

(2024) 05 CAL CK 0069

Calcutta High Court (Appellete Side)

Case No: W.P.A. No. 11521 Of 2012

Jamila Khatun & Ors.

APPELLANT

Vs

Board Of Councillors Of Dhuliyān
Municipality & Ors.

RESPONDENT

Date of Decision: May 24, 2024

Hon'ble Judges: Saugata Bhattacharyya, J

Bench: Single Bench

Advocate: Milon Bhattacharyya, Ziaul Haque, Ashok Kumar Banerjee, Md. Nurezamman,
Somen Bose, Amal Kumar Sen, Lalmohan Basu

Final Decision: Dismissed

Judgement

Saugata Bhattacharyya, J

1. Writ petition has been instituted, inter alia, challenging Memo No. 3049(19)/Dhuliyān Municipality dated 10th March, 2012 whereby the Chairman of

Dhuliyān Municipality (hereinafter referred to as "said Municipality") communicated to the Councillors to reallocate Sishu Siksha Kendras

(hereinafter referred to as "SSKs") in a manner which would enable the authorities to constitute two SSKs in each ward. The said Municipality

was having 19 wards and as per the said Memo dated 10th March, 2012 the said Municipality was required to establish total 38 SSKs for 19 wards

having two SSKs in each ward. Every SSK would have two Siksha Sahayikas. The said Memo dated 10th March, 2012 is at pages 84 and 85

(Annexure P-9) of the writ petition.

2. Mr. Milon Bhattacharyya, learned senior advocate appearing for the petitioners submits that engagement letters were issued on 1st February, 2010

to the petitioners for a period of one year and such engagement was renewable. It is the case of the petitioners that engagement letters were issued in terms of Government Scheme issued vide Memo dated 30th May, 2000. It is further contended that as per the said scheme dated 30th May, 2000 managing committee of the respective SSK was having the authority to engage Siksha Sahayika for a period of one year on contractual basis and the same would be renewable subject to performance of the respective Siksha Sahayika. The eligibility criteria of the candidate who was to be engaged as Siksha Sahayika were also stipulated in the said scheme wherein it was provided that only female candidate is to be engaged whose age was within 40 to 60 years. The candidate must be the resident of the respective ward where SSK situates and in the event eligible candidate is not found in the said ward the candidate from neighboring ward needs to be engaged with a condition that the distance of the said ward has to be nearest from the respective ward. Minimum educational qualification of the candidate under unreserved category should be Madhyamik pass and in those areas inhabited by scheduled caste and scheduled tribe communities in the event higher qualified candidate is not available the candidate having qualification of class-VIII pass can also be engaged.

3. By placing reliance on Clause 14(Ka) of the aforesaid scheme it was contended that where SSKs situate under the jurisdiction of municipality the responsibility would be on the shoulder of the said Municipality to smoothly administer, inspect and for overall supervision of the SSKs and the Councillor of the concerned ward would also be entitled to inspect and supervise the SSKs. Therefore, it was submitted on behalf of the petitioners that no specific power was provided to the said Municipality or its Councillors to engage the petitioners being Siksha Sahayika in the SSKs which were established in terms of the Memo dated 21st November, 2008 issued by the Joint Secretary, Department of Municipal Affairs, Government of West Bengal addressed to the Director of Local Bodies, West Bengal. As per the petitioners the scheme which was introduced vide Memo dated 4th June, 1999 issued by the Special Secretary of the concerned department addressed to the Chairman of one Municipality was also applicable and which was

relied upon by the learned advocate representing the petitioners during the course of his submission which provides in terms of Clause 11(Ka) the honorarium of Siksha Sahayika would be paid from the grant to be provided by the State Government. Therefore, it was submitted that it was not the municipality but the State Government which provided fund to the SSKs for payment of monthly honorarium, as such the Chairman of the said Municipality did not have authority to dispense with the service of the petitioners while ward wise reallocating SSKs afresh in terms of the Memo dated 21st November, 2008 issued by the Joint Secretary, Department of Municipal Affairs, Government of West Bengal. It was also submitted that since the managing committee of the concerned SSK was the engaging authority in terms of the relevant scheme it was not within the domain of the Chairman of the municipality to unilaterally terminate the service of the petitioners for initiating fresh selection process in order to engage new candidates. Attention of this Court has been drawn to pages 41 and 42 of the supplementary affidavit affirmed on 21st July, 2016 by one Chinmoyee Dawn (Mallick) wherefrom it appears that a report was furnished by the Executive Officer of the said Municipality vide Memo dated 19th May, 2015 to the Sub-Divisional Officer, Jangipur wherefrom it can be ascertained that remuneration was stopped to the petitioners from the month of March, 2012 and a new group of Siksha Sahayikas were inducted w.e.f. April, 2012 with an approval of the Director of Local Bodies, West Bengal vide Memo dated 19th September, 2013. It was also submitted that the petitioners being engaged w.e.f. February, 2010 were entitled to continue till 60 years based on response letter dated 22nd January, 2015 issued by the State Public Information Officer, Director of Local Bodies, Government of West Bengal addressed to Madhumita Mukherjee (Chakraborty), to a letter dated 20th December, 2014 issued under Right to Information Act seeking information how long Sahayika can continue who is working in SSK under a municipality. During reply attention of this Court was also drawn on memo dated 16th April, 2015 of the Sub-Divisional Officer, Jangipur, Murshidabad relating to utilization of fund allotted by the State authorities for payment of honorarium to the Siksha Sahayikas.

