
(2013) 03 CAL CK 0023
In the Calcutta High Court
Case No : Writ Petition No. 645 of 2012

Dr. Pranab Kumar Karmakar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Calcutta University Act, 1979 — Section 39(2)

Citation : (2013) 4 CHN 586 : (2013) LabIC 3153 : (2013) 4 LLN 159

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Indranil Chakroborti and Srikanta Dutta, for the Appellant; Kalyan Banerjee, Biswaroop Bhattacharya, Ms. Reshmi Ghosh, Mrs. Chaitali Bhattacharya and Mrs. Tapati Samanta, for the Respondent

Judgement

Prasenjit Mandal, J.—This application is for issuance of a writ in the nature of mandamus directing the respondent authorities to appoint and designate the writ petitioner as "Professor" and for a direction upon the respondent authorities to consider the petitioner's past services in connection with his appointment and fixation of the grade of proper pay scale and other consequential reliefs. The case in short necessary for the purpose of disposal of this application is that the writ petitioner was appointed in a project named "Centre for Research & Training in Microwave and Millimeter Waves" Scientist "B" on February 5, 1988 and he joined the said project on February 9, 1988. Thereafter, the Selection Committee of the respondent university selected the petitioner as Scientist "C" and the pay of the petitioner was fixed at a consolidated amount. Thereafter, the Respondent No. 6 issued a letter dated April 28, 2008 informing the petitioner of the appointment to the post of Teacher in the Centre for Research & Training in Microwave and Millimeter Waves on probation for one year in the grade of Rs. 10,000-325-15,200/- with other admissible allowances and benefits as per University Rules w.e.f. March 26, 2008 and the petitioner accepted the offer to act as Teacher by his letter dated April 29, 2008. Thereafter, the petitioner submitted various representations for his proper grade, fixation of pay, etc. in

vain.

2. Then, on July 4, 2011, the Respondent No. 6 issued an intimation to the petitioner informing that he had been promoted from the post of Lecturer to the post of Assistant Professor. The petitioner wrote several letters to the different authorities including the UGC for consideration of his case in terms of the notification/regulations of the UGC and then the UGC asked the Respondent No. 3 to consider the case of the petitioner.

3. Then by a letter dated January 4, 2012, the respondent No. 3 informed the Deputy Secretary, UGC that the State Government had clearly informed that the petitioner's claim regarding counting of past service and other benefits could not be entertained by the Government.

4. The petitioner also got a letter from the O.S.D. & E.O., Special Secretary to the Governor of West Bengal to the effect that after the decision of the State Government, the Respondent No. 3 could not take any further decision in the matter from the University's end.

5. The petitioner even addressed a letter to the Hon'ble Chief Minister of West Bengal on January 16, 2012 placing his entire grievance, but by a letter dated April 30, 2012, the Assistant Secretary, Higher Education Department had informed that the petitioner could not claim himself to be an Assistant Professor in the Department of Radio Physics & Electronics in the University of Calcutta.

6. The petitioner again sent another letter dated June 5, 2012 to the Hon'ble Minister-in-Charge, Higher Education Department praying for consideration of his prayer already made before the different authorities in vain. Ultimately, he has filed this application for the reliefs already stated.

7. The State of West Bengal and the respondent university are contesting the application by filing separate affidavits-in-opposition contending, inter alia, that the petitioner was appointed Scientist "B" on February 5, 1988. But, at that time, it was indicated clearly that the project was temporary and as such, the said project was governed by Section 39(2) of the Calcutta University First Ordinance, 1979. Thereafter, when the Central Government withdrew the financial assistance for the project, the Government of West Bengal came forward to sponsor the said project for a further period of 3 years under the GO. dated January 4, 1995 and some posts including the post of Scientist "C" for a period of 3 years for the said project were made and the petitioner was appointed again on the basis of his application in response to the advertisement for the said project as Scientist "C". The said project was renewed and extended from time to time by the Government of West Bengal till December 31, 2002. Thereafter, the Government of West Bengal converted the said project to a permanent one under the University of Calcutta in the Department of Radio Physics & Electronics. Thus, the petitioner initially entered into service as Scientist "B" and then as Scientist "C" and as such, his services cannot be counted for confirmation of certain status. The State Government did not want to

disturb the position of the employees and as such, the post of Teacher and the scale of pay allowed were treated to be as personal. It was made clear that the petitioner was never a Teacher guided by the UGC Rules and Regulations and that his regular service would be taken into account from the date of absorption.

8. The respondent university has also contended that the petitioner was appointed Scientist "B" and then, Scientist "C" in the project as stated by the petitioner and as such, he was appointed at a consolidated pay of Rs. 7,330/- per month.

