(2023) 12 CAL CK 0070

In the Calcutta High Court

Case No : W.P.A. No.17231 Of 2021

Dipon Kumar Fouzdar APPELLANT

Vs

State Of West Bengal And Others RESPONDENT

Date of Decision : 15-12-2023

Acts Referred:
Vidyasagar University Act, 1981 — Section 20, 21(ix)

Citation : (2023) 12 CAL CK 0070

Hon'ble Judges : Kausik Chanda, J

Bench : Single Bench

Advocate : Subrata Mukherjee, Sabyasachi Hazra, Debjani Sengupta, Koyel Bag, Abhijit Chatterjee, Jonaki Khan, Anil Kr. Gupta

Final Decision : Dismissed

Judgement

Kausik Chanda, J

1. The petitioner asserts that he was appointed as a casual staff under the Directorate of Distance Education Examination Work, Vidyasagar University (in short, "the DDE") on September 24, 1997. Subsequently, by an order dated February 24, 2005, on the recommendation of the Advisory Committee of the DDE and with the approval from the Executive Council of the Vidyasagar University his appointment was regularised as a permanent staff with effect from April 1, 2004. The appointment letter of the petitioner clearly indicated that he would be entitled to all allowances as admissible to the employees of the University and his appointment would be under general terms and conditions of the Acts, Statutes, Ordinances and Regulations of the University.

2. He received all monetary benefits between 2004 to 2016. However, after about 12 years of service, the Registrar of the University by a letter dated February 16, 2016, informed the petitioner that he would not receive any pensionary benefits in terms of a Government Notification no.2966-F(P) dated April 23, 2010. The Registrar further, by a letter dated February 24, 2016, asked

the petitioner to submit his acceptance of the terms and conditions of the aforesaid Government Order threatening that if the petitioner failed to submit his acceptance within seven days, his salary would not be disbursed from the month of March 2016 as per the decision taken by the Executive Council of the University. Though the petitioner sent a letter of acceptance dated March 2, 2016, under duress, thereafter he made several representations before the University seeking all service benefits. The prayers were not acceded to. Ultimately, the petitioner retired on August 28, 2021, at the age of sixty years.

3. By filing this writ petition, the petitioner has prayed for disbursement of his service benefits including career advancement benefits, the benefit of Pay Commission, and all retiral dues including pensionary benefits. The petitioner has argued that as per Section 20 of the Vidyasagar University Act, 1981, the Executive Council of the University consists of several representatives from the State. The decision of the Executive Council of the University to regularise his service should be deemed to be approved by the State. The petitioner contended that the University, after 12 years of continuous service as permanent staff, could not alter his service conditions.

4. It has been submitted by the petitioner that his letter of acceptance dated March 2, 2016, is inconsequential since he was forced to write said letter of acceptance by the University which threatened the stoppage of his salary from March 2016 onwards.

5. Conversely, on behalf of the University, it has been contended that on the date when the petitioner was appointed, there was no valid sanctioned post of a Junior Assistant and no formal selection process was initiated. The State accorded only one-time approval to the creation of ten non-teaching staff in the DDE by a Memo dated March 30, 2000, and ten persons, other than the petitioner, were regularised accordingly.

6. The University further argued that a six-member Enquiry Committee was constituted to examine the status of the employees who were appointed without the approval of the State. The Enquiry Committee filed a detailed report before the Executive Council of the University and accordingly, the Executive Council of the University by a resolution dated February 15, 2016, resolved to alter the said condition of the petitioner as follows:

“Terms and Conditions:

i) The Basic pay and other allowances would freeze (except incentive) and hereafter no increments would be allowed and will be given consolidated fixed pay based on current salary.

ii) They will be considered as temporary/or quasi-permanent/or unconfirmed employees of the University.

iii) They will be allowed retirement benefits like gratuity, leave encashment and the deposits in Provident Fund with reasonable interest without any pension/

family pension. In addition, at the time of retirement they will be entitled to a one-time cessation grant of Rs.1.00 Lakh only (as per Government of West Bengal, Finance Department Memorandum No.2966-F(P), dated 23rd April, 2010, item No.3).

iv) All employees will be required to submit an undertaking in a prescribed proforma at the earliest.

v) Status quo be maintained regarding the family pensions already granted and the pension amount will be freezed and no additional allowances would be permissible in future.

vi) The Group C & D employees will be entitled, on satisfactory performance, to an annual incentive of Rs. 300.00 & Rs. 200.00 respectively (to be paid monthly) w.e.f. 1st July, 2016."

7. The said decision was circulated by a letter dated February 16, 2016. The petitioner accepted the said decision by a letter dated March 2, 2016. Again, a revised office order was issued in partial modification of the office order dated February 16, 2016, on March 30, 2016. The petitioner also accepted the revised order of March 31, 2016.

8. The University submits that upon his retirement, on November 3, 2021, the petitioner received his retirement benefits which included gratuity, leave encashment, one-time cessation grant of Rs.1,00,000/- in terms of the Government Order No.2966-F(P) dated April 23, 2010, and he was also paid the benefit of Employees Provident Fund. The University argues that the petitioner has accepted all his retiral dues without challenging the resolution passed in the meeting of the Executive Council on February 15, 2016, the office circular dated February 16, 2016, and the rectified office order dated March 30, 2016. The University has submitted that the petitioner suppressed in the writ petition that he had accepted both the office orders dated February 16, 2016, and March 30, 2016.

