
(2019) 08 CAL CK 0288

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 12288 (W) Of 2017

Sagar Chakraborty

APPELLANT

Vs

State Of West Bengal & Others

RESPONDENT

Date of Decision : 27-08-2019

Acts Referred:

Citation : (2019) 08 CAL CK 0288

Hon'ble Judges : Tapabrata Chakraborty, J

Bench : Single Bench

Advocate : M. M. Verma, Abhishek Verma, Punak Verma, Lilam Verma, Suman De, Biswaroop Bhattacharya, Reshmi Ghosh

Final Decision : Disposed Of

Judgement

Tapabrata Chakraborty, J

The present writ petition has been preferred primarily claiming the benefits as conferred vide memo dated 9th December, 2010 issued by the Joint Secretary, Government of West Bengal, Department of Higher Education (C. S. Branch).

Shorn of unnecessary details the facts are that the petitioner was interviewed and appointed on 15th November, 1996 as a special part-time teacher in commerce subjects in Umesh Chandra College (in short, the said college). The governing body of the said college thereafter adopted a resolution for filling up a vacancy of whole-time teacher on 13th September, 2004 and a selection committee was constituted. The petitioner participated and emerged to be successful in the selection process and he was appointed as "Contractual Whole Time Teacher" (in short, CWTT) on 20th September, 2004 and he is continuing in service till date. On 9th December, 2010, in congruence with the general policy of the State, a circular was issued and in the same it was indicated that the provisions of the same would be applicable to the CWTTs of the State Aided non-Government colleges with effect from 1st January, 2011. In continuation of the said memo further guidelines were introduced by a memo dated 4th January,

2011 and in partial modification of the memo dated 9th December, 2010, a further memo was issued on 3rd June, 2011. In the midst thereof, a proposal for approval of the service rendered by the petitioner as CWTT was forwarded by the teacher-in-charge of the said college to the respondent no.3 by a letter dated 14th February, 2011 along with the proposals of other CWTTs in the said college. Except the petitioner, other teachers named in the said letter dated 14th February, 2011 were approved. However, no reason was communicated as regards denial of grant of approval to the petitioner. In view thereof, the college authorities again forwarded all necessary documents to the respondent no.3 for reconsideration of the petitioner's claim but in vain.

Mr. Verma, learned advocate appearing for the petitioner submits that a selection committee was constituted by the said college for appointment of CWTT and the petitioner appeared before the said committee and was selected and the competent authority thereafter appointed him as CWTT with effect from 20th September, 2004. Such appointment of the petitioner as CWTT cannot be construed to be an illegal one. In view of such appointment and continuance in service till date, the petitioner is entitled to the benefits as conferred by the memo dated 9th December, 2010.

He submits that there is no dispute that on the date of issuance of the memo dated 9th December, 2010, the petitioner was an existing CWTT. The petitioner's service is being utilized by the said college till date and from such continuance, it is explicit that there had exists a requirement towards such service. The petitioner has earned experience through his uninterrupted service till date and his service has also been utilized by the University of Calcutta by appointing him as an Examiner in the University examinations and in view thereof, he comes within the purview of the said memo dated 9th December, 2010.

Drawing the attention of this Court to the averments made in paragraphs 38 to 40, Mr. Verma submits that persons similarly situated with the petitioner had been granted approval as CWTT by the respondent no.3 but a different yardstick has been applied in respect of the petitioner and such discrimination as practiced warrants interference of this Court. In support of his arguments, Mr. Verma has placed reliance upon two unreported decisions of this Court. The said orders have been annexed to the affidavit-in-reply.

Per contra, Mr. Dey, learned advocate appearing for the State respondents submits that the petitioner's initial engagement was as a special part-time teacher in the year 1996 and upon conversion he was accommodated as CWTT. In view of such conversion of post, the petitioner is not entitled to the benefits as conferred by the memo dated 9th December, 2010. In support of such contention he has drawn the attention of this Court to a memo dated 3rd June, 2011 issued in partial modification of the memo dated 9th December, 2010.

