

Tripura High Court

Ditul Debbarma vs State Of Tripura And Others on 18 May, 2022

HIGH COURT OF TRIPURA

AGARTALA

WP(C)No.225 of 2020

Ditul Debbarma

.....Petitioner

Versus

State of Tripura and Others

.....Respondent (

For Petitioner(s)

: Mr. S. Bhattacharjee, Adv.

For Respondent(s)

: Mr. D. Bhattacharya, G.A.

Mr. P. Saha, Adv.

HON'BLE MR. JUSTICE S. TALAPATRA

Judgment & Order(Oral)

18/05/2022

Heard Mr. S. Bhattacharjee, learned counsel appearing for the petitioner as well as Mr. D. Bhattacharya, learned G.A. assisted by Mr. P. Saha, learned counsel appearing for the respondents.

2. The petitioner was engaged as the Technical Assistant (JE) for implementing various projects relating to MGNREGA works. As stated by the petitioner, on 21.11.2018, he abruptly received a notice [Annexure-3 to the writ petition] whereby he has been terminated from his contractual job as Technical Assistant under the scheme of MGNREGA. It has been stated in the said notice that the petitioner had been reporting to his project irregularly, not attending the Office timely and also remaining absent from the Office and the prescheduled meetings. The petitioner was responsible for supervising all the schemes being implemented by the village committees, but his performance was found very dissatisfactory for which the progress of IHHLs under SBM(G) & MGNREGA and housing schemes under PMAY(G) have been adversely affected.

3. Serious allegations those have been made are that as a result of his dereliction in duty, construction of PMAY(G) houses of 2016-17 are not yet completed, even after lapse of two years, though it is one of the Flagship Programme of Hon'ble Prime Minister & State Government.

Further, it has been alleged that for his dereliction of duty, Open Defecation Free (ODF) another Flagship Programme of the Central Government, has also been adversely affected. It has been also alleged that for his wilful negligence, gross carelessness and lack of attention or negligence to his duties, the respondents suffered serious detriment.

4. The petitioner having received the said notice had filed a representation on 17.02.2020 alleging the violation of principles of natural justice as he was not given any opportunity to defend himself.

The said representation dated 17.02.2020 [Annexure-4 to the writ petition] has not been responded to by the respondents. Finding no other alternative, the petitioner had approached this court urging directions on the respondents to set aside the said notice of termination dated 22.11.2018 and to reinstate the petitioner in the position of Technical Assistant (JE).

5. Mr. S. Bhattacharjee, learned counsel appearing for the petitioner has submitted that under the similar circumstances, this court in Sri Umesh Kalai versus State of Tripura and Others [judgment dated 11.02.2020 delivered in WP(C)No.22 of 2019] has observed that when an order of this nature which results into adverse civil consequences and also stigmatizes the petitioner is passed, a bare minimum opportunity of hearing ought to be granted. Without a show cause notice, without pointing out the nature of so called negligence and defiance of the orders of the authority, the competent authority has unilaterally concluded that the petitioner's service on such grounds was required to be terminated. When the petitioner had continued, although on contractual basis for about 10 years, for which Umesh Kalai was remunerated regularly from the government exchequer, before terminating his engagement, that too on the ground of negligence and misconduct was essential opportunity of hearing.

Having observed thus, the order of termination was set aside directing the respondents to reinstate the petitioner. However, no back wage was directed to be paid.

6. Mr. D. Bhattacharya, learned G.A. assisted by Mr. P. Saha, learned counsel appearing for the respondents has produced the photo copies of the materials which were relied on for passing the impugned order of termination. Materials are catalogues of the projects, where the petitioner failed to supervise for completing them within the planned period. Communications in respect of construction of the houses of the PMAY(G) projects are also placed along with some other papers.

7. This court has glanced through those copies, but the role of the petitioner cannot be gathered. It is thus apparent that the impugned order was totally based on the oral reports or on the basis of the experience of the District Magistrate and Collector, Dhalai, Jawharlalnagar.

8. Mr. Bhattacharya, learned G.A. has strenuously submitted that as from the records the outcome is irresistible, it is useless to provide someone further opportunity for building up his defence.

9. This court is unable to accept the said reason as the fundamental attribute of the fairness of action is the obligation of the authorities to provide reasonable opportunity, not to provide or condemn someone without hearing. This is also component of the principles of natural justice which is embedded in the Constitution of India vide Article 14. A catena of cases can be referred in this regard. A person cannot be faulted with or stigmatized without providing him the reasonable opportunity of defence.

10. True it is that the provision under Article 311(2) of the Constitution of India will not be available to the petitioner, but a showcause laying down the reference where he has shown dereliction of duties and where for his negligence, the competent authority has suffered adversely and how he had shown his disobedience to the lawful orders' cannot be avoided. In this case, that has not been done.

In the notice, the allegations have been made. But the authority did not feel the necessity of providing an opportunity to the petitioner to have his say. By the impugned notice, he has been communicated that he is flatly terminated. This cannot, by any stretch of interpretation, stated to be fairness of action.

11. Having observed thus, the impugned notice containing the order of termination, dated 21.11.2018 [Annexure-3 to the writ petition] is interfered with and set aside. The petitioner shall be reinstated within two weeks from the day when the petitioner will furnish a copy of this order. However, the respondents are given liberty to inquire into the allegations after providing the petitioner reasonable opportunity, so that he can have his say in the matter. Thereafter, the appropriate order would be passed by the competent authority. There would be no order as to the back wages. But from the day of joining the petitioner shall be paid his salaries in terms of the contract till the inquiry, if taken up by the respondents, comes to an end.

In terms of the above, this writ petition stands allowed and disposed of.

There shall be no order as to costs.

JUDGE Sabyasachi B