

**HIGH COURT OF TRIPURA
AGARTALA
W.A.No.163 of 2021**

Smt. Ambika Sarkar,
daughter of Subodh Sarkar,
wife of Sri Manik Deb,
resident of near Bishalgarh Sub Divisional Hospital,
P.S. Bishalgarh, District-Sepahijala

.....Appellant(s)

Versus

1. The State of Tripura and Others

to be represented by the Secretary,
Department of Education, Government of Tripura,
New Secretariat Complex, New Capital Complex,
Agartala, West Tripura, Pin-799010

2. The State Project Director,

Samagra Siksha (Director of Elementary Education),
Government of Tripura, Siksha Bhavan,
Agartala, West Tripura

3. The District Project Coordinator,

(District Education Officer), Belonia, South Tripura

4. District Project Coordinator,

Samagra Siksha Abhijan,
District Education Officer (I/C),
Belonia, South Tripura

.....Respondent(s)

For Appellant(s)	:	Mr. P. Roy Barman, Sr. Adv. Mr. S. Bhattacharjee, Adv. Ms. A. Debbarma, Adv.
For Respondent(s)	:	Mr. D. Bhattacharya, G.A. Mr. S. Saha, Adv.
Date of Hearing and Judgment & Order	:	31.05.2023
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE ARINDAM LODH

Judgment & Order

Heard Mr. P. Roy Barman, learned senior counsel appearing for the appellant as well as Mr. D. Bhattacharya, learned G.A. appearing for the respondents.

2. The appellant has filed the instant writ appeal against the judgment and order passed by the learned Single Judge in WP(C)No.841 of 2020 dated 08.01.2021. The case of the appellant is that Samagra Siksha Abhijan is an overarching programme for the school education extending from pre-school to Class-XII. The scheme has been launched prepared with the broader goal of improving school effectiveness measured in terms of equal opportunities for schooling and equitable learning outcomes. It subsumes the three schemes of Sarva Shiksha Abhiyan, Rashtriya Madhyamik Shiksha Abhiyan and Teacher Education. It is run in Tripura through the Elementary Education Department, Government of Tripura.

3. The appellant was appointed as Post Graduate Teacher under the Directorate of Secondary Education, Government of Tripura and being so appointed she joined in the post on 26.08.2010. In pursuance to the common judgment and order dated 07.05.2014, passed in WP(C)No.51 of 2014, in Tanmoy Nath versus State of Tripura and Others and similar other writ petitions appointment of the appellant was terminated w.e.f.31.12.2017 and thereafter, the appellant has been on ad-hoc appointment.

4. In pursuance to the advertisement published in Dainik Sambad dated 09.05.2018, the appellant offered her candidature for the post of URP(English) by submitting written application to the District Project Coordinator (District Education Officer), Samagrah Siksha Abhijan, South District with all particulars and documents.

5. The appellant obtained Bachelor of Arts Degree from Tripura University in the year 2001. Thereafter, the appellant obtained Master Degree in English in the year 2007 from IGNOU in second division securing 47.18%. Thereafter, the appellant obtained Bachelor of Education Degree in the year 2014 from the Tripura University securing 59%. While the appellant offered her candidature for the post of URP (English) in writing against the Clause 11 of the said application the appellant has stated that she is in service under the Directorate of Secondary Education being posted at Purba Gakulnagar, H.S. School, Bishalgarh, Sepahijala.

6. The appellant was selected by fair and transparent selection process for the post of URP/BRP and in pursuance to such selection, the District Project Coordinator, District Education Officer (I/C), Belonia, South Tripura, vide memo dated 03.10.2019 engaged the appellant in the post of URP (English) with posting at Belonia Government English Medium URC under Samagra Siksha Abhijan Scheme as per terms and conditions mentioned in the memo. The engagement was on contract basis @ Rs.21,740/- as remuneration per month and the memo also stipulated that the appellant will be required to join the post in between 16th October to 18th October, 2019 and tenure of

engagement will be purely on contract basis primarily for one year or till cessation of Samagra Siksha Scheme whichever is earlier.