4. According to the petitioners, since they were engaged under a scheme issued under Memo dated 30th May, 2000 read with the scheme which was circulated vide Memo dated 4th June, 1999 by the managing committee of the respective SSKs they cannot be discontinued by the Chairman of the said Municipality on issuing impugned Memo dated 10th March, 2012. It was contended that the decision of the Chairman of the said Municipality was taken by the Chairman alone without any decision being taken by the Board of Councillors. Furthermore, petitioners were entitled to continue till 60 years of age which was also not taken into consideration while taking steps against them. No specific power was provided to the said Municipality or its Chairman to discontinue the service of the petitioners as Siksha Sahayikas of SSKs working under the jurisdiction of the said Municipality which according to the petitioners would only lead to a conclusion against the impugned Memo dated 10th March, 2012 and as such the same needs to be set aside thereby directing the concerned respondent authority to re-induct them as Siksha Sahayikas of the SSKs in place and stead of the existing Siksha Sahayikas who are working from April, 2012.

5. While giving reply certain documents which are annexed to the second supplementary affidavit affirmed on 12th July, 2013 were relied upon to show that some Siksha Sahayikas were allowed to continue even in the year 2013 by issuing letters of contract on adopting resolutions by the managing committees of certain SSKs. It was also submitted that excepting terming the initial engagements of the petitioners backdoor entry nothing was elaborated. According the petitioners impugned letter dated 10th March, 2012 was addressed to the councillor which did not have bearing on the right of the petitioners to continue.

6. In support of the case made out on behalf of the petitioners reliance was placed upon the following judgments:-

- i. AIR 2005 SC 1605 (State of Bihar and Ors. vs. Bihar M.S.E.S.K.K. Mahasangh & Ors.) paragraph 64.
- ii. AIR 2011 SC 3470 (State of Tamil Nadu & Ors. vs. K. Shyam Sunder & Ors.) paragraph 20.
- iii. (1989) 1 SCC 458 (Pomal Kanji Govindji And Others vs. Vrajlal Karsandas Purohit And Others).

7. State respondents and the said Municipality were represented by learned advocates who jointly opposed the prayer made in this writ petition on a common ground that engagement of the petitioners as Siksha Sahayika was on contractual basis which was renewable on year to year. Therefore, according to the respondent authorities, in case of discontinuation of service of the petitioners vide Memo dated 10th March, 2012, now in 2024 the petitioners cannot be re-inducted as Siksha Sahayikas in place and stead of another group of Siksha Sahayikas who were inducted upon initiating de novo engagement process w.e.f. April, 2012.

8. Mr. Amal Kumar Sen, learned Additional Government Pleader submitted that at best petitioners can claim compensation for discontinuation of their engagement as Siksha Sahayikas by initiating appropriate proceeding in the event it is found that their engagement was discontinued wrongly by the concerned authority of the said Municipality vide Memo dated 10th March, 2012.

9. On behalf of the State respondents the Memo dated September, 2012 which is annexed at page 11 of the affidavit-in-opposition affirmed by Joint

Director of Local Bodies, Government of West Bengal on 3rd May 2023 was relied upon wherein it was provided in case of new engagement in the

post of Siksha Sahayika and academic supervisors or renewing contract of any person holding such post in SSKs running in different urban local

bodies, prior approval of the Director of Local Bodies, Government of West Bengal is necessary and the government grants for payment of

honorarium for any such posts cannot be released unless such prior approval is taken for the purpose. Therefore, it was the stand of the State

Government that once the engagement of the petitioners as Siksha Sahayikas was discontinued by the dint of the Memo dated 10th March, 2012 and a

new set of Siksha Sahayikas were inducted with the approval of the Directorate of Local Bodies vide Memo no. 1059/DLB/SSP-Appt/2013 (Pt-4)

dated 19th September, 2013 re-engagement of the petitioners at this stage may not be allowed taking into consideration contractual engagement of the

petitioners which was renewable on year to year basis subject to their satisfactory performance. Notice of this Court is drawn to page 48 of the writ

petition which according to the State respondents is letter of contract which does not confer right upon the petitioners to continue as Siksha Sahayikas

after the expiry of the term one year.

