

(1996) 04 CAL CK 0032
In the Calcutta High Court
Case No : C.O. No. 893 (W) of 1989

Dr. Amal Kumar Samanta and Others	Vs	APPELLANT
State of West Bengal and Others		RESPONDENT

Date of Decision : 04-04-1996

Acts Referred:

Burdwan University Act, 1981 — Section 2(21), 2(22)
Constitution of India, 1950 — Article 14, 16, 226

Citation : (1996) 2 CALLT 494

Hon'ble Judges : Altamas Kabir, J

Bench : Single Bench

Advocate : Partha Sarathi Sengupta, Bhubaneswar Sinha Roy, Ranjit Kumar Ghosh, D.N. Roy and Biswanath Dutta, for the Appellant; A.P. Sircar, S. Srimani and A. Chatterjee for Respondent Nos. 3 and 4, for the Respondent

Judgement

Altamas Kabir, J.—The short point involved in this case is whether the petitioners, who are working either as Technical Assistants, Technical Supervisors or Herbarium Assistants in the University of Burdwan, can be classified as "Teaching Staff" under the provisions of The Burdwan University Act, 1981, and the Statutes framed u/s 57(2) thereof.

2. Appearing in support of the Writ petition, Mr. Partha Sarathi Sengupta, learned advocate, submitted that as Technical Assistants in the different branches of science, the petitioners were and are required to (i) make lesson units for practical classes (ii) assist and impart instruction to the students in practical classes (iii) perform demonstration work in practical classes and (iv) keep attendance of students in practical classes and maintain a record of the work done by them.

3. Mr. Sengupta urged that while the nature of work indicated above is essentially teaching-oriented and involves imparting of education, the petitioners have all been designated as Non-teaching staff.

4. Mr. Sengupta urged that Laboratory Assistants of different non-Government Colleges, performing duties similar to those being performed by the petitioners, were always treated as teaching staff and their pay and allowances were at the rates admissible to teaching staff until the issuance of Government Order No. 228 Edu (cs) dated 21st March, 1969, where by Laboratory Assistants of non-Government Colleges were categorised as non-teaching staff.

5. Mr. Sengupta submitted that being aggrieved by the said Government Order, Graduate Laboratory Assistants of several non-Government Colleges, moved a writ petition, being Civil Rule No. 2665(W) of 1985, seeking declaration of their statues as "Teaching Staff". The said Rule was made absolute on 29th July, 1987, and the writ petitioners in the said Rule were declared as "Teaching Staff. Mr. Sengupta submitted that an appeal preferred by the State Government against the decision of the learned Single Judge, being F.M.A.T. No. 2722 of 1987, is pending hearing.

6. Mr. Sengupta contended that since the Writ petitioners herein are discharging functions which are similar to those discharged by the Laboratory Assistants whose statues as teaching staff has been declared, the writ petitioners, herein are also entitled to the benefit of such declaration.

7. Mr. Sengupta then referred to Sub-section (21) of Section 2 of The Burdwan University Act, 1981, where the expression "Teacher" has been defined as follows-

"2(21) "Teacher" means a Principal, Professor, Assistant Professor, Reader, Lecturer, Demonstrator, Tutor, Instructor or any other person appointed or recognised as such by the University, either whole-time or part-time, for the purpose of imparting instruction or conducting research in the University or appointed by an affiliated College or institution."

8. Mr. Sengupta also referred to Sub-section (22) of Section 2 of the said Act which defines the expression "Teacher of the University" in the following terms:-

"2(22) "Teacher of the University" means a Professor, Reader or Lecturer or any other persons appointed or recognised as such by the University, either whole-time or part-time, for the purpose of imparting instruction or conducting research in the University."

9. Drawing a parallel with the definition of the expression "Teacher" in the various enactments pertaining to different University in India, Mr. Sengupta urged that the common thread running through all the definitions is that they include person appointed for imparting instruction.