7. The appellant by submitting in writing on 16.10.2019 to the District Project Coordinator, District Education Officer (I/C), Belonia, South District, stated that she is delighted being engaged as URP(English) as communicated vide memo dated 03.10.2019. Stating so, the appellant has stated that her daughter is only three years old and she is studying at St. Josephs Pre Nursery School and Academic session is from April to March and final exam will be held in the last week of March, 2019. So during the midterm of the session, it would be difficult to shift her school. The appellant has further stated that she is currently under treatment for LS Spine Back pain and she has been advised by Dr. V.P. Singh, Physiotherapist, Apollo Hospital, Chennai to complete the Physiotherapy treatment and not take journey. Stating so, the appellant requested the District Project Coordinator to extend her joining time. Along with the representation, the appellant enclosed necessary documents. After overcoming her difficulties, the appellant on 27.04.2020 in writing informed the District Project Coordinator (District Education Officer(I/C). Samagra Siksha Bhijan that she has recovered from her illness and now she is in a position to join in pursuance to the memo dated 03.10.2019 by which she has been engaged in the post of URP(English) with posting at Belonia, Government English Medium H.S. School. With the letter dated 27.04.2020, the appellant enclosed medical illness certificate and fitness certificate with other relevant documents.

8. Thereafter, the Joint Director, Samagra Siksha Abhijan vide letter dated 18.05.2020 informed the District Project Coordinator, South Tripura District that State Project District, Samagra Siksha, Tripura has approved the prayer made by the appellant for allowing to her to join URP (English) and in view of such approval, the District Project Coordinator, South Tripura District was requested to allow joining of the appellant in the post of URP English as per prescribed manner. Thereafter, the District Project Coordinator, District Education (In Charge), Belonia vide memo dated 18.05.2020, instructed the appellant to join the office of the URC Coordinator, Belonia, Government English Medium H.S. URC within 27.05.2020 without fail. Thereafter, the appellant joined on 19.05.2020 in the post of URP by submitting joining report to the Coordinator, Belonia Government English Medium H.S. School HRC.

9. Thereafter, all on a sudden, by the memo dated 19.05.2020 the State Project Coordinator asked the District Project Coordinator, South Tripura, to give some information regarding the appellant and by the said memo, the approval conveyed regarding the acceptance of joining of the appellant was kept in abeyance with direction not to allow the appellant to join the contractual post under Samagra Siksha until further order. All on a sudden the State Project Director, communicated to the District Project Coordinator, South Tripura, to inform him, that the joining of the appellant in the post of URP could not be accepted on the ground stated in the letter. In the said letter it is stated that vide letter dated 18.05.2020, the State Project Director, conveyed acceptance of the prayer of the appellant herein for accepting her joining.

10. Thereafter, verbal complaint was received against the appellant and stating so in the letter it is mentioned that though illness was a ground for delayed joining but it is ascertained that concerned applicant discharged duties up to 31st of March, 2020 as ad-hoc teacher, Purba Bakulnagar H.S. School, Bishalgarh. On this ground by the said letter, the decision of the said State Project Director not to accept the joining of the appellant was communicated.

11. By the letter dated 25.08.2020 the State Project Director, Samagra Siksha Tripura communicated to the District Project Coordinator (District Education Officer), South Tripura, Belonia. In that letter, it is stated that the ground for extension of date of joining does not corroborate with the facts and for this reason, prayer for extension of joining time by the appellant is regretted. In para-4 of the letter it is stated though ground of illness was taken for extension of joining time by the appellant but it is ascertained that she discharged her duties up to 31.03.2020 as Teacher (ad-hoc) in Purba Gakulnagar H.S. School, Bishalgarh.

12. From the impugned letter dated 25.08.2020 it is very much clear that there is total non application of mind by the State Project Director. The appellants prayer for extension of joining time was based on two genuine grounds, one regarding pre nursery schooling of her daughter and difficulty in making admission in a new school in the mid of the session. Another ground was appellant's medical advice asking the appellant to avoid motor journey and ongoing treatment. The appellant never stated that she is bed ridden. She has stated that she is under medical treatment. It is not in her prayer the appellant stated that she is bed ridden. It appears that the State Project Director did not

consider the facts and there has been non-application of mind. Without giving the appellant any opportunity to state that she did not resort to hide and seek game in seeking extension of joining time and on genuine grounds she made prayer for extension of joining time which was accepted by the concerned authority, the joining of the appellant was not accepted to the prejudice of the appellant.

