

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 7908 of 2026

Dr. Sham Kumar Sharma

Vs.

Union of India & Ors.

For the writ petitioner	:-	Mr. Kaushik Dey, Adv. Mr. Debdipto Banerjee, Adv. Mr. Soumen Banerjee, Adv.
For the respondent	:-	Mr. Siddhartha Lahiri, Adv. Mr. Debapriya Gupta, Adv.
Heard on	:-	02.04.2026
Judgment on	:-	08.04.2026

Amrita Sinha, J.:-

1. The petitioner is a retired Central government officer. In response to a vacancy notice published by Dr. Shyama Prasad Mookerjee National Institute of Water and Sanitation, Kolkata in October, 2023, he applied for being appointed in the sanctioned post of Scientist F under level 13A pay matrix (7th CPC). He is a permanent resident of the State of Himachal Pradesh and is presently residing in Kolkata.
2. As per the vacancy notice, the remuneration of the retired government officers is governed by the Department of Expenditure, Ministry of Finance guidelines dated 9th December, 2020, as amended from time to

time. The maximum age limit for application by the retired government officers is the date of superannuation plus four years, and the maximum age and the period of engagement of the retired government officers in the Institute is the age of superannuation plus five years, as applicable.

3. The last date for receipt of the application was 30th December, 2023. The application made by the petitioner was considered and accepted by the authority. An offer of engagement as Scientist F on contract basis in the Institute was issued to the petitioner on 15th March, 2024.
4. The said offer of engagement mentions that the maximum age of engagement of retired government officer in the Institute will be the age of superannuation plus five years, as applicable, subject to annual satisfactory performance from the date of joining the Institute or until further order(s), whichever is earlier. The remuneration and other benefits are regulated as per the Department of Expenditure, Ministry of Finance guidelines dated 9th December, 2020. The petitioner was requested to join duties within thirty days from the date of issuance of the engagement offer letter which was addressed to him in his permanent address at Himachal Pradesh.
5. The petitioner being a very competent officer and having vast knowledge and experience in the field of sanitation became highly interested in the offer and accepted the same. He joined service on 27th March, 2024.

6. On 27th October, 2025 the petitioner was communicated the revised terms regarding the tenure of his engagement issued by the Administrative Officer of the Institute. The same mentions that the matter of engagement has been examined in line with the Office Memo dated 9th December, 2020 in the Department of Expenditure. The matter was sent to the Department of Drinking Water and Sanitation, Jal Shakti for direction and the Department has given such direction vide Office Memo dated 19th September, 2025.
7. The tenure of engagement of the petitioner stood substituted. It was mentioned that the term of appointment shall ordinarily be for an initial period not exceeding one year which is extendable by another one year or till the completion of five years from the date of superannuation or until further order(s), whichever is earlier. The revised terms and conditions were effective from the date of communication of the same.
8. Being aggrieved by the curtailment of his tenure of engagement, the petitioner filed an objection on 11th December, 2025 before the Joint Secretary-cum-Director and Head of the Institute highlighting that the right which accrued in his favour on issuance of the offer of engagement could not have been curtailed with retrospective effect. It was mentioned in the representation that the Institute is a national level Institute for which the initial offer has been kept open for five years and not one year to attract competent retired officers from various parts of the country.

9. In response to the said objection filed by the petitioner, a reply was given by the Joint Secretary-cum-Director and Head of the Institute on 3rd March, 2026 mentioning that the revision of terms and conditions has been made in terms of the existing Government Policy, especially Office Memo dated 9th December, 2020 of the Department of Expenditure, Government of India. The issue was duly examined and approved by the Department and the revised terms have also been approved by the Executive Council in its meeting held on 3rd February, 2026. Being an Institute of the Government of India, the Institute has to follow all policy and instruction issued by the Government from time to time.
10. By the next communication dated 5th March, 2026, the petitioner was intimated that his tenure as Scientist F on contract basis is due to complete on 26th March, 2026. The competent authority has decided not to extend the contract beyond the said date. The said decision was taken relying on the Office Memo dated 9th December, 2020. The petitioner again submitted an objection on 6th March, 2026. Along with the aforesaid objection the petitioner forwarded a brief resume of the work performed by him for the period 1st April, 2025 to 31st March, 2026.
11. Despite such objection, relieving order dated 23rd March, 2026, was issued relieving the petitioner from the post. The petitioner was requested to hand over the charge including the records and e-files and related documents to a Scientist C of the Institute and obtain the No

Objection Certificate from the concerned division and submit the same to the Administrative Section. It was mentioned that the relieving order was issued with the approval of the competent authority.

