Even though the matter falls in the contractual realm, this Court should be loathe in exercise of its power under Article 226 of the Constitution of India in view of the decisions of the apex court in *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, AIR 1975 SC 1121 : (1975) 1 SCC 737 : (1975) 3 SCR 254 , *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, AIR 1977 SC 1496 : (1977) 3 SCC 457 : (1977) 3 SCR 249 , *Ramlal and Sons Vs. The State of Rajasthan*, AIR 1976 SC 54 : (1976) 1 SCC 112 : (1976) 2 SCR 222 : (1975) 7 UJ 913 , *Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others*, AIR 1980 SC 1037 : (1980) 2 SCC 437 : (1980) 1 SCR 1170 : (1980) 12 UJ 55 and *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, AIR 1979 SC 1628 : (1979) 2 LLJ 217 : (1979) 3 SCC 489 : (1979) 3 SCR 1014 . But the law has taken its new trajectory in the course of time. It flows that in cases where the decision making authority exceeds its statutory power or commits breach of principles of natural justice in exercise of their power or in arriving at decision which is perverse or passed in an irrational manner, this Court has right to intervention even after the contract is entered between the parties and the Government and its agencies. In this regard, we may advert to three decisions of the apex court in *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, AIR 1989 SC 1642 : (1989) JT 146 Supp : (1989) 1 SCALE 1157 : (1989) 3 SCC 293 : (1989) 2 SCR 751 : (1989) 2 UJ 419 , *Mahabir Auto Stores and others Vs. Indian Oil Corporation and others*, AIR 1990 SC 1031 : (1990) 69 CompCas 746 : (1990) 1 SCALE 410 : (1990) 3 SCC 752 : (1990) 1 SCR 818 : (1990) 2 UJ 62 and *Kumari Shrulekha Vidyarthi and Others Vs. State of U.P. and Others*, AIR 1991 SC 537 : (1990) 4 JT 211 : (1991) 1 SCC 212 : (1990) 1 SCR 625 Supp : (1991) 1 UJ 645 , where the breach of contract involved breach of statutory obligation and when the order complained of was in exercise of statutory power. Even though cause of action arises out of contract but it pertains to bring the dispute in the sphere of public law. Fairness in action by the State is laid on the fundamental, constitutional principle that the State action must be free from the vice of arbitrariness. The Government may enter in the business with anybody but such transactions are subject to the condition of reasonableness and fair play as well as the public interest.

5. Within this narrow ambit, Mr. D.K. Biswas, learned counsel appearing for the petitioner has taken this Court to the genesis of the controversy. The petitioner was engaged as the Junior Engineer, Grade-I in the State Project Office of SSA Rajya Mission, Tripura by the memorandum under No. F.11(3-9)-SE/SSA/2013(B)/3089-97 dated 22.08.2013, Annexure-1 to the writ petition. It appears that the petitioner topped in the selection process and he was engaged as the Junior Engineer, Grade-I in the said office on a fixed monthly remuneration of Rs. 14,986/- for a period of one year. The said engagement was subject to the conditions inter alia that the engagement shall be for only one year or cessation of SSA Programme, whichever is earlier. The persons so engaged shall be terminated from the engagement automatically on expiry of

tenure of one year. In case of unsatisfactory performance during the first year, the persons so engaged shall be terminated with 15 days prior notice and the engagement shall not confer any right on the persons to claim for regular employment in Education (School) Department or any other Departments of the State Government.

6. After expiry of the initial tenure of one year, the petitioner was given three months' extension by the said memorandum dated 05.09.2014, Annexure-5 to the writ petition, with instruction that he is to be much more active and serious in duty. Thereafter, by the impugned memorandum dated 04.12.2014 his service has been terminated.

7. Mr. Biswas, learned counsel has contended that the engagement as per the instruction shall be for one year or cessation of the SSA Programme, whichever is earlier but the respondent No. 2 arbitrarily had extended the tenure only for three months attaching some instructions in deviation of the standard procedure and thereafter on the basis of the purported assessment of the performance and efficiency of the petitioner he has been disengaged. Having referred the memorandum No. F.11(8-29)-SE/SSA/2005/2180-220 dated 23.06.2014, Annexure-7 to the writ petition, Mr. Biswas, learned counsel has contended that the upper age limit is usually 60 years. For purpose of reference, the instructions contained in the memorandum dated 23.06.2014 is reproduced hereunder:

"The issue of upper age limit of tenure of engagement of contractual teaching and non-teaching staff engaged formally under Sarva Shiksha Abhiyan programme has since long been under consideration of the authority in SSA Rajya Mission, Tripura.

After careful examination of all aspects of the issue it has been decided that all teaching and non teaching staff including resource persons engaged formally under Sarva Shiksha Abhiyan programme from amongst unemployed shall continue to serve upto to age of 60(sixty) years save as decided other wise or cessation of SSA programme which ever as earlier.

This shall take immediate effect."

8. Mr. Biswas, learned counsel has argued that the respondent No. 2 in violation of the instructions at the first instance extended the service of the petitioner for three months and thereafter without any assessment whatsoever, though it has been shown that the performance and efficiency during that tenure has been assessed and now disengaged the petitioner and thus has brought an abrupt end to the career of an young and bright engineer. Mr. Biswas, learned counsel has submitted that there had been no notice for such termination and the said termination has been made slapping stigma on the efficiency of the petitioner. This action suffers the vice of arbitrariness and as such even though the engagement is in the contractual realm, this Court may interfere in the action of the respondent for substantial justice.

