



WA No. 03/2022

SUNITA PRADHAN

APPELLANT (S)

VERSUS

STATE OF SIKKIM & ANR.

RESPONDENT(S)

For Appellant : Mr. Yam Kumar Subba, Advocate.
Ms. Kingzum Sherpa, Advocate.

For Respondents : Mr. Sudesh Joshi, Addl. Advocate General.
Mr. Thinlay Dorjee Bhutia, Govt. Advocate.
Mr. Yadev Sharma, Govt. Advocate.
Mr. Sujan Sunwar, Asst. Govt. Advocate.

Date: 21/04/2022

CORAM:

**HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE
HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

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JUDGMENT : (per the Hon'ble, the Chief Justice)

This appeal arises in respect of the judgment and order dated 08th March, 2022, passed by a learned Single Judge of this Court in WP (C) No. 15 of 2021 (*Ms. Sunita Pradhan vs. State of Sikkim and Another*). By the impugned judgment and order, the learned Single Judge has been pleased to allow the writ petition – in part – while dismissing the writ petitioner's prayer for regularization and extension of her service beyond the contractual service period.

The instant appeal has been preferred by the writ petitioner.

For convenience, relevant portions of the impugned judgment and order are quoted hereinbelow:

"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."

The learned advocate representing the appellant/writ petitioner submits before this Court that even during the pendency of the instant matter, the concerned respondent authority has extended the contractual service period of some other teachers, who were similarly situate and circumstanced. He further submits that in the facts and circumstances of the case, the appellant/writ petitioner's contractual service ought to have been regularised. In order to buttress his submission, he has referred to the following judgments:

- (i) Jarnail Singh and Others, etc. vs. State of Punjab and Others, reported in AIR 1986 SC 1626;
- (ii) Secretary, State of Karnataka and Others vs. Umadevi and Others, reported in AIR 2006 SC 1806 (paragraph 20).

Having perused both the judgments carefully, we are of the view that its ratios have no manner of application at all in the facts of the instant case. In the facts of the instant case, it is the admitted position that the appellant/writ petitioner was in contractual service. It is also the admitted position that her contractual service period has already come to an end. The question of extension of her contractual service lies squarely with concerned authority of the State. A writ in the nature of mandamus cannot be issued directing the



concerned authority of the State to extend the contractual service of the appellant/writ petitioner, if the contractual period has come to an end. Similarly, the writ Court, ordinarily, cannot compel the State or its authority to regularise the service of a contractual employee. Certainly, in an exigency, the State or its authority can always regularise the service of a contractual employee. That is, in fact, the discretion of the State. We do not notice any such exigency in the facts of the instant case.

Now, the other question is whether the appellant/writ petitioner can cite the extension of contractual service of some other teachers as a reason for this Court to invoke Article 14 of the Constitution of India. If we accept this analogy, we will be invoking the principle of negative equality, which will certainly not be in conformity with the positive Constitutional principle as prescribed under Article 14 of our Constitution. In other words, if some teachers have been unduly favoured by the concerned authority of the State – while allowing their contractual services to be extended – a writ in the nature of mandamus cannot be issued by this Court directing the concerned authority of the State to roll-out the same favour to the appellant/writ petitioner.

In an Intra-Court mandamus appeal, interference is usually warranted only when palpable infirmities or perversities are noticed on a plain reading of the impugned judgment and order. In the facts of the instant case, on a plain reading of the impugned judgment and order, we do not notice any such palpable infirmity or perversity. That apart and in any event, the impugned judgment and order is supported with cogent and justifiable reasons.

For reasons stated above, the instant appeal is liable to be dismissed and stands accordingly dismissed.

(Meenakshi Madan Rai)
Judge

(Biswanath Somadder)
Chief Justice