10. Mr. Sengupta added that the petitioners were also appointed by the University authorities as External Examiners for conduction practical examinations of the University in different subjects, as indicated in Annexure "C" collectively to the writ petition.

11. Mr. Sengupta then urged that as would appear from paragraph 2 of the writ

petition, all the writ petitioners were highly educated and some even held Ph.D. degrees in their respective subjects, which made them eminently suited to impart instructions, which they have been doing, despite being designated as no-teaching staff.

12. Mr. Sengupta submitted that pursuant to a direction given by this Court on 2nd December, 1991, the Registrar, University of Burdwan, had written to the Heads of all the Departments concerned on 16th December, 1991, requesting that a chart giving the service particulars of each of the petitioners be provided to the University.

13. Mr. Sengupta referred to the replies sent by the Heads of the different departments, copies whereof were produced in Court, which shows that the petitioners mentioned therein were all conducting or were associate with conducting Post-Graduate Practical Classes and imparting instruction to the students, besides providing sophisticated instrument support.

14. Mr. Sengupta urged that the reports sent by the Heads of the different must be held be reliable, since it was they who actually allocated work among the staff of their respective departments. Since all of them had certified that each of the candidates were either involved with imparting education or were associated with imparting instruction, the writ petitioners must all be deemed to come within the definition of "Teacher" and/or "Teacher of the University", as indicated in Sub-sections (21) and (22) of Section 2 of The Burdwan University Act, 1981,

15. In regard, Mr. Sengupta urged that in the case of Shri Pradip Kumar Ganguly and Ors. v. The State of West Bengal and Ors. (C.O. 8710 (W) 1994), a learned Judge of this Court while deciding a similar question, had by his judgment of 19th December, 1994, held that Laboratory Assistants/Analysts were engaged in imparting instructions to the students as part of their other duties and hence they come within the ambit of the definition of "teacher".

16. Mr. Sengupta submitted that in another case involving the claim of Laboratory Instructors to be given the status of "teachers", (State of West Bengal v. Harendra Nath Bhowmick and Ors.) a learned Single Judge of this Court had held that they should be redesignated as teachers. The said decision was upheld upto the Hon'ble Supreme Court which felt that there was no ground to interfere with the findings of the learned Single Judge.

17. opposing the writ application on behalf of the Burdwan University, Mr. A.P. Sircar, learned Senior Counsel, urged that the writ petitioners had failed to discharge their burden of proving the necessary facts for grant of relief, and the writ petition, was, therefore, bound to fail, as was held by the Hon'ble Supreme Court in Governing Body of Dayanand Anglo Vedic College v. Padmanabha Padhy and Ors., reported in AIR 1986 SC 612.

18. Speaking in the same vein, Mr. Sircar submitted that in a writ proceeding, the Court had to depend on affidavit evidence in order to arrive at a decision and

it was, therefore, up to the writ petitioner to plead the relevant facts in the writ petition and to annexe evidence in support of such pleadings. Mr. Sircar urged that there was nothing in the pleadings or the supporting annexures to establish that the petitioners had ever imparted instruction to the students in their respective subjects. Mr. Sircar urged that the bare statements made by the Heads of the various Departments of University that the petitioners were imparting instructions or were associated with imparting instructions to the students, were in themselves insufficient to prove that the petitioners had been allotted teaching duties, as such, by the Heads of the various Departments.

19. Mr. Sircar urged further that the duties of Technical Assistants were not similar to those of the Teachers of the University, as the job requirements were different. The recruitment requirements of the two were also totally different in terms of the Burdwan University Act, Statutes and Ordinances in force.

20. Mr. Sircar submitted that the unreported decisions of this Court and the Hon"ble Supreme Court in the case of Pradip Kumar Ganguly and Harendra Nath Bhowmick were on a different set of facts and could not be equated with the facts of the present case, since this Court would again have to embark on a process of comparison and evaluation, which had been discouraged by the Hon"ble Supreme Court.