9. Mr. T.D. Majumder, learned GA appearing for the respondents has submitted that the engagement was only for one year and that has not conferred any right to the petitioner to claim regular appointment in any Government department. In terms of the conditions attached to the engagement, on expiry of one year such engagement shall automatically come to an end. The petitioner was however allowed three months extension recording some observation and instruction in regard to his performance. But after three months when the respondent No. 2 assessed his performance it has surfaced that the petitioner has not improved his performance at all. Mr. Datta Majumder, learned GA has categorically submitted that there exists no provision that the engagement shall mandatorily be for one year. Thereafter, Mr. Datta Majumder, learned GA has referred to the counter affidavit filed by the respondents where it has been emphatically contended as under:

"Only in the last part of the 2nd tenure of his engagement he appeared to be a little but active although it was not at all satisfactory. Out of 69 working days he contributed for field inspection duty only for 7 days (10%). Despite instruction for several times, the petitioner made no effort to be active and up and doing, but killed work time just sitting idle. During his entire tenure of engagement (2nd September, 2013 to 1st December 2014) on an average he could utilize 11.16% (33 days) of 295.5 working days he attended the office for field inspection purpose."

10. Mr. Datta Majumder, learned GA has brought to the notice of the Court that area, for which an engineer is engaged in SSA, includes lots of activities like preparation of plan, estimate and drawing required for formulation of Annual Work Plan and Budget of SSA, carrying out regular inspection of schools for supervising the construction works, preparation of the report based on various item, activity-wise observation with specific suggestion, proposal, measures to overcome lapses and defects in order to assure and ensure quality construction, collection and compilation of field level progress reports, preparation of letters/memos to field functionaries for taking up/follow-up actions to expedite pace of work with assured quality, organize meetings/workshops with the field engineers to enrich their capacity and for sharing views/ideas, preparation and updating of data-base on school infrastructure, preparation and submission of State level progress report based on field progress report, preparation of Whole School Development Plan as per RTE Act, 2009, providing technical guidance to field engineers and implementing officers, preparation of Annual Work Plan and Budget on requirement for improvement of school infrastructure etc. But the petitioner's approach was entirely lackadaisical and in his entire tenure he carried out school inspection only for 33 days out of 295.5 days. He attended the office only for 11.16 per cent of the working days. Despite that he was given a space for improvement of his performance but he did fail and thereafter he was disengaged by the impugned order. Mr. Datta Majumder, learned GA has contended that there is no arbitrariness as alleged in the process of decision making for disengaging the petitioner.

11. In rejoinder to the counter affidavit filed by the respondents, the petitioner has denied that the imputation of his being incompetent, insincere or being irregular in attendance is not based on records. He has further submitted that he was regularly attending the office. He has sought to compare his performance with one junior engineer namely Sharmistha Das and according to him if the performances are compared, it would appear that his contribution is much more than the said junior engineer. The petitioner has further submitted that from the records, it would be apparent that he has complied all the instructions of visit and there had been no lapse. He has filed a bulk of documents with his rejoinder for perusal of this Court in support of his field activities.

12. By the order dated 08.04.2015, Mr. Datta Majumder, learned GA was directed to produce the personal records of the persons whose names have appeared in the memorandum dated 11.07.2014, annexed to the rejoinder filed by the petitioner and accordingly Mr. Datta Majumder, learned GA has produced those records on 09.04.2015. On scrutiny of the records, it is found that most of those records are not very material for determining the controversy. But this Court has come across one note being Note No. 7 under File No. F.11(28-129)SE/SSA/2013 wherefrom it transpires that one complaint was made against the petitioner. It is quoted hereunder:

"This is regarding the performance of Er. Dipankar Saha, SE of State Office of SSA. He is working in his office since one year, but his work performance is very bad or dissatisfactory. From the month September, he could not perform any field visit as well as no official works. He is sitting idly in his table and continuously reading newspaper. He could not follow my any instructions. All Engrs are working efficiently except himself. They are raising that, they are working, but Dipankar is not working, but how can he got full salary? His inadvertentness and idleness is not under consideration.

Submitted for necessary action."

The said note dated 19.11.2014 has invited certain action and according to the court has been taken care for disengaging the petitioner.

13. On thorough scrutiny of the records, this Court does not find any note from the respondent No. 2 that he has assessed the performance of the petitioner for the period from 02.09.2014 to 04.12.2014. The petitioner has asserted that he was not given any show cause at any relevant point of time and such disengagement ought to have been preceded by due notice. That apart, no record is available that there had been any assessment of the performance and efficiency of the petitioner at all except the above recorded note of a junior engineer, who is borne in the same grade and does not command any supervisory authority over the services of the petitioner.

14. Hence, this Court has every reason to observe that the decision of disengaging the petitioner was not on assessment of efficiency and performance, but prompted by the said note. Thus, the impugned order dated 04.12.2014,

Annexure-6 to the writ petition, is interfered with. Fair assessment of the petitioner's performance ought to have been made by the competent authority for purpose of extension of his tenure. Since the extended tenure has expired, it is directed that the Principal Secretary, Department of Education (School Education) to the Government of Tripura shall personally make assessment of the performance and efficiency of the petitioner for determining whether his engagement in the post of Junior Engineer in the office of the SSA Tripura Mission would be extended or renewed. If it is found on comparative assessment laying a bench mark that the petitioner's performance is satisfactory, in that event the petitioner shall be reengaged or his term may be extended. This exercise has to be completed within one month from the day when the petitioner shall furnish a copy of this order to the Principal Secretary, Department of Education, Government of Tripura, Agartala.

15. It is to be noted here that this Court has not considered the objection raised about the tenure of extension being less than one year for obvious reason that the petitioner has accepted that memorandum dated 05.09.2014, Annexure-5 to the writ petition without any flutter and worked till the impugned order has been issued.

16. Having held so, the writ petition stands allowed to the extent as indicated above. However, there shall be no order as to costs.

The records so produced by Mr. T.D. Majumder, learned GA be returned.