

(2013) 03 CAL CK 0047
In the Calcutta High Court
Case No : Writ Petition No. 9113 (W) of 2005

Dr. Asoke Kumar Sinha Roy	Vs	APPELLANT
University of Kalyani and Others		RESPONDENT

Date of Decision : 08-03-2013

Acts Referred:

Citation : (2013) 2 CALLT 285

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Kashi Kanta Moitra and Mr. Arup Kr. Lahiri, for the Appellant; L.K. Gupta and Mr. Amitava Chowdhury, for the Respondent

Final Decision : Allowed

Judgement

Prasenjit Mandal, J.—This application is at the instance of a staff having the present designation as Ex-cadre Grade-A of the respondent university and is filed for a writ in the nature of mandamus commanding the respondents to revoke, cancel, withdraw and rescind the letter dated 8th/11th February, 1991 issued by the Registrar, University of Kalyani and to absorb the petitioner in any post commensurate with the status and qualification of the petitioner and to place the petitioner in any scale of pay not below Rs. 550-1470 as it stood in terms of Revision of Pay and Allowance Rules, 1981 and other consequential benefits.

The following facts are not in dispute:--

(i) The petitioner was appointed Assistant Teacher in Chemistry in the Kalyani University Experimental High School at Kalyani temporarily against a lien and his period of appointment was extended subsequently. Thereafter, he was appointed Assistant Teacher of the said school w.e.f. April 27, 1982.

(ii) He was later confirmed in the said post of Assistant Teacher. Then in December 1986 the Government of West Bengal took over the said school as a Government Sponsored Institution w.e.f. January 1987.

(iii) An option was given to the teachers and the staff of the said school to the effect that if they were not willing to serve the Sponsored Institution, they should be absorbed by the University as its own staff.

(iv) The petitioner exercised his option and accordingly, he was posted in the Personnel section of the Registrar's Department in the University of Kalyani.

(v) The petitioner has contended that the job assigned to him was mere clerical in nature and as such, he requested the respondents to allot teaching duties, which would be in conformity with his educational qualification and experience. The respondents did not take any action in the matter.

(vi) Ultimately he filed a writ being W.P. 12554 (W) of 1988. While disposing the same, Hon'ble Mr. Justice Kalyanmoy Ganguly (as His Lordship then was) directed the respondent university to consider the application of the writ petitioner for the post sympathetically and to allot specific duties commensurate with the status and educational qualification of the petitioner. In October 1990, the petitioner was designated as Assistant Grade-A and his pay was fixed in a scale provided for the staff of the respondent university.

(vii) Then the petitioner filed a writ petition being C.O. No. 14478 (W) of 1990 and the said writ petition was disposed of by Hon'ble Justice K.M. Yusuf (as His Lordship then was) directing the respondents to see that the pay scale of the petitioner was fully protected and not reduced as per Memo dated June 8, 1990 issued by the Registrar of the respondent university and also to check up again whether the status and position of the petitioner were commensurate with the previous status and qualification as Assistant Teacher.

(viii) Then the respondent university reiterated its decision to designate the petitioner as Ex-cadre Assistant Grade-A and held the observation that the petitioner was not a member of the teaching staff of the university.

(ix) Thereafter, the petitioner filed a contempt petition which was disposed of holding the respondent university guilty on contempt, but, the respondent university filed an appeal and the Hon'ble Division Bench set aside the order of contempt, but, holding that the writ petitioner was at liberty to challenge the aforesaid action of the registrar in an appropriate proceeding..

(x) However, in compliance with the order dated December 18, 1990 passed by the Hon'ble Justice K.M. Yusuf, the respondent university informed the petitioner by the letter dated 8th/11th February, 1991 that he was not a teacher of the university and as such, the question of revised pay scale of the teacher of the State aided school did not arise. He was also informed that the post of educational statistics as being performed by the writ petitioner was commensurate with his previous status and qualification.

Being aggrieved by such letter this application has been preferred.

The following points of law are for consideration in this writ petition:--

(a) Whether after absorption as staff of the Kalyani University, the present post of the writ petitioner is commensurate with his status and qualification.

(b) Whether the respondent university is justified in not allotting the job of a teaching post to the petitioner.

(c) Whether the scale of pay of the writ petitioner has been reduced.

Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that the following qualification and experience of the petitioner are not also in dispute:--

Qualification:--

The Petitioner is an M.Sc. in Chemistry and he obtained a doctorate degree in Chemistry from the University of Kalyani.

Experience:--

19.9.1979. The petitioner joined as part time Lecturer in Chemistry, Government Training College at Hooghly.

1980. The petitioner was appointed Internal and External Examiner for conducting B.Ed. Degree Examination in 1980.

January, 1982. The petitioner was appointed Assistant Teacher in Chemistry in the Kalyani University Experimental High School at Kalyani temporarily against a lien vacancy.

05.06.1982. The Registrar, Kalyani University, issued Memo extending the tenure of Temporary appointment of the petitioner for a period of four months with effect from 27th 1982.

13.08.1982. The petitioner was appointed substantively in the post of Assistant Teacher in Chemistry in the Kalyani University Experimental High School with effect from 27.04.1982.

04.03.1987. The Registrar of the Kalyani University informed the petitioner that the petitioner was posted in the Personnel section. Registrar's Department in the University of Kalyani, meaning thereby the fact that the petitioner had acquired teaching experience of more than 5 years in the Kalyani University Experimental High School.

2. In order to understand the present position, the order dated December 18, 1990 passed by the Hon"ble Justice K.M. Yusuf in C.O. No. 14478 (W) of 1990 is very much relevant and the extract of the said decision is quoted below:--

This writ application is disposed of by directing the respondents to see that the pay scale of the petitioner is fully protected and is not reduced as per memo dated 8th June, 1990 issued by the Registrar of the Kalyani University. The respondents are also directed to check up once again whether the status and

position of the petitioner are commensurate with his previous status and qualification as Assistant Teacher. The respondents will consider as directed the case of the petitioner within 31st January, 1991.

3. The said order had attained finality and so it remains in force. While disposing of the appeal against the order of the contempt matter, the petitioner was given liberty to renew his prayer by an appropriate proceeding. The respondent university had informed the writ petitioner by letter dated 8th/11th February, 1991 in compliance with the order of Justice K.M. Yusuf dated December 18, 1990. The extract of which is quoted below:--

This University reconsidered the matters in depth as directed by Justice Mr. K.M. Yusuf. It reiterated its decision to re-designate you as Excadre Assistant Gr. "A" as was done by the Executive Council. It may be mentioned in this connection that you are no longer a teacher in this University and as such the question of extending to you the revised pay scales of teachers in State-aided Schools does not arise: that scale does not at all exist in this University. As for the assignment of work to you, we have reconsidered the question as directed by the Hon"ble Court. Here also we find that educational statistics which is a prestigious work in the establishment is quite commensurate with your previous status & qualification. It may be" mentioned in this connection other formal Assistant Teachers of the erstwhile Kalyani University Experimental School who have opted for University service are performing various duties in the offices of the University as assigned to them gracefully without any murmur of protest. The reconsideration as directed was done on 31.1.91.

4. It is also an admitted fact that while the petitioner was in the Institution, he was in the scale of Rs. 550-1470/- and in March 1983 his pay was fixed at Rs. 550/- per month under the ROPA Rules 1981. The said ROPA Rules of 1981 were revised by the ROPA Rules 1990. Had the petitioner been posted all along in the Government Sponsored Institution, he would have been in the scale 1780-3780/- in the revised scale. After absorption the pay of the petitioner had been fixed in the scale of Rs. 600-1250/- under ROPA Rules 1981 of non-teaching employees of the University. So, on comparison by the two highest pay that could be reached under the ROPA 1981, it could well be assessed that the scale of 600-1250/- is not higher at all than the scale 550-1470/- and by such scale of 600-1250/-, the writ petitioner would not be benefited at all after a certain length of service. The said scale of 600-1250/- was revised to 1550-3530/- under ROPA 1990 w.e.f. January 1, 1986.