9. The Project Training Programme in Millimeter Wave Technology and Wave Propagation run by the respondent university was converted to a permanent "Centre for Research & Training in Microwave and Millimeter Wave" in the Department of Radio Physics & Electronics, University of Calcutta by the order dated February 28, 2008. Five posts were created by the Higher Education Department. The writ petitioner was informed that his appointment to the post of Teacher in the Centre for Research & Training in Microwave and Millimeter Wave and the scale of pay assigned to the post were to be treated as personal to the present incumbents including the writ petitioner and after their retirement, the posts would be re-designated to the original post of Scientist "C".

10. It was clearly indicated that the services rendered by the incumbents on contractual basis were not to be counted as part of service for any purpose. The case of the petitioner was considered, but, it was indicated that his past services are to be counted for confirmation of certain status to which he is legally entitled to. When the project attained permanence only in the year 2008, the Government did not intend to disturb the position and scale of pay allowed to the Teachers, but treated the same as personal. The respondent university had acted in accordance with the decision of the Government. The petitioner has been working as Teacher in terms of the decision of the Government as communicated by the letter dated February 28, 2008 and as such, his prayer for designation, suitable pay scale and fixation of pay cannot be entertained. So, the application should be dismissed.

11. Now, the following questions of law have arisen for decision:--

- i) Whether the respondent authorities are justified in not considering the past service performances of the writ petitioner in deciding his designation;
- ii) Whether the respondent authorities have violated the principles of natural justice; and
- iii) Whether the petitioner is entitled to the reliefs as prayed for in the writ application.

12. Upon hearing the learned Counsel for the parties and on going through the materials on record, I find that admittedly, the petitioner was appointed Scientist "B" on February 5, 1988 in a project which has been subsequently renamed on permanent basis as "Centre for Research & Training in Microwave and Millimeter

Wave" at a basic pay of Rs. 700/- in the scale of Rs. 700-1,300/- plus admissible allowances as per University Rules under the guidance of Professor A. K. Sen, Department of Radio Physics & Electronics, University of Calcutta from the date he joined.

13. Then, on March 1, 1990, he was again appointed to the post of Scientist "C" on promotion in the scale Rs. 3,000-4,500/-.

14. It is also an admitted fact that the said project acquired the character of permanence when the State Government undertook the financial liability of the University of Calcutta in the matter in the year 1995. Then, the respondent university made an advertisement in "The Statesman" dated July 19, 1996 describing the posts of Scientist "B", Scientist "C", Senior Research Fellow, Junior Research Fellow, etc. mentioning pay structures for the said post. Accordingly, the petitioner appeared before the Selection Committee of the respondent university and by letter dated January 1, 1997, the writ petitioner was informed that he had been selected to the post of Scientist "C" in the project entitled Training Programme in Millimeter wave Technology and Wave Propagation in the Department of Radio Physics & Electronics with a consolidated pay of Rs. 7,330/- per month w.e.f. January 1, 1997 till the termination of the project. Thus, I find that the letter of appointment is contrary to the advertisement dated July 19, 1996. But, in any way, the petitioner did not challenge his appointment mentioning such fixed pay and being not in accordance with the scale he is entitled to. So, his conduct amounts to conceding to his post and salary he had joined on January 1, 1997.

15. Mr. Indranil Chakraborty, learned Advocate appearing for the petitioner, has contended that by the letter dated June 21, 2011 addressed to the Minister-in-Charge, Higher Education Department, the petitioner prayed for counting the past service and other benefits of the petitioner for fixation of his pay and designation. Subsequently, by a letter dated September 15, 2011 addressed to the Hon'ble Chief Minister, the petitioner again renewed his prayer for the same purpose, but, his past service had not been considered at all. The petitioner had even written to the UGC for consideration of his past service along with other benefits in consideration of his experience, publication of articles in several journals, text book and the fact that he was guiding the Ph.D. students. Not only that he was entrusted to take classes in B.Tech. and Post M.Sc. students and as such, his designation should be considered as Professor under the University of Calcutta. The petitioner was designated as Teacher instead of Scientist "C" previously and as such, upon taking into consideration of such experience, he should be declared to have been possessing such character of post, i.e., Professor. Thus, he has submitted that the petitioner should get the reliefs as prayed for in the application.

16. He has also drawn my attention to the order passed by this Bench on October 3, 2012 wherein by an interim order, the learned Judge has observed that the petitioner shall continue to discharge his service in the same manner as

he is doing today but his service shall be subject to the final decision of the writ petition.

17. On the contrary, Mr. Biswaroop Bhattacharya, learned Advocate appearing for the respondent university has reiterated the contention of the respondent university and he has submitted that the awarding the designation of Teacher to the petitioner while he was holding the post of Scientist "C" was by a mere fault on the part of the respondent university and this has been clarified by the letter dated April 30, 2012 particularly the Item Nos. (iii) to (vi) addressed to the petitioner.

