

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Bikash Bhavan, Salt Lake, Kolkata – 700 091.**

**Present-**

**THE HON'BLE SAYEED AHMED BABA, OFFICIATING CHAIRPERSON AND ADMINISTRATIVE MEMBER,**

**Case No. – OA 671 of 2022**

**MS. OINDRILA GANGULY - Vs - THE STATE OF WEST BENGAL & OTHERS.**

Serial No. and  
Date of order

For the Applicant : Mr. S.Banerjee  
Advocate

04  
23.06.2023

For the State respondents : Mr. Goutam Pathak Banerjee  
Advocate

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt.-II) dated 23<sup>rd</sup> November, 2022 issued in exercise of the powers conferred under Section 5 (6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsels for the contesting parties, the case is taken up for consideration sitting singly.

The prayer in this application is for setting aside the Memo. No. 363 issued by the respondent on 25.04.2022. By this order the service of the applicant was terminated. The applicant was engaged on contract as a Psychiatry Social Worker by an order dated 01.04.2015. The relevant portion of the appointment order is as under:

*“Ms.Oindrila Ganguly, D/o- Prof. (Dr.) Nemai Chand Ganguly, residing at 44/2, Guru Prasad Chowdhuary Lane, Kolkata-700006, is hereby appointed provisionally for the post of Psychiatry Social Worker, purely on contractual basis for the period 02.04.2015 to 31.03.2016. This appointment will cease to work automatically after 31<sup>st</sup> March, 2016 from the date of joining”.*

In terms of such appointment order, the applicant also signed an agreement with the respondent in which she agreed to all the terms and conditions including the term that she was appointed on purely contractual basis. Further, in her joining letter also she has mentioned

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that she is aware that the appointment is purely on a contractual basis. Extensions to such contractual agreement on the same terms and conditions were given each year by the respondent.

Mr.S.Banerjee, learned advocate for the applicant submitting that the termination was arbitrary and not backed by any law, refers to a Notification No. 1107 issued by the Finance Department on 25.02.2016 in which the relevant portion is as under:

*“ (i) All contractual / casual / daily rated workers shall continue to be in engagement up to the age of 60 years. Engagement of contractual / casual / daily rated worker shall not be terminated except as prescribed in the above referred Memo.”*

Mr.S.Banerjee submits that this is not a simple termination, but a fall out of some complaints made by the ex-students against the applicant. The termination was purely on the basis of a complaint against the applicant, without giving any opportunity for the applicant to respond to these complaints. Although, the applicant was allowed the opportunity to respond to such complaints, but the replies in response by the applicant were not considered.

Mr.S.Banerjee, relies on a judgement of Apex Court, the relevant para of the judgement is as under:

*“10. It is thus clear that the appellant was appointed after he underwent the entire selection process. Even as per the University, though the appointment shows that it is on a contractual basis, for all the purposes, it is on a regular basis. It could thus be seen that even for the appointment on a contractual basis in the said University, a candidate is required to undergo the entire selection process. Though he is appointed on a contractual basis, his terms and conditions are almost like a*

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*regular employee. It will be relevant to note that the Annual Performance Assessment Report (for short "APAR") of the appellant during the period 2012-2013 show his performance to the outstanding. Every other parameter in his APAR is shown as excellent. With regard to his integrity, it is mentioned that there is nothing against the appellant adversely reflecting his integrity. It is further stated in his APAR that he enjoys a good reputation and his integrity is good."*

*14. It could thus be seen that though the communication of the said University dated 12.08.2014 states that the appellant's contractual period has expired, in the facts of the present case, it would reveal that his services were discontinued on account of the allegation made against him by the Dean of the said University. Since even according to the said University, though the employment was contractual but the employee was entitled to get all the benefits of a regular employee, we find that in the facts of the present case, the appellant's services could not have been terminated without following the principles of natural justice. We therefore find that the present appeal deserves to be allowed on this short ground."*

In response, Mr.G.P.Banerjee learned advocate for the respondents submits that reference to Memo. No. 1107 by the learned advocate for the applicant is subject to the conditions laid down in Memo. No. 9008, the relevant pages of this Memo. is missing from the application. Therefore, it is important to examine what are the terms and conditions laid down in those missing two pages.

Further submission is that after the completion of enquiry against the applicant, the Director of Institute issued a caution notice on 11.02.2022 cautioning the applicant "*not to repeat such misconducts mentioned above*". Such warning notice issued by the respondent was

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not challenged by the applicant either before the respondent or before any appropriate forum.

In conclusion, Mr.G.P.Banerjee submits that Memo. No. 9008 and other relevant Government orders gives discretionary power based on the performance of the contractual / casual employees.

Mr.S.Banerjee, learned advocate for the applicant prays for an interim order to the effect that the vacancy after termination of the applicant should not be filled up without leave of the Court. However, Mr.G.P.Banerjee opposes such an interim order on the ground that the termination of the casual employee was done after following all relevant procedures, thus, the Tribunal should not interfere in this matter and pass any interim order for filling this post which has been vacant for the last one year.

Let this matter along with the prayer for an interim order be heard under the heading "Further Hearing" on 15<sup>th</sup> September, 2023. Reply, rejoinder, if any, in the meantime.

**(SAYEED AHMED BABA)**  
**OFFICIATING CHAIRPERSON AND MEMBER (A)**

BLR