5. Mr. Kashi Kanta Moitra, learned Senior Advocate appearing on behalf of the petitioner has drawn my attention that as per resolution of the Executive Council dated January 9, 1987 if any teacher opted for the university service, he/she would be treated as an Ex-cadre staff, the post being personal to the incumbent only and the university authority would be free to allot him/her such duties as they deem fit. He has also pointed out that the members of the Sub-Committee also decided that the pay fixation should be consistent with the directions of the

Calcutta High Court and the Sub-Committee recommended that the benefits to the Ex-Cadre staff (non-teaching, Ex-teacher of Experimental School) would be purely personal and would be automatically abolished as and when these posts were vacated through retirement, resignation or otherwise and that those Ex-cadre teachers would continue to remain in the same pay scale and salary as per provision of the G.O. No. 33 (Edn.(B) dated March 7, 1990 of the Government. So, if the writ petitioner is given any benefit, it would be the personal to the writ petitioner and it would not operate as a general rule for all the staff of the respondent university. The recommendation of the Sub-Committee had been accepted by the Executive Council. Thus, it was recommended that the protection of pay scale of the Ex-cadre teacher would be done by such process. Under the circumstances, when the scale was revised to 2200-4000/- of non-teaching employees further revised to 8000-13500/- the petitioner should get the benefits of such revised scales.

6. Opposing such contention of Mr. Moitra, Mr. L.K. Gupta, learned Senior Advocate appearing for the respondent university has contended that though the Executive Council took a decision on January 9, 1987 as to the salary etc. of the Ex-cadre staff, the observation of the Sub-Committee is nothing but a recommendation and does not tantamount at all to a decision. So, the decision of the sub-committee need not be considered.

7. It is true that the petitioner gave an option to be absorbed by the University of Kalyani as its own staff by his letter dated December 22, 1986 (Annexure P-6) for the first time, while he was a permanent teacher of the Experimental School. By the letter dated February 6, 1987 the writ petitioner again opted to be absorbed by the Kalyani University as its own staff (Annexure P-8), possibly in consideration of his qualification and experience, he thought that he would be absorbed in the university as teaching staff. That is why, when he was allowed to submit another option after certain modification by the Government, he decided to be absorbed by the respondent university for the second time on the hope that, by this process, he would be gained. But, I find that all his hopes came to an end when he was directed to work under the Registrar's Department as Ex-cadre Grade-A. So far as his job is concerned, I find that he has been performing the duties as educational statistics which, in my view, does not seem to be appropriate in consideration of the qualification and experience of the writ petitioner. That is why, the petitioner had made further representation and he had to file several writ petitions, contempt applications etc. as indicated above.

8. The petitioner has categorically stated that he had been allotted to do the work of a clerk. The respondent university has contended that in order to become a teaching staff of the university certain procedures which are completely different from the rules for appointment of the non-teaching staff, are to be followed. The writ petitioner cannot be treated to have opted for the post of teaching staff at all.

9. By the word Staff it means Employees of a particular Organization, a Group of

Officers assisting and Officer in Command of an Army formation or Administration Head Quarters. Therefore, when the petitioner was absorbed as a staff of the respondent university, from his conduct it appears that he was not ready to do the job. In consideration of such a situation this Hon''ble Court, on earlier two occasions, directed the respondent university to consider the case sympathetically in the first writ petition and by the disposal of the second writ petition, to consider the posting commensurate to his qualification and experience. Therefore, the conduct of the writ petitioner shows that he was never ready to be absorbed in the post of Ex-cadre Grade-A.

10. Neither the letter in question nor any other material tendered by the respondents reflects as to how the pay of the petitioner had been fixed under the revised Rules. On the other hand, the petitioner has shown how his pay has been fixed in the lower scale.

11. The writ petitioner is now in the scale of 5000-11325/- under the ROPA 1998 w.e.f. January 1, 1996 whereas Assistant Teachers of aided high schools including the sponsored sigh school in West Bengal are placed in the scale of 6000-12000/- w.e.f. January 1, 1996. Thus, I am of the view that the pay protection of the petitioner had not been done by placing him in the scale 5000-11325/-. The petitioner had been placed in the lower scale than that he would have been placed had he not been absorbed in the University of Kalyani. The result is that, the order dated December 18, 1990 of the Hon''ble Court in the said writ matter had not been complied with as yet.