12. A further objection was raised by the petitioner on 24th March, 2026. The petitioner has handed over charge under protest on 26th March, 2026 without prejudice to his rights and contentions and a no-due certificate has been issued in his favour on the same date.
13. The petitioner challenges the action of the authority in altering the terms and conditions of his engagement which stool crystallised on the date the engagement letter was issued in his favour.
14. It has been submitted that the post in question is a sanctioned one. A proper vacancy notice was published by the Institute for filling up the same. The petitioner being eligible for the said post applied in response to the advertisement and being successful in the interview accepted the offer and started performing his duties. The vacancy notice clearly mentions the duration of engagement. It is only after being satisfied with the terms and conditions for engagement as prescribed in the vacancy notice, the petitioner, though a permanent resident of Himachal Pradesh, expressed his interest and inclination to perform duty in Kolkata. It has been submitted that, had the petitioner been initially intimated that his service would have been only for a short tenure of one or two years, he would not have been interested or inclined to apply for the job.

15. It has been argued that the authority ought not to have revised the terms and conditions of engagement, that too, with retrospective effect. By revising the terms and conditions of engagement, his valuable right to hold on to the job for a period of five years has been infringed for which the petitioner is severely prejudiced. It has been submitted that the terms and conditions of his engagement were altered without giving him an opportunity of hearing, resulting in violation of the principles of natural justice.
16. In support of the submission that the authority could not have given retrospective effect to the revised terms and conditions of engagement, the petitioner relies on the judgments delivered by the Hon'ble Supreme Court in the matter of ***H. L. Tharan & Ors. -vs- Union of India & Ors.*** reported in ***(1989) 1 SCC 764***, ***Bharat Sanchar Nigam Limited & Ors. -vs- Tata Communication*** reported in ***(2022) 20 SCC 96*** and ***Punjab State Cooperative Agricultural Development Bank Limited -vs- Registrar of Cooperative Societies & Ors.*** reported in ***(2022) 4 SCC 363***.
17. Prayer has been made for issuance of a writ of Mandamus to set aside the impugned memo revising the terms of engagement, the relieving order and any steps taken consequent thereto. Prayer has been made to reinstate the petitioner and permit him to resume his duty.

18. The petitioner has, inter alia, prayed for interim relief seeking stay of operation of the impugned memo revising the terms of engagement and the relieving order.
19. In support of the prayer for grant of interim order, learned advocate for the petitioner relies on the judgment delivered by the Hon'ble Supreme Court in the matter of **Deoraj -vs- State of Maharashtra & Ors.** reported in **(2004) 4 SCC 697** and the judgment delivered by the Hon'ble Division bench of this Court in **Md. Mujibur Rahman -vs- State of West Bengal & Ors.** reported in **2019 SCC Online (Cal) 1028.**
20. It has been submitted that the petitioner will be highly prejudiced if interim order is not granted at this stage and may be by the time the matter is decided after exchange of affidavits, the cause of action for filing the instant writ petition will not survive.
21. Learned advocate representing the respondents oppose the submission and prayer of the petitioner. It has been submitted that the respondents took steps in terms of the Office Memo dated 9th December, 2020 and the clarification regarding the contract period of re-employment forwarded by the under Secretary, Government of India to the Director of the Institute on 19th December, 2025.
22. Office Memo dated 9th December, 2020 has been placed before the Court wherein it has been mentioned that the term of appointment is ordinarily for an initial period not exceeding one year, extendable by

another one year. The term may be extended beyond two years after the age of superannuation where adequate justification exists, based on a review of the task and performance of the contract appointee, provided it shall not be extended beyond five years after superannuation.

23. It has been submitted that the petitioner would be bound by the subject Office Memo. The same is also indicated in clause 4 of the vacancy notice.
24. It has been contended that as the petitioner has been engaged on contractual basis, he does not have any legal right to seek issuance of a writ of Mandamus for extending his period of contract. The relationship between the employer and the employee ceased after the relieving order was issued. The employer always has a right to revise the terms and conditions of the contract.
25. Prayer has been made by the respondents not to entertain the writ petition.
26. I have heard and considered the submissions made on behalf of both the parties and perused the materials on records.
27. As the writ petition is at the motion stage, the Court would prefer to grant an opportunity to the respondents to disclose their stand by filing affidavit-in-opposition. At this stage the matter is being considered only in the purpose of passing interim order.