21. Mr. Sircar contended that the petitioners had failed to make out any justiciable right that such categorisation is erroneous or that the University authorities had acted mala fide in the matter.

22. Mr. Sircar submitted that the Technical Assistants are merely technical hands and the duties performed by them are in the nature of maintaining and up keeping the laboratories for teaching and research work, notwithstanding the fact, that they may be highly qualified. Their job is essentially to assist the teachers to conduct practical lessons and to also assist the students in conducting research work in the laboratories. It is in that context and to such extent that it can be said that the writ petitioners associate themselves with imparting instruction to the students.

23. In this context, Mr. Sircar referred to the decision of the Supreme Court in the case of Bharat Singh and Others Vs. State of Haryana and Others, , wherein it was observed that in a writ proceeding facts have not only to be pleaded but evidence in support thereof have also to be annexed to the writ petition and other affidavits, since the Court had to proceed on the basis of affidavit evidence.

24. Mr. Sircar then submitted that at the time of hearing the writ petitioners had gone far beyond what had been pleaded in the writ petition and much of the submissions made were outside the scope of the writ petition. Mr. Sircar urged that this was not a fit case for issuance of a writ in the nature of Certiorari, inasmuch as, neither was there any refusal to exercise a jurisdiction vested in the University authorities, nor is there any error apparent on the face of the record which has resulted in injustice or prejudice to the writ petitioners. Mr.

Sircar urged that it was not for the writ court to go into disputed questions of fact or to appraise the evidence for the said purpose in order to decide whether the said writ petitioners were, in fact, imparting instruction to students for performing such duties as would bring them within the ambit of Sub-sections (21) and (22) of Section 2 of the Burdwan University Act, 1981.

25. In support of his aforesaid contention, Mr. Sircar referred to and relied upon two decisions of the Supreme Court in (i) P. Kasilingam Vs. P.S.G. College of Technology, and (ii) Kanshi Ram Verma Vs. Municipal Committee, Mansa through its Executive Officer, Punjab and Others, , where the aforesaid sentiments have been reiterated.

26. Mr. Sircar then contended that in matters involving value-based judgment, the Courts have always indicated that the same should be left for decision to expert bodies which are in a better position than the Court to make an assessment of duties and responsibilities of posts where equation of posts and pay was involved.

27. Mr. Sircar further urged that if there was such a determination by an expert body the Court should normally accept such determination and should not interfere with the reasoning of the expert body, unless it could be shown that such determination had been arrived at upon extraneous consideration.

28. In this connection, Mr. Sircar relied on the decision of the Supreme Court in the case of Randhir Singh Vs. Union of India (UOI) and Others, . Mr. Sircar also relied on the decision of the Supreme Court in the case of State of U.P. and Anr. v. J.P. Chawasia and Anr., reported in AIR 1989 SC 19, wherein it was observed that the answer to the question whether two posts are equal or should carry equal pay depends upon several factors. It does not just depend upon either the nature of work or volume of work done. Primarily, it requires amongst others, evaluation of duties and responsibilities of the respective posts. Quite often the functions of two posts may appear to be the same or similar, but there may be difference in degrees in the performance. The quantity of work may be the same, but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. It was then observed that the equation of posts or equation of pay must be left to the determination of expert bodies like the Pay Commission which would be the best judge to evaluate the nature of the duties and the responsibilities attached to the post in question.

29. In the same vein, Mr. Sircar also referred to the decision of the Supreme Court in the case of AIR 1989 29 (SC) , where it was indicated that classification of posts into different categories with different pay-scales should be left for determination to the management since it may have good reason for such classification depending on the nature of work and responsibilities of posts, which could not be evaluated by the court on the basis of affidavits and the Courts should generally accept such classification unless it is demonstrated that it is patently erroneous either in law or in fact.

30. The same sentiments have also been reiterated by the Hon'ble Supreme Court in (1) The State of Maharashtra v. Chandrakant Kulkarni (AIR 1990 SC 1990) (ii) Federation of Federation of All India Customs and Central Excise Stenographers (Recognised) and others Vs. Union of India and others, and (iii) Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, .

