

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 . - Versus - The State of West Bengal & Others.

Serial No. and Date of order	For the Applicant	: Mr. G. Haldar, Advocate.
<u>07</u> 07.03.2024.	For the State Respondents	: Mr. G. P. 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 23rd 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. IP/22/363 issued by the respondent on 25.04.2022. By this order the service of the applicant on contract was terminated. The applicant was engaged on contract as a Psychiatry Social Worker by an order dated 01.04.2015.

In terms of such appointment order, the applicant also signed an agreement with the respondent in which she had agreed to all the terms and conditions including the term that she was appointed on purely contractual basis. Extensions to such contractual agreement on the same terms and conditions were given each year by the respondent.

Mr. G. Halder, learned advocate for the applicant submitting that the termination was arbitrary and not backed by any law, refers to a Notification No. 1107-F(P) issued by the Finance Department on 25.02.2016. He submits that this is not a simple termination, but a fall out of some complaints made by the ex-students against the applicant. Although, the applicant was allowed the opportunity to respond to such complaints, but the replies in response by the applicant were not considered.

In response, Mr. G. P. Banerjee learned advocate for the respondents submits that reference to Memo. No. 1107-F(P) by the learned advocate for the applicant is subject to the conditions laid down in Memo. No. 9008-F(P).

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It appears that while working as a teacher in the capacity of Psychiatry Social Worker, her relationship with the students were not at all healthy. Several complaints were filed by these students against her and finally, an enquiry was also held to enquire into the allegations. In terms of the report submitted by the Enquiry Committee, the Director of the Institute had also issued a caution notice to her for her alleged misconducts. Besides misconduct, another complaint was her irregular attendance in attending the classes. An opportunity of personal hearing before the Committee was given to the applicant as well as her response in writing was also considered. Thereafter, the matter appears to have been considered by the Principal Secretary of the Department and a decision was taken not to further extend her contract and terminate her services w.e.f. 25.04.2022.

The primary argument presented by the applicant's side is that such termination was not valid in terms of the Notification No. 1107-F(P) dated 25.02.2016. By this Notification, all contractual employees can be engaged till the age of 60 years. However, this was subject to the provisions of enabling Notification No. 9008-F(P) dated 16.09.2011. On examination of the two notifications, the Tribunal is of the opinion that such Memorandum does not mean that such contractual employees cannot be terminated. In fact, one of the paragraphs of Notification 9008-F(P) relates to continuity of service which requires to be certified by the competent officer. The issue in this application is that the authorities were not satisfied with the performance of the applicant and were not willing to extend the contract. It is to be understood that the applicant was appointed on contractual basis for a year and renewed on yearly basis. The discretion of the respondent to renew or not to renew cannot be questioned for such contractual employees. The argument presented by the applicant's side such termination was due to a biased attitude cannot be agreed because an enquiry was held in which the applicant was given proper opportunity to represent herself and also submit her replies. Also the argument of the applicant that there was "no need" for the respondent authorities to constitute an Enquiry Committee is also not a valid argument. It should rather

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be appreciated that such decision of the respondent was to give an opportunity to the applicant to express her views. The Tribunal is also aware of the fact that the contract she had signed with the respondent authorities made it clear that such appointment was purely on contractual basis and notice of such termination can be given by either side in terms of such an agreement. The Director of the Institute passed the termination order after giving one month's remuneration in lieu of such notice as per the terms of the agreement. It is also clear to the Tribunal that the respondent authorities had the right as the employer to terminate such a contractual service with the applicant. In this case, since the employer was not satisfied with her performance and there were several allegations of professional misconduct, the termination order cannot be questioned and called arbitrary or unlawful.

The Tribunal has also observed that there was no unfairness or perversity in the action taken by the respondent authorities in terminating this contract. It is also evident that renewal of such contract depend upon the performance of the employee and to the satisfaction of the employer. In this case, unfortunately the employers were not satisfied with her performance and thus they chose not to renew the contract. The Tribunal does not find any element of unfair treatment towards the applicant. As per the terms of the contract, the employer was free to either renew the contract or not to renew any further.

Having observed the above, the Tribunal does not find any merit in the prayer of this application and it is disposed of without passing any orders. Any Interim Order, if any, in this matter stands vacated.

(SAYEED AHMED BABA)
Officiating Chairperson and Member (A)

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