9. The University has contended that in the absence of a substantive post, the appointment of the petitioner constitutes a contractual arrangement and the said arrangement was modified by the resolution of the Executive Council dated February 15, 2016, and circulated by the office order dated February 16, 2016, and March 30, 2016.

10. The University has argued that the post of Junior Assistant is classified according to Clause 88 of the Vidyasagar University First Ordinances, 1985. According to para 1(b) of Clause 10 of the said Ordinance, the appointment shall be made to the post of Junior Assistant by the Establishment Committee subject to delegation of such power by the Executive Council. The University further argues that according to Section 21 (ix) of the Vidyasagar University Act, 1981, the Executive Council is the appointing authority for all employees to the University, but the petitioner was appointed by the Director of the DDE who is

not the appointing authority as per Vidyasagar University Act, Statutes and Ordinances. The Executive Council can make appointments in respect of the sanctioned posts by the State. The petitioner was not appointed against the sanctioned post and, therefore, he cannot claim the benefit of a sanctioned post where all payments, both salary and retiral benefits, are funded by the State. The University submits that the petitioner having accepted the decision of the Executive Council cannot further turn around and pray for pensionary benefits. The University has drawn the attention of this Court to the fact that the petitioner has challenged the decision of the resolution of the Executive Committee dated February 15, 2016, by filing the present writ petition in the year 2021, at a much belated stage. The University points out that the pension is payable by the State Government to the regular employees who are appointed against the sanctioned vacant posts with the approval of the State Government. The State Government did not bear any beneficial liability towards the salary and retirement benefits of the non-teaching employees of DDE including the petitioner. Such financial burden was borne by the Director of Distance Education from its own fund. The University also submits that the National Assessment and Accreditation Council on September 2021 granted B++ Grade to the University and thereafter, the DDE only conducted online courses/old continuing academic sessions and did not allow any fresh admission since 2021. The DDE is overburdened with payment of huge amounts towards service and retirement benefits of its staff.

11. In the aforesaid facts, the maximum possible relief has been given by the Executive Council after considering the report of the Enquiry Committee and no injustice has been meted out to the petitioner. The University has relied upon a judgment reported at AIR 1964 SC 521 (State of Punjab v. Jagdip Singh) to argue that the State can rectify its mistake and revert an employee to his original officiating post when the employee has been made permanent illegally.

12. By placing reliance upon the judgments reported at 2010 (5) SCC 475 (Mohd. Ashif v. State of Bihar), 2001 (1) SCC 37 (Subedar Singh v. Distt. Judge, Mirzapur) and (1997) 2 SCC 1 (Ashwani Kumar v. State of Bihar), the University has argued that if the initial entry is illegal, the Court cannot allow such an illegality to persist.

13. While expressing sympathy for the petitioner, I am constrained from providing any relief in his favour.

14. The incontrovertible facts remain that the petitioner was never appointed against a sanctioned post. The petitioner was conferred permanent status without the approval of the State. It is true that the service condition of the petitioner was substantially altered by the resolution of the Executive Council of the University dated February 15, 2016, he accepted the altered conditions by his written consent. He continued in service for more than five years with the said conditions and retired in the year, 2021. Only after his retirement, he filed this writ petition seeking the benefits of a regular employee and the pensionary

benefits.

15. Pursuant to an order dated May 2, 2023, the University has filed an affidavit disclosing that the payment of the petitioner was borne by the DDE from its internal resources and the State did not bear any financial liability towards the salary or retirement benefits of the petitioner. Needless to mention that the pensionary benefits are exclusively drawn from the State fund and are applicable to permanent employees of the University appointed against the sanctioned posts with the approval of the State. When the appointment of the petitioner was not made against the sanctioned post without the approval of the State, the State cannot be saddled with the liability to pay the pensionary benefits to the petitioner.

16. In the case reported at (1964) 4 SCR 964 (State of Punjab v. Jagdip Singh), the Supreme Court upheld the order of the State cancelling the confirmation order of the Tahshilders who were illegally made permanent by the creation of supernumerary posts.

17. In the judgment reported at (2010) 5 SCC 475 (Mohd. Ashif v. State of Bihar), the Supreme Court adjudicated upon a case involving the employees who were initially engaged as voluntary health workers on payment of monthly honourium. Within a period of five months, they were absorbed as primary health workers. The appointment continued nearly for 15 years and then the service was terminated because their absorption was found to be in breach of the Government circulars, the Supreme Court upheld the order of termination. A parallel perspective was affirmed in the judgment reported at (1997) 2 SCC 1 (Ashwani Kumar v. State of Bihar).

18. The petitioner has received remuneration and all associated benefits in accordance with the stipulations outlined in the resolution of the Executive Council dated February 15, 2016. In light of these circumstances, having received all entitlements per the aforementioned resolution, the petitioner's pursuit of pensionary benefits from the State is untenable, especially considering that his appointment was not sanctioned by the State and lacked State approval.

19. In view of the aforesaid discussions, no relief can be granted to the petitioner. Accordingly, W.P.A. No.17231 of 2021 is dismissed.

20. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.