18. For convenience, the extract of the said letter as appearing as Annexure P-19 at page No. 64 is quoted below:--

iii. Two posts of "teacher" was created instead of "Scientist-C" due to some communication gap.

iv. The Government did not intend to disturb the position and as such the posts of teacher and scale of pay assigned to the posts was allowed to be treated as personal to the then existing incumbents including yourself.

v. As such you are/were not a teacher to be guided by the UGC Rules as referred to by you.

vi. The regular services of the then existing incumbents (including yourself) will be taken into account from their date of absorption (obviously not earlier than 28.02.2008).

19. Mr. Bhattacharya has, thus, contended that the stand of the University is very much clear with respect to the designation and scale of pay of the writ petitioner. He has also contended that as per recommendation of the SENET dated March 26, 2008, the project had attained the character of permanent nature as appearing from Annexure-R2/3 at page Nos. 25 & 26 and so, the writ petitioner has been working under the designation of Scientist "C" in a project and not at all as a Teacher.

20. He has also contended that by the letter dated January 12, 2009, the then Registrar had informed the Government that so far as the posts of Teachers of the writ petitioner, another Dr. Chattopadhyay and others are concerned, the respondent university sought for advice from the Government whether the past service as Research Scientists or Assistants would be given effect to their present permanent employment as per order of the Government or not and in compliance, the Government replied by the letter dated March 19, 2010 to the effect that the regular service of 5 teaching and non-teaching staff including the petitioner would be taken into account from the date of absorption, i.e., w.e.f. February 28, 2008. It has been further clarified that the services rendered by the said staff on contractual basis are not counted as part of the service for any purpose.

21. Mr. Bhattacharya has contended that the UGC Rules provide for appointment of Lecturer and Professor and this has been indicated in the UGC Rules appearing as Annexure P/10 at page No. 50 of the writ petition and the same was duly communicated to the petitioner. So, according to the Rules of the UGC, the petitioner cannot be designated as Professor as claimed.

22. Ms. Chaitali Bhattacharya, learned Advocate for the State, has adopted the submission of Mr. Bhattacharya and thus, has submitted that the petitioner is not entitled to get any relief.

23. Having due regard to the submissions of the learned Advocates of both the sides and on perusal Of the materials on record, I find that though the petitioner was appointed as Scientist "B" on February 8, 1988 under a project and then he was appointed Scientist "C" in the project which attained the character of permanence by the order of the State Government, the service of the petitioner had been confirmed w.e.f. February 28, 2008 and his past services which were related to the project were not taken into consideration at all for consideration of his prayer for the designation of Professor.

24. So far as, counting of past service is concerned, unless, the service fulfills the norms as laid down in Point No. 8.0.0 particularly the Point Nos. 8.5.0 & 8.6.0, it has been clarified by the Rules of the UGC that the previous appointment on ad hoc basis as applicable in the instant case or temporary service of more than one year duration can be counted provided the appointment was made on the recommendation of duly constituted Selection Committee and the incumbent was selected to the permanent post in continuation of the ad hoc or temporary service without any break.

25. Prior to the date of absorption, i.e., on February 28, 2008, the petitioner was, no doubt, working under the project which was declared to be a permanent nature subsequently and the service rendered by him does not fulfill the norms of the UGC as referred to hereinabove. So, the prayer for continuation of the entire service w.e.f. February 8, 1988, in my view, cannot be accepted.

26. The petitioner did not challenge the decision of the SENET dated June 11, 2009 and the order of the Government dated March 19, 2010 which lay down that the services rendered by the 5 teaching and non-teaching staff on contractual basis were not counted as part of service for any purpose. So, the position remains that the petitioner has conceded to the said decision of the SENET and the Government of West Bengal. Accordingly, I am of the view that the prayer of the petitioner for awarding the designation of Professor and fixation of scale accordingly does not and cannot arise.

27. However, since the petitioner possesses the degree of Ph.D. if there is any rule for pay increments to the petitioner for Ms Ph.D. Degree, he must get the benefit of such degree w.e.f. March 1, 2008.

28. The respondents are, therefore, directed to pass a reasoned order within 8

weeks from the date of communication of this order to the effect whether the petitioner is entitled to get increments for possessing the Ph.D. Degree and then to communicate the said decision to the writ petitioner within 2 weeks from the date of decision.

29. The application is disposed of with such observations.

30. However, there will be no order as to costs.

G.A. No. 2626 of 2012:--

31. This is an application for stay of the order of the Registrar of the University of Calcutta conveyed by the letter dated August 6, 2012 advising the petitioner not to use the designation of Assistant Professor.

32. In view of the above order, this application is disposed of without passing any further order over the application. Urgent xerox certified copy of this judgment, if applied for, be supplied to the learned Advocates for the parties upon compliance of all formalities.