

THE HIGH COURT OF SIKKIM: GANGTOK

(Civil Extra Ordinary Jurisdiction)

SINGLE BENCH: HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

W.P. (C) No. 15 of 2021

Ms. Sunita Pradhan,
D/o Bal Krishna Pradhan,
R/o Mandir Dara, Goan,
Namchi, South Sikkim.

..... **Petitioner**

Versus

1. State of Sikkim,
Through Chief Secretary,
Government of Sikkim,
Gangtok, East Sikkim.
2. Education Department,
Through the Secretary,
Government of Sikkim
Gangtok, East Sikkim.

..... **Respondents**

Writ Petition under Article 226 of the Constitution of India.

Appearance:

Mr. Yam Kumar Subba, Advocate for the Petitioner.

Mr. Sudesh Joshi, Additional Advocate General and Mr. Sujan Sunwar, Assistant Government Advocate for the Respondents.

08.03.2022

O R D E R (ORAL)

Bhaskar Raj Pradhan, J.

1. The writ petition seeks to assail the order of termination bearing O.O. No. 1484/Adm/Edn dated 25.01.2021 (the termination order) issued by the respondent

no.2 terminating the petitioner's contractual service on the sole ground of unsatisfactory performance. The petitioner also seeks regularization and extension of her contractual period and other incidental reliefs.

2. The petitioner was appointed on ad-hoc basis on 04.06.2014 as post graduate teacher (commerce) on temporary basis till the end of the academic session 2014. Thereafter, on 20.02.2015, 20.02.2016, 24.02.2017 the petitioner was reappointed on temporary ad-hoc basis for fixed tenures, the last one for a period of six months from the date of her joining. Thereafter, the petitioner's ad-hoc appointment was extended on 07.08.2017 till March, 2018. The petitioner was then again temporarily engaged for two terms on ad-hoc basis on 12.02.2018 and 20.02.2019. By a general order dated 14.12.2020 the term of employment for all ad-hoc teachers (which would also include the petitioner) appointed till the academic session of 2020 was extended till 31.03.2021. However, before her contractual service came to an end the respondents terminated her service. This was, as stated above, on the sole ground that her service performance was unsatisfactory. The petitioner has challenged this termination order on various grounds.

3. Heard Mr. Yam Kumar Subba, learned counsel for the petitioner. It is his submission that the termination order also casts a stigma on her and hampers her career. It is submitted that the allegation that her performance was unsatisfactory was made without any basis. In fact records would reveal that her performance has been satisfactory. It is also submitted that several similarly placed contractually appointed teacher's terms have been extended by the respondents and therefore, the petitioner must also be treated equally.

4. The learned Additional Advocate General however, submits that the petitioner's appointment was contractual and her service had to be terminated as she did not comply with the transfer order No.8/Edn/Adm dated 03.07.2020 (the transfer order).

5. The ground for termination as above was disclosed by the respondents in the counter-affidavit. It was not reflected in the termination order. This statement was denied by the petitioner in her rejoinder, asserting that no such transfer order had been issued to her and she had therefore, continued to work in the last place of posting till she was terminated. The respondents have not denied the assertion made by the petitioner in the rejoinder. The learned

Additional Advocate General admits that the respondents have not filed any record to show that the petitioner was in fact served with the transfer order.

6. This court has perused the pleadings and the records placed. On hearing the learned counsel for the parties this court is of the view that the assertion in the termination order that her services was unsatisfactory does not stand to reason. It is noticed that the petitioner has been continuously reappointed or her contractual service extended from 04.06.2014 till the date of her termination. There was no reason for the respondents to have done so if her service had been unsatisfactory. The learned Additional Advocate General submits that it was because of her failure to comply with the transfer order that the respondents deemed it to be unsatisfactory service. The respondents have however not placed any record to establish this fact.

7. The service of the petitioner is a contractual service which would have ended on 31.03.2021. She was however, terminated on 25.01.2021 itself before her term ended on the sole ground that her service was unsatisfactory. There is no proof that her service was unsatisfactorily or that she was served with the transfer order. Resultantly, the impugned termination order No.1484/Adm/Edn dated

25.01.2021 is set aside. The respondents shall pay the petitioner her consolidated salary with all other benefits that would have accrued to her for the period from the last date of payment of consolidated salary till 31.03.2021 on which date her service would have come to an end.

8. The other grievance of the petitioner that she was treated unequally with those contractual employees whose terms had been extended, cannot be examined by this court in view of the fact that the petitioner had chosen not to make them parties in the present proceedings. The petitioner's prayer for regularization and extension of the service beyond the contractual service period cannot be granted. The writ petition stands partially allowed to the above extent. The parties to bear their respective costs. All pending interim applications are accordingly disposed of.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting: **Yes/No**
 Internet : **Yes/No**
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