13. The appellant in her request for extension of joining time did not state that she is in bed. The appellant sought for extension of joining time on two grounds. Her daughter cannot be shifted to another School in the middle of pre nursery session and another ground was that under the advice of doctor she is required to complete the physiotherapy course and not travel motor journey. As the appellant was required to join in the post of URP at Belonia, she would be required to take her three years daughter with her, but her daughter was a student of St. Joseph School at Bishalgarh, Sepahijala and for this reason, shifting of school is required and in the midst of academic session such shifting of school is not advisable. As the appellant was serving on ad-hoc at Purba Gakulnagar H.S. School, it was within the vicinity of her residence in Bishalgarh without requiring Motor Journey.

14. Being satisfied with the grounds taken by the appellant for extending the joining time, the respondents extended the joining time and thereafter instructed the appellant to join by 27.05.2020 and in pursuance to such instruction, the appellant had joined on 18.05.2020. Thereafter, impugned memo dated 19.05.2020 and letter dated 25.08.2020, were issued behind the back of the appellant without giving for extension of joining time might not be

recalled as there was no such ground for recall. The appellant joined on 18.05.2020 and there was no reason for subsequent withdrawal of the extension of joining time on extraneous ground and without application of mind, without considering the real facts and without giving the appellant opportunity to explain that she did not make any misrepresentation of facts or suppression of facts in seeking extension of joining time, joining of the appellant has been regretted. Though the selection and subsequent engagement of the appellant in the post of URP is on contractual basis initial for one year but there is every likelihood, that the tenure would be extended as the tenure is co-terminus with the project and the project is likely to continue for many years. Those who have been engaged on contract basis initially for a year under Samagra Siksha Abhijan have been continuing till date.

15. In the writ petition the appellant has sought for quashing and cancelling the memo dated 19.05.2020 and letter dated 25.08.2020 issued by the State Project Director, Samagra Sikhsa, Tripura whereby and where under the extension of joining time, allowed to the appellant for joining in the post of URP(English) being selected through fair and proper selection, has been kept in abeyance and withdrawn respectively to the prejudice of the appellant without giving any opportunity to the appellant that extension of joining time once allowed was not called for revocation.

16. According to learned G.A. the application of the appellant for extension of joining having two receipts one of her illness and other is her daughter's admission in school. That particulars documents were not annexed with the writ petition. According to learned G.A. what to be believed and what

not to be believed the learned Single Judge had come to a conclusion that the materials on record would suggest that the respondent did consider the case of the appellant sympathetically for extension of time for reporting for duty on the ground that she was suffering from acute illness which request was supported by medical papers. Such request was granted. However, upon complaints being received the administration carried out further inquiries and it was revealed that during such period when the appellant had claimed extension for reporting on the basis of her acute illness, she was actually discharging duties as a teacher in Government school. The authority therefore decided not to allow the appellant to report for duties. The appellant was engaged as a contractual worker and has no tenure protection. When it is found that she had given inaccurate reason for extension of time for reporting for duty, the extension granted was withdrawn. No ground for interference is made out. Hence, according to learned G.A. the judgment passed by the learned Single Judge is just and proper.

Heard both sides.

17. According to this Court (1) The notification is issued for the purpose of employment for a period of one year during 2019 which has expired in 2020, so by efflux of time, the very purpose of appointment which is issued comes to an end by expiry of the scheme or one year whichever is earlier.

(2) The petitioner has categorically indicated in the affidavit and as well in the letter seeking extension of time that she requires some time to report to the duty since the child is a student in St. Josephs Pre Nursery School and she was unwell and as per the medical advice she requires rest and she is

not supposed to travel. Though, initially, this has been accepted by the respondent authorities and later on, she was restrained from reporting to the duty placing on an enquiry report which says that the petitioner was working in a school during the period where she was sought for extension of her reporting to the job. This action of the petitioner is unjust. This has been categorically indicated in the impugned order dated 25.08.2020. The petitioner in the affidavit has not stated that she was not working during the said period in any other school as alleged in the impugned order. In the absence of denial of the same, this Court draws a negative inference against the petitioner and opines that the petitioner has suppressed facts and also has not approached this Court with clean hands. As such, there is no infirmity in the order passed by the learned Single Judge and accordingly, the present writ appeal is dismissed upholding the order of the learned Single Judge.

18. Since it reflects upon the conduct of the petitioner with regard to the suppression of fact, this Court cautions the petitioner. The petitioner is left free without imposing any costs, since, she is an unemployed woman having a minor child, a lenient view is taken.

In terms of the above, the present appeal is dismissed confirming the order passed by the learned Single Judge.

JUDGE

JUDGE