12. Since the petitioner had been appointed as Ex-cadre Grade-A by way of absorption, possibly, all the relevant rules and regulations for appointment of a teacher of the university need not be followed. Question is whether the petitioner has the requisite qualification or experience for being appointed as teaching staff of the respondent university and, I am of the view that in consideration of the fact that it is a case of absorption, the respondent university authority has the scope for consideration again whether the writ petitioner could be absorbed in the post of a Lecturer under the University of Kalyani. The specific positive direction should be given to the respondents again for consideration of the order dated December 18, 1990 passed by this Hon''ble Court as referred to above. Such exercise must be done within four weeks from the date of communication of this order. Since the benefit if given to the petitioner would remain as personal, I am of the view that a specific direction should be given to the respondents for consideration of the posting and fixation of pay of the writ petitioner.

13. The respondent university has also contended that as per order dated March 4, 1987 (Annexure P-9) nine Assistant Teachers including the writ petitioner who had exercised their options were posted in the Offices or Departments as noted against their names on temporary basis, but, they did not express any grievance that they were doing the clerical job. The qualification and experience of other eight teachers are not before this Bench and as such, the consideration of their

case to decide the fate of the case of the petitioner does not arise. Here I am to decide the matter in dispute on the basis of the materials placed by both the parties.

14. Anyway, as per order dated December 18, 1990 passed in W.P. No. 12554 (W) of 1988 passed by this Hon''ble Court, I find that the said order had not been complied with. The petitioner has contended that had he known that he would not be absorbed in the post of teacher of the respondent university, he would not have opted for appointment in the respondent university. The materials filed by the petitioner, the conduct of the petitioner and the circumstances lend support to such contention. The petitioner has specifically contended that a person possessing qualification of being appointed to a member of the teaching staff of the respondent university will never treat the duties of educational statistics as a prestigious one (Page No. 29 of the writ petition).

15. The contention of the respondents that the duty of an educational statistics has been described as prestigious work and quite commensurate with the previous status and qualification, in my view, cannot be accepted.

16. The writ petitioner has been placed in a lower scale than that which he would have been, had he been a teacher all along. While disposing of the appeal of the contempt matter the Hon''ble Division Bench gave liberty to the writ petitioner to proceed against the respondent university in accordance with law by appropriate proceedings. Had the petitioner been in the post of Assistant Teacher under the ROPA 1998, he would have been placed in the scale of 6000-12000/- w.e.f. January 1, 1996 whereas he had been placed in the scale of Rs. 5000-11325/-.

17. Accordingly, I am of the view that the letter dated 8th/11th February, 1991 is not at all in compliance with the order dated December 18, 1990 and the decision of the respondent university indicated in the said letter cannot be sustained at all. The present assignment of the petitioner cannot be described as commensurate with his status and qualification. The pay scale of the petitioner has been reduced.

18. Accordingly, the writ application succeeds and it should be allowed. Since it is the 4th round of litigation, instead of giving a general direction for consideration, I am of the view that the situation demands for giving certain positive directions upon the respondents.

All the three points of law are, thus, answered.

19. The application is, therefore, allowed. Accordingly, the respondents are, and particularly the respondent No. 3 is directed to comply with the following directions within the period as indicated below:--

(1) The reliefs as made in Prayer (a) appearing at Page No. 49 of the writ application is allowed meaning thereby that the letter dated 8th/11th February, 1991 issued by the Registrar of respondent university stands revoked, cancelled, withdrawn & rescinded;

(2) The respondents are, and particularly the respondent No. 3 is directed to absorb the petitioner in any post commensurate with the status and qualification of the petitioner, i.e., to consider if the petitioner could be appointed lecturer of the respondent university, keeping in view that this is a case of absorption. The exercise of such direction must be done within four weeks from the date of communication of this order; and

(3) The respondents are directed to fit the petitioner in the scale of pay not below 550-1470/- as it stood in terms of ROPA 1981 since revised in terms of ROPA 1990 and 1998 and to confer upon the petitioner all consequential and incidental benefits in accordance with law. Such exercise must be done by eight weeks from the date of communication of this order without fail.

There will be no order as to costs.

Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

Later:--

After delivery of the judgment, the learned Advocate appearing for the respondent university submits that the judgment delivered today be stayed for some time.

The learned Advocate for the petitioner opposes to such prayer.

Upon due consideration of the submission for the learned Advocates of both the sides, I am of the view that the prayer for stay cannot be considered.

Accordingly, this prayer is refused.