10. Mr. Ashok Kumar Banerjee, learned senior advocate appeared on behalf of the said Municipality and at the threshold submitted that the

engagement of the petitioners as Siksha Sahayikas was tainted with malice which needs to be termed as back-door engagement since the then

Municipality did not follow the relevant provisions of the scheme of engagement of Sahayikas and ward wise allocation of SSKs was grossly contrary

to the Memo dated 21st November, 2008 issued by the Joint Secretary, Department of Municipal Affairs. A memo was issued in the month of July,

2008 by the Director of Local Bodies addressed to the Joint Secretary referring to the prayer made by the Chairman of the said Municipality for

opening new SSKs considering the number of school children available in the area. A recommendation was made by the Director that 38 numbers of

SSKs may be sanctioned for 19 wards with a condition of each ward would have two SSKs. Based on such Memo dated July, 2008 ultimately Joint

Secretary, Department of Municipal Affairs, Government of West Bengal issued Memo dated 21st November, 2008 permitting the said Municipality to

open 38 SSKs in 19 wards, each ward would have two SSKs and every SSK would be manned by two Siksha Sahayikas.

11. According to the said Municipality, resolution was adopted on 27th February, 2009 on getting approval of the Department of Municipal Affairs to

start 38 number of SSKs vide Memo dated 21st November, 2008 and by said resolution dated 27th February, 2009 decision was taken for engagement

of Siksha Sahayikas without following the procedure as contained in G.O. dated 30th May, 2000 though the same was required to be followed in terms

of the said memo of the Joint Secretary dated 21st November, 2008. It is stated in paragraph 4(v) of the affidavit-in-opposition of the said Municipality

that though Chairman was not the authority to engage Siksha Sahayika but on adopting the resolution on 27th February, 2009 engagements were made

by the then Chairman namely, Chainbanu Khatun. It was further submitted on behalf the said Municipality that the then Chairman of the municipality

namely, Chainbanu Khatun participated in the meeting on 27th February, 2009 and appointed herself as Siksha Sahayika in Uttarpara SSK who is

petitioner no. 35 in the writ petition.

12. The illegalities which were committed by the then said Municipality in engaging the petitioners on adopting resolution dated 27th February, 2009 as stated in the affidavit-in-opposition used on behalf of the said Municipality affirmed on 4th February, 2013 are stated below:-

A. In terms of the scheme of engagement the candidates must be within 40 to 60 years but 14 candidates were appointed who were below 40 years.

Who are those petitioners being engaged though their ages were below 40 years were also indicated in paragraph 4(vi) of the affidavit used on behalf of the said Municipality.

B. As per the relevant engagement scheme candidate has to be the resident of the ward where SSK situates or the resident of the nearest ward in the event eligible candidate is not available in the respective ward, but petitioner nos. 1 and 22 in the present case were residing in panchayat area not under the jurisdiction of the said Municipality.

C. Petitioners were engaged without publication of advertisement through back-door process.

D. The then Chairperson of the municipality namely, Chainbanu Khatun being the petitioner no. 35 was also the beneficiary to the resolution dated 27th February, 2009 by which petitioners were engaged and in the meeting held on 27th February, 2009 Chainbanu Khatun participated as it appears from the page 14 of the affidavit used on behalf of the said Municipality. Said Chainbanu Khatun took remuneration as Chairperson of the said Municipality as well as Siksha Sahayika twice in a month which led to misuse of the Government grant.

13. It is also averred on behalf of the said Municipality in its affidavit-in-opposition that petitioner nos. 6, 15, 16 and 21 applied for being engaged as

Siksha Sahayika in the selection process which was subsequently carried out in 2012 and they were accordingly appointed.

14. Finally it was also submitted on behalf of the said Municipality that contractual engagement of the petitioners as Siksha Sahayikas cannot be stretched beyond one year in the event of non-renewal of service on expiry of one year term; therefore there is no scope at present to re-engage the petitioners as Siksha Sahayikas upon cancellation of the engagements made in favour of another group of candidates in the year 2012 and it has

become fait-accomplì.