28. The petitioner is a retired Chief Engineer of the Jal Sakti Vibhag, Himachal Pradesh. He has a work experience of thirty-three years in WASH section in the Jal Sakti Vibhag in various capacities from the Executive Engineer to the Chief Engineer in design wings and field postings from 1989 to 2023. It is only for utilizing his experience that he gathered over more than three decades in service that he responded to the advertisement seeking application from eligible candidates to fill up the sanctioned vacant post of Scientist F on contract basis from the retired Government officers.
29. The petitioner has disclosed that it is only after noticing that the period of engagement is the age of superannuation plus five years, as applicable, that he became interested in the job. Had the vacancy notice disclosed a lesser duration of the contract, the petitioner would not have been interested to come down all the way from Himachal Pradesh to serve in the State of West Bengal.
30. On approval of his application the petitioner was called for interview, and being found fit for the job, the offer of engagement was issued clearly mentioning that, the application was approved by the competent authority and on the basis of the interview he stood selected on contract basis.
31. The offer of engagement was in line with the vacancy notice as regards the duration of the contract. The engagement offer specified that, the maximum age of engagement of retired Government officer in the

Institute will be the age of superannuation plus five years, as applicable, subject to annual satisfactory performance from the date of joining or until further order whichever is earlier. Remuneration of engagement will abide by the guidelines of Office Memo dated 9th December, 2020.

32. The authority by the impugned communication dated 27th October, 2025 revised the terms regarding tenure of engagement of the petitioner. The initial term stood revised by mentioning that the term shall ordinarily be for an initial period not exceeding one year, extendable by another one year or till completion of five years from the date of superannuation, whichever is earlier or until further orders. The revision has been given effect retrospectively from the date of issue of the engagement offer letter.
33. Primary point for challenge by the petitioner is that as his right stood crystalized on the day he was issued the offer of engagement, the same could not have been revised retrospectively curtailing his right. No opportunity of hearing was given to the petitioner prior to such curtailment.
34. The Court cannot brush aside the submission of the petitioner that had the duration of engagement not been for a continuous period of five years, the petitioner may not have been interested to join. The petitioner is a permanent resident of a different State and only because he wanted to make best use of his vast experience over the subject, that he got

interested in the job. The petitioner had to set up a different establishment for himself for attending duty in Kolkata. He had to make several arrangements for his accommodation and stay in Kolkata for the entire tenure of five years. Curtailing the period of engagement suddenly within a period of two years and relieving him from the job has caused serious prejudice to him.

35. In *H.L. Thiran (supra)* a three Judge Bench of the Hon'ble Supreme Court held that it is established principle of law that there can be no deprivation or curtailment of any existing right or benefit enjoyed by a Government servant without complying with the rules of natural justice by giving the concerned Government servant an opportunity of being heard. The Court held that post decisional opportunity of hearing does not subserve the rules of natural justice as the authority embarking upon such post decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation in such post decisional hearing. The Court held that any arbitrary or whimsical exercise of power prejudicially affecting the existing service condition of a Government employee, will offend provision of Article 14 and would offend the rules of natural justice.

36. In *Bharat Sanchar Nigam Limited (supra)* the Court held that administrative/executive orders or circulars, in the absence of legislative competence cannot be made applicable with retrospective effect. Only law can be made retrospectively if it is expressly provided by

the legislature in the statute. The Court held that the circular giving retrospective effect in revising the infrastructure charges is not legally sustainable.

37. In Punjab State Cooperative Agricultural Development Bank Limited (supra) the Court held that an amendment having retrospective operation which has the effect of taking away benefit already available to the employee under the existing rule, would divest the employee from his vested or accrued rights and would be held to be violative of the rights guaranteed under Articles 14 and 16 of the Constitution of India.
38. The Court by way of illustration records that if a person entering into service, has a legitimate expectation as per the existing scheme of rules but at the later stage, if there is any amendment made in the scheme it may alter the service condition in future. If the employee who had already been appointed under specified terms and if the same is taken away by the impugned rules retrospectively, then the same will take away the vested/accrued right of the incumbent which may not be permissible and may be violative of Articles 14 and 16 of the Constitution.
39. In the case at hand, the petitioner accepted the offer of the Institute only after noticing the vacancy notice that the duration of engagement was for a period of five years subject to annual satisfactory performance. There is no allegation against the petitioner as regards his poor performance. The Institute has simply curtailed his tenure of

service by giving retrospective operation to the revised terms regarding tenure of engagement.