31. In this regard, Mr. Sircar lastly relied on the decision of the Supreme Court in Grih Kalyan Kendra Workers' Union Vs. Union of India and others, , wherein it was held that while considering the principle of equal pay for equal work, it is not necessary to find out similarly by a mathematical formula, but there has to be reasonable similarity in the nature of work, performance of duties, the qualification and the quality of work performed by the employees concerned. The Supreme Court also observed that it is permissible to have classification in service based on hierarchy of posts, pay-scales, values of work and responsibility and experience and such classification must have a reasonable nexus with the object sought to be achieved.

32. Mr. Sircar urged that merely upon certification by the respective Heads of Departments where the petitioners work, it could not be contended that the petitioners were imparting instruction to the students and were thus teachers of the University.

33. Mr. Sircar urged that it is not the nature of the duties performed once in a while which would determine the equivalence of posts, but the predominant nature of the duties for which the person concerned had been appointed.

34. Mr. Sircar urged that the Writ petition was without merit and was liable to be dismissed.

35. Replying to the submissions made on behalf of the Burdwan University, Mr. Sengupta urged that except for three of the petitioners, the claim of the other petitioners had not been controverted on behalf of the respondents.

36. Mr. Sengupta urged that the question of equivalence was not relevant in this case, since the petitioners were, in fact, imparting instruction to the students which brought them within the ambit of subsections (21) and (22) of Section 20 of the Burdwan University Act, 1981. Mr. Sengupta urged that no determination was called for in the present case, since in terms of the definition of "Teacher" and "Teacher of the University", the petitioners were ipso facto part of the teaching staff of the University.

37. Referring to Section 47 of the Burdwan University Act, 1981; Mr. Sengupta urged that the framing of statutes by virtue of such delegated legislation could not override the provisions of the statute itself.

38. Mr. Sengupta urged that the qualifications, as prescribed under the Statutes of the University of Burdwan and the University Ordinances relating to appointment and terms and conditions of service of teachers of the University, could not and did not have an overriding effect on the definition of "teacher", as

defined in Sub-section (21) of Section 2 of the said Act.

39. Mr. Sengupta reiterated that the materials on record would categorically show that the petitioners were discharging functions which brought them within the definition of "Teacher" and/or "Teachers of the University" within the meaning of Sub-sections (21) and (22) of Section 2 of the aforesaid Act.

40. Mr. Sengupta concluded by urging that the respondents could not take shelter under the doctrine of "Onus of proof". Mr. Sengupta contended that not only had the writ petitioners discharged their onus of proof that they were members of the teaching staff of the University, but the same had also been established from the documents provided by the respective heads of the Departments where the petitioners were employed.

41. Referring to the decision of the Supreme Court in the case of Gopal Krishnaji Ketkar v. Md. Hazi Latif and Anr., reported in AIR 1986 SC 1413, Mr. Sengupta submitted that even if the burden of proof does not lie on a party the court may draw an adverse presumption if he withheld important documents in his possession which could throw light on the facts at issue as to the question involving disputed questions of fact. Mr. Sengupta submitted that, in fact, there was not such dispute as all the evidence required was available in the records.

42. Although, length submissions have been advanced on behalf of the respective parties, the scope of the writ petition is limited to the question as to whether having regard to the nature of the duties performed by them, the writ petitioners can be said to be members of the teaching staff of the University, having particular regard to the qualifications as prescribed under the Statutes of the University and the definition of "teacher" under Sub-sections (21) and (22) of Section 2 of the Burdwan University Act, 1981.

43. From the materials on record it is apparent that as part of their duties the writ petitioners have been imparting instruction to the students, though mainly in the practical classes. Some of the writ petitioners have also been appointed by the Controller of Examinations, Burdwan University, as External Examiners for conducting the Degree Part II Pass Practical Examinations and the U.E. Pass Practical Examination in Zoology and Botany.