15. Reliance has been placed on behalf of the said Municipality on the following judgments:-

- i. 2018 (1) Supreme 12 (Raj Balam Prasad & Ors. vs. State of Bihar & Ors.);
- ii. 2018 (2) CHN (CAL) 58 (State of West Bengal vs. Niyati Bouri);
- iii. 2018 (1) Supreme 574 (Yogesh Mahajan vs. Prof. R.C. Deka, Director, All India Institute of Medical Sciences);
- iv. (2015) 1 WBLR (Cal) 1029 (Abul Kalam Azad vs. The State of West Bengal & Ors.);
- v. (2006) 4 SCC 1 (Secretary, State of Karnataka & Ors. vs. Umadevi (3) & Ors.).

16. Respective submissions of the parties to this writ petition are considered in the light of the facts of the case and the impugned Memo dated 10th

March, 2012 issued by the Chairman of the said Municipality. It is the specific submission made on behalf of the petitioners that the scheme

formulated vide memo dated 30th May, 2000 needs to be followed in engaging Siksha Sahayikas and petitioners were engaged vide letters dated

February, 2010 onwards which are annexed to the writ petition being Annexure P-1. It is contended since petitioners were engaged in terms of the

aforesaid scheme by the managing committees of the respective SSKs the Chairman of the said Municipality has got no authority to terminate the

engagements of the petitioners by issuing Memo dated 10th March, 2012. Much emphasis has been laid on the scheme formulated vide Memo dated

30th May, 2000 wherein it has been provided in clause 8(Ka) that it is the managing committee who would engage Siksha Sahayikas for a period of

one year and term would be renewable on year to year basis subject to performance of the candidate. It is true that in terms of the documents

annexed as P-1 the petitioners were engaged as Siksha Sahayikas w.e.f. February, 2010, but the documents appended to the writ petition being

Annexure-P-1 are the letters of contract (chuktipatra) for a period of one year. In terms of the aforesaid scheme of engagement eligibility criteria are

laid down under Clause 7 and nothing has been found on record which goes to show that on scrutinizing the fulfillment of conditions relating to

eligibility criteria as contemplated under the said scheme petitioners were selected by the respective SSKs and subsequently letters of contract were

issued in their favour. In the scheme of engagement albeit it was not specifically provided in details the manner of selection of Siksha Sahayika save

and except it has been provided that managing committee of SSK is the appointing authority but in view of eligibility criteria as delineated in Clause 7

of the said scheme transparent procedure needs to be followed for selection of candidates for being engaged as Siksha Sahayikas on satisfaction being

expressed by the managing committee that selected candidates have fulfilled those eligibility criteria which ultimately made them entitled to be

engaged. It needs to be recorded herein that in terms of the Memo dated 21st November, 2008 issued by the Joint Secretary permitting the said

Municipality to open 38 SSKs there was requirement to follow the scheme which was issued vide G.O. No. 467/MA/C-10/3S-10/99 dated 30th May,

2000 being the relevant scheme also relied upon on behalf of the petitioners to vindicate their engagements.

17. On perusal of records it transpires that selection was made by the said Municipality vide resolution dated 27th February, 2009 which is annexed to

the affidavit-in-opposition used on behalf of the Municipality affirmed on 4th February, 2013. On careful reading of the said resolution dated 27th

February, 2009 takes this Court to an inescapable conclusion that the candidates were selected in the meeting dated 27th February, 2009 which led the

concerned authority of the said Municipality to include names of the candidates in the resolution itself against each and every SSK. If responsibility

was to be shouldered by the newly formed managing committees of the respective SSKs to select the candidates then how before such selection is

made by the managing committees the petitioners were found eligible to be engaged as Siksha Sahayikas as it transpires from the resolution dated 27th

February, 2009. Therefore, nothing was left for the respective managing committees of the newly established SSKs for selection of candidates upon

conducting valid procedure for scrutinizing the eligibility of the candidates as contemplated under the relevant scheme.