40. It appears that the revision has been made relying upon Office Memo dated 9th December, 2020. On a perusal of the said Office Memo, it appears that the same relates to regulation of remuneration in case of contractual appointment. The Ministry of Finance, Department of Expenditure noticed that there was no uniform guideline for regulation of remuneration in respect of the retired Central Government employees engaged on contract basis. To address the issue, the Ministry published the subject Office Memo only for the purpose of regulation of remuneration.
41. Office Memo dated 9th December, 2020 mentions about the term of appointment. It says that the term shall ordinarily be for an initial period not exceeding one year which is extendable by another one year. The petitioner joined duty on 27th March, 2024. He completed two years of service on 26th March, 2026. The subject Office Memo does not mention that the tenure of appointment has to be restricted only for the purpose of two years. It mentions that beyond two years, after the age of superannuation, where adequate justification exists, the term may be extended based on a review of the task and the performance of the contract appointee. The contract of the petitioner stood extended after the first year only upon subjective satisfaction of the authority.

42. The subject Office Memo does not bar appointment after two years. The maximum duration for such appointment is five years after superannuation. The said period has been fixed only for the purpose of remunerating the retired employee. The Office Memo itself relates to remuneration and the period of remuneration has been specified in the Office Memo.
43. Prima facie, it appears that the authority misread and misunderstood the subject Office Memo and thought the same to be a guideline for fixing up the tenure of engagement of a retired employee on contract. The respondents have completely misread and misdirected themselves in understanding the Office Memo and the reason for which the regulation and the guideline for remunerating the retired Central Government employees on contract basis was initiated.
44. Relying on the said Office Memo the authority fixed the period of engagement in the vacancy notification i.e., the age of superannuation plus five years, which is in line with the Office Memo subject however, to the performance of the appointee and the exigency of the official work where public interest is served by appointment of the retired employee.
45. The Institute is an autonomous Institution under the Department of Drinking Water and Sanitation. It is registered as a Society under the Societies Act, 1860. The area of operation of the Society is all States and Union Territories of India both rural and urban areas affected by various physical, chemical and biological contaminations of drinking

water sources and for monitoring the works related to Swachh Bharat Mission (Gramin) such as construction of toilets, community sanitation centres and solid and liquid resources management activities in rural areas.

46. From the objects of the Institute, it is clear that the same is essentially for public service. The post in which the petitioner has been engaged, after conducting a regular recruitment process, is a sanctioned one. There is no allegation of poor performance against the petitioner for which his tenure of service has to be abruptly curtailed from five years to only two years.
47. The petitioner has prayed for an interim order. Whether interim order can be granted at this stage without affording opportunity to the respondents to file their affidavit is the issue. In *Deoraj (supra)* the Court observed that situation emerges where the granting of an interim relief would tantamount to grant of final relief itself. There may be a situation where withholding of an interim relief would tantamount to dismissal of the writ petition; for, by the time the main matter comes up for hearing, there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour.
48. The Court would grant interim relief only after satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the

hearing, and at the end the Court would not be able to vindicate the cause of justice.

49. The aforesaid principle was reiterated by the Hon'ble Division Bench of this Court in the matter of Md. Mujibur Rahman (supra) wherein the Court held that if in a given case passing an interim order may have the effect of giving the final relief for a temporary period, the Court has to pass the same if exigencies of the situation so demand.
50. Here, after perusal of the documents which are already available on record it appears that the petitioner has been able to make out a very strong prima facie case for grant of an interim order in his favour. Non-granting of the same, at this stage, would certainly cause prejudice and injustice to him. Similarly, not permitting the petitioner to continue with the job will be against public interest.
51. The petitioner has already been relieved from his service on 26th March, 2026 and if the instant writ petition is to be heard after filing of affidavits, the same will consume a considerable period of time and it is anybody's guess as to whether the matter can be finally disposed of within the next three years, that is, the remaining period of the contractual service of the petitioner.
52. As the Court is prima facie of the view that the respondents erroneously applied the Office Memo dated 9th December, 2020 to curtail the vested right accrued in favour of the petitioner, the Court directs the respondents to keep in abeyance the relieving order dated 23rd March,

2026 till 26th June, 2026. The respondents are directed to permit the petitioner to re-join service with immediate effect and positively by 10th April, 2026.

53. As the petitioner did not have any opportunity to report to duty after handing over charge on 26th March, 2026, accordingly, the period from 27th March, 2026 till 10th April, 2026 will not be treated as break in service of the petitioner for the time being subject to the result of the writ petition. He would be entitled to his regular remuneration until further order.
54. The respondents are directed to file their affidavit in opposition by 7th May, 2026; reply, if any, may be filed by 22nd May, 2026. All objections raised by the respondents including the issue of maintainability of the writ petition is kept open to be decided at the time of hearing. It is made clear that the observations made herein above are only for adjudicating the prayer for grant of interim order.
55. List the matter for hearing on 8th June, 2026.
56. Parties to act on the basis of the server copy of this order duly downloaded from the official website of this Court.
57. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocate on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)