44. Apart from the above, the service of Shri Nanda Lal Agarwala, the respondent No. 4 herein, a Junior Technical Assistant attached to the Department of Philosophy, was certified by the Head of the Department to have been utilised for teaching the paper on Experimental Psychology which includes Psychometric and Practical classes. In his certificate, the Head of the Department of Philosophy has observed that Shri Agarwala had proved himself to be an able teacher of the subject, and was liked by his students.

45. A similar question, in almost the same circumstances, came up for consideration before this Court in a writ petition filed by Laboratory Assistants redesignated as Laboratory Instructors (Harendra Nath Bhowmick and Ors. v.

State of West Bengal and Ors.) claiming that they were entitled to the pay scale which was being given to physical Instructors/Demonstrators. The same points urged in the instant writ petition were also urged in the said writ petition and was accepted by the learned Single judge, who by his judgment dated 29th July, 1987, allowed the writ petition and directed the State Government to grant the Laboratory Instructors the pay-scale prescribed for physical Instructors/Demonstrators. While allowing the writ petition, the learned Single Judge held that since the writ petitioners had to discharge teaching functions besides guiding the students in laboratory work, the decision of the Government to treat them as non-teaching staff was arbitrary.

46. An appeal preferred against the judgment of the learned Single Judge was dismissed, and the said judgment was also upheld by the Hon'ble Supreme Court in Civil Appeal No. 2530 of 1993.

47. Another writ petition filed by Shri Pradip Kumar Ganguly and Ors. [C.O. No 8710 (W) 1994,] on a very similar set of facts was also allowed by a learned Single Judge of this Court by his judgment and order dated 19th December, 1994, upon holding that the writ petitioners, who were Analysts and Laboratory Assistants in the Bengal Engineering College, Howrah, were imparting instruction to students in the laboratory and were also engaged as examiners, and were therefore, entitled to the status of "teachers".

48. It is no doubt true that the equation of posts or equation of pay should be left to the determination of Expert bodies which are competent to evaluate the nature of duties and responsibilities attached to the posts in question. The judgments cited by Mr. Sircar are unanimous on such point, but it. will have to be seen how far the said decisions will apply in the facts of the Instant case.

49. There is a subtle distinguishing featuring between the cases cited by Mr. Sircar and Harendra Nath Bhowmick's case, as also Pradip Kumar Ganguly's case and this case.

50. In Harendra Nath Bhowmick's case and Pradip Kumar Ganguly's case, the Court was not called upon to make any equation of posts or pay vis-a-vis the teaching staff. The Court was only called upon to declare the status of the writ petitioners as "teachers" from the materials on record, without going into the question of equivalence.

51. Similar is the case as far as this writ petition is concerned. In fact, the facts of this case are in para materia with those of Pradip Kumar Ganguly's case and to some extent Harendra Nath Bhowmick's case. Without going into comparisons, it will be seen from the documents emanating from the University authorities themselves, such as the information supplied by the Heads of the various Departments and letters written by the Controller of Examinations, that the writ petitioners were taking practical classes, acting as Teacher guides and External Examinees and were generally speaking imparting instructions to the students.

52. The very nature of the work performed by them bring them within the definition of "teacher" and/or "teacher of the University" under subsections (21) and (22) of Section 2 of the Burdwan University Act, 1981.

53. In that view of the matter, and having particular regard to the decision in Harendra Nath Bhowmick's case and the views expressed therein by the Hon'ble Supreme Court, the Writ petition must succeed and is allowed. The respondents are directed to treat the writ petitioners and those similarly placed, as "Teachers" within the meaning of subsections (21) and (22) of Section 2 of the Burdwan University Act, 1981, and to grant them all consequential benefits from date.

54. The writ application is thus disposed of.

55. There will be no order as to costs.

56. Having regard to the view taken by me, prayer for stay of this judgment is considered and refused.