18. By no stretch of imagination the letters of contract which are annexed as P-1 to the writ petition should be treated as documents depicting

observance of the procedure in order to select candidates for being engaged as Siksha Sahayikas by the respective managing committees. The

documents being annexed as P-1 were issued in a prescribed format based on the selection made by the municipality vide resolution dated 27th

February, 2009. In between the decision taken by the said Municipality on 27th February, 2009 and the issuance of the letters of contract being

Annexure-P-1 to this writ petition engaging the candidates as Siksha Sahayikas w.e.f. 1st February, 2010, nothing is on record which supports that the

exercise was carried out by the respective managing committees of the newly formed SSKs in order to complete the selection process to select the

petitioners. In view of the failure on the part of the respective managing committees to conduct the selection process to scrutinize eligibility of the

petitioners as required under the aforesaid relevant scheme negates the contention of the petitioners that they were engaged by the respective

managing committees. Since the flaw alluded above as found in engaging the petitioners based on resolution dated 27th February, 2009 and mere

letters of contract were issued by the respective managing committees of the newly formed SSKs the ratio of the decisions of the Apex Court in K.

Shyam Sunder (supra) and State of Bihar (supra) do not come in aid of the petitioners since in both the decisions it has been enunciated by the Apex

Court that change of elected government ought not to be treated as a consideration for discarding the previous stand, decisions of the erstwhile elected

government. As this Court is not satisfied with the manner of engagement of the petitioners as expressed above the ratio of Pomal Kanji (supra) that

Court can mould the law is also found to be inapplicable.

19. This Court cannot shut its eyes to the glaring illegalities made while engaging petitioners vide resolution of the said Municipality dated 27th

February, 2009 since it has been disclosed during course of hearing that the then Chairman of the said Municipality namely, Chainbanu Khatun, herself

participated in the selection process by remaining present in the meeting of the municipality dated 27th February, 2009 was engaged as Siksha

Sahayika of Uttara para SSK. Said Chainbanu Khatun is petitioner no. 35 in the present writ petition claiming re-engagement upon cancellation of

engagement of the candidates who were selected based on the process which was initiated in April, 2012. There were other allegations of illegalities

which have been elaborated while recording submissions made on behalf of the said Municipality in details. It has been alleged some of the candidates were engaged whose ages were below the prescribed lower age limit of 40 years. There were candidates who were residing in the panchayat areas got selected by the said Municipality whereas while defining the eligibility criteria it has been provided in the aforesaid relevant scheme that candidate has to be the resident of the ward where SSK situates and in the event of non-availability of the candidate the resident of nearest ward can be considered for being engaged subject to fulfillment of other conditions. In terms of the approval granted by the Joint Secretary vide Memo dated 21st February, 2008 permitting the said Municipality to engage two Siksha Sahayikas against each SSK and each ward would have two SSKs. Therefore in 19 wards under the said Municipality there would be 38 SSKs and 76 total numbers of Siksha Sahayikas. But on perusal of the resolution dated 27th February, 2009 it transpires against ward nos. 8, 12, and 13 one SSK was opened instead of two; in ward nos. 5, 9, 10 and 17 instead of two, three SSKs were opened which is contrary to the Memo dated 21st November, 2008 issued by the Joint Secretary wherein it was specifically provided that two SSKs would be allocated against each ward. Most striking feature of the said resolution dated 27th February, 2009 was the decision to open three SSKs under ward no. 9 namely, Habibur Smriti Sishu Siksha Kendra, Ketabuddin Smriti Sishu Siksha Kendra and Uttarpara Sishu Siksha Kendra whereas the said Municipality was required to open two SSKs and in the 3rd SSK (Uttarpara Sishu Siksha Kendra) which was established against the permission granted by the Joint Secretary vide Memo dated 21st November, 2008 the then Chairman namely, Chainbanu Khatun was engaged as Siksha Sahayika.

20. Aforesaid illegalities vitiate engagements made in favour of the petitioners w.e.f. February, 2010 which was communicated vide Memo dated 10th March, 2012 issued by the Chairman of the said Municipality. Since it was not the engagements made in favour of the petitioners by respective managing committees of the newly formed SSKs under the said Municipality, as such it cannot be agitated before this Court now that the Chairman of

the said Municipality was devoid of power to terminate the engagements of the petitioners. It has been found that the respective managing committees only issued letters of contract (chuktipatra) to the petitioners based on the selection made by the then Municipality by adopting resolution dated 27th February, 2009.

21. Since initial engagements of the petitioners were made dehors the aforesaid relevant scheme which was also relied upon on their behalf no enforceable right accrued in favour of the petitioners to point finger at the Memo dated 10th March, 2012. In this regard, reliance is placed on the decision of the Apex Court in Umadevi (supra).

22. In the above conspectus, this Court refuses to interfere with the Memo dated 10th March, 2012. Accordingly, the writ petition is dismissed.

However, there shall be no order as to cost.

23. Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.