

Dr. Souryendra Nath Sarkar Vs The State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Oct. 8, 2013

Hon'ble Judges: Sambuddha Chakrabarti, J

Bench: Single Bench

Advocate: Diptakshi Sarkar, for the Appellant;

Final Decision: Dismissed

Judgement

Sambuddha Chakrabarti, J.

By this writ petition the petitioner has prayed for a writ in the nature of Mandamus commanding the

respondents to quash the entire proceeding leading to the termination of service of the petitioner and to reinstate him to the post he held and to

release the arrear salaries with interest and for other reliefs. According to the petitioner he was appointed as a whole-time teacher in Maheshtala

College when the department of Journalism and Mass Communication was opened in the said college. At the time of appointment his salary was

Rs. 4,000/- per month. In spite of his discharging satisfactory duties the Principal of the college without assigning any reason had reduced his

salary. But because of the compulsion of livelihood he had to accept the same at the reduced rate.

2. On March 9, 2006 the petitioner had received a letter containing certain allegations against him and he was informed that till decision of the

Governing Body is taken all his assignments as Guest Lecturer stood withdrawn with immediate effect. The petitioner sent a letter of protest

through his learned advocate. The college had informed the learned advocate that a meeting of the Governing Body was held on March 20, 2006

where it was unanimously resolved to terminate the contractual assignment of the petitioner as a Guest Lecturer.

3. The petitioner has challenged this decision by alleging that he was not appointed as a Guest Lecturer but as a whole-time Lecturer and was

given the overall charge of the department. But the college authorities as per their convenience designated him as a Part-time Lecturer or a Guest

Lecturer. According to him the notice dated March 16, 2006 issued by the petitioner had been suppressed in order to pass the resolution in their

favour and the petitioner's service was terminated without giving any opportunity of hearing. He has filed the present writ petition with the

allegations as mentioned.

4. The respondents Nos. 4 and 5, i.e., the Board and the President of the Governing Body have filed an affidavit-in-opposition denying the

allegations made by the petitioner. They had denied that the letter dated June 10, 2003 was a letter of appointment but it was an offer letter for

appointment subject to issue of appointment letter. It has been asserted that the petitioner was never paid any salary but an honorarium. The

allegation of deduction of salary is false and his consolidated honorarium was fixed at Rs. 2,000/- per month. The answering respondents had

referred to a letter dated February 27, 2006 written by the petitioner to the Principal of the college. According to them this was done with a

purpose of filing the present application. The respondents have further denied that the service of the petitioner has not been terminated and no

question for that arises since he was not a permanent Lecturer of the college. The appointment letter will clearly show that the petitioner was

appointed as a Part-time Lecturer at a consolidated honorarium of Rs. 2,000/- per month. The fact remains that in the meeting of the Governing

Body held on March 20, 2006 the President of the Governing Body placed a letter which was duly recorded in the Minutes of the Governing

Body. Since his academic and other assignments as a Guest Lecturer has been withdrawn there is no question of reinstating him. Therefore, giving

of any opportunity to the petitioner does not arise. They have prayed for the dismissal of the petition.

5. The petitioner has filed an affidavit-in-reply wherein he has reiterated the stand taken in the writ petition.

6. Although an affidavit-in-opposition was used by the respondents none of them appeared at the hearing of this petition.

7. It appears that the assertion made by the respondents Nos. 4 and 5 is perhaps correct. By a letter dated June 10, 2003 the petitioner was

offered the post of whole-time Lecturer of the college in the department of Journalism and Mass Communication on contract basis for one year on

a monthly remuneration of Rs. 4,000/- per month. Thus, he was in fact not exactly appointed by that letter, but was offered an appointment. He,

however, was in fact appointed as a Part-time Lecturer in the department of Journalism and Mass Communication of the college which will appear

from Annexure X-1 to the affidavit-in-opposition, on a consolidated honorarium of Rs. 2,000/- per month and this appointment was valid for 179

days.

8. But from the communication made to the writ petitioner by the Principal of the college on April 3, 2006 it does not appear that the assignment of

the petitioner as a Guest Lecturer was merely withdrawn. On the contrary what was resolved by the Governing Body on March 20, 2006, as it

appears from the said letter, was that the action of the Principal withdrawing all academic and other assignment was endorsed and at the same time

to terminate the contractual assignment of the petitioner who was working in the capacity of the Guest Lecturer. Thus the withdrawal of academic

and other assignments was an action taken by the Principal that was entrusted to him but the Governing Body's resolution was to terminate the

contractual assignment of the petitioner. Before we decide the right of the petitioner to be reinstated it is necessary to examine whether a teacher

who was on contractual appointment have any right to move a writ petition.

9. In order to appreciate the problem it is necessary to mention that in the appointment letter that was issued it was made very clear that the

petitioner was being appointed as a Part-time Lecturer which was a Non-UGC part-time post. Thus there was a contract between the petitioner

and the college and this contract of employment was not made on the strength of any statutory power conferred on the respondents. A Part-time

Lecturer has no right to challenge the decision of the Governing Body to terminate the contract which is not statutory in nature. Writ does not lie to

enforce a contract between two parties which has not any statutory colour in it.

10. In such view of it this writ petition is clearly not maintainable. The petitioner cannot really ask for a Mandamus directing the respondents to

reinstate him in service when in fact he was not holding any service.

11. The writ petition is dismissed.

12. There shall, however, be no order as to costs. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority

basis upon compliance of all requisite formalities.