He argues that the petitioner was not appointed as a CWTT upon conducting a regular selection process. No advertisement was published, no merit-wise panel

was prepared. Such fact would be explicit from the letters issued by the teacher-in-charge of the said college on 13th January, 2012 and 5th December, 2012. In the said letters it had been categorically stated that no advertisement was issued and no usual selection process was followed towards appointment of the petitioner as CWTT. The petitioner's appointment as CWTT was thus not in accordance with the procedure prescribed and as such the petitioner is not entitled to the reliefs as prayed for.

He submits that the judgments upon which the reliance has been placed by the petitioner are distinguishable of facts and have no manner of application in the instant case.

Mr. Bhattacharya, learned advocate appearing for the University submits that no allegations have been levelled by the petitioner against the University authorities in the writ petition.

Clause 1 of the memo dated 9th December, 2010 runs as follows:

"1. Existing CWTTs serving in a particular department in a State Aided non-Govt. colleges, duly engaged through a selection process (as per norms of affiliating University) will continue to remain engaged in the concerned college till they attain 60 years of age. Departments/ Courses run on self-financing basis are not included in this scheme."

It cannot be disputed that the petitioner was an existing CWTT in a State Aided non-Govt. college on the date of issuance of said memo dated 9th December, 2010 and he is continuing as CWTT till date. In view thereof, the petitioner comes within the purview of clause 1 of the memo dated 9th December, 2010. In the said memo and in the memo dated 4th January, 2011, issued in continuation of the earlier memo, there is no rider that conversion of part time teachers to CWTT would under no circumstances be entertained. The said memo dated 3rd June, 2011 has been issued in partial modification of the memo dated 9th December, 2010. Such modification thus came into effect from 3rd June, 2011. Prior thereto, the petitioner's proposal for approval was forwarded by the said college to the respondent no.3 on 14th February, 2011 since the petitioner was an existing CWTT as on the date of issuance of the memo dated 9th December, 2010.

The argument of Mr. Dey that the petitioner's appointment as CWTT was an arrangement made by the said college with the petitioner in an illegal manner, is not acceptable to this Court. In the letter dated 13th January, 2012 issued by the teacher-in-charge of the said college it has been stated that upon consideration of the petitioner's academic qualification and good performance by the selection committee, he was appointed as CWTT with effect from 20th September, 2004 and that at the said juncture there was no rule or instruction about the procedure for appointment of CWTT.

In W.P. 33233 (W) of 2014 the arguments, as advanced on behalf of the State,

that the petitioner's appointment given on whole time contractual basis was not in accordance with the procedure and that there is no rule to allow conversion of a part time teacher to contractual whole time teacher, were not accepted by a coordinate bench observing inter alia that the State had not been able to establish that conversion of part time teacher to contractual whole time teacher was irregular. The said order has been complied with by the respondents therein. Fairness and reasonableness are paramount issues for administrative action. As a model employer the State must conduct itself with high probity and candour and cannot act arbitrarily by withholding the benefits as extended to similarly situated incumbents.

Judicial propriety demands that the findings arrived at on the rudiments of similar facts by another Court should be given respect and should be followed.

Under the guise of the new memo dated 3rd June, 2011, the respondents cannot take away the rights which had accrued to the existing CWTTs as on 9th December, 2010. The said memo dated 3rd June, 2011 cannot be construed as to have modified the memo dated 9th December 2010 retrospectively.

From the date of initial appointment in the year 1996, the petitioner has served the college for more than twenty two years. The petitioner did face the selection committee and the said committee found him to be eligible and experienced and thereafter he was given appointment. In the backdrop of said facts it cannot be said that the appointment of the petitioner was a backdoor entry. No arbitrariness or mala fide as regards such appointment could be established by the respondents.

With an object to eradicate the sufferings of the teachers engaged on exploitative terms with no guarantee of livelihood, the State had taken a policy decision inter alia towards extension benefits of continuance in service till 60 years and towards enhancement of remuneration and payment of gratuity vide memo dated 9th December, 2010 and the petitioner cannot be denied the said benefits.

For the reasons stated above this Court directs the respondents to approve the appointment of the petitioner as CWTT and to grant the benefits as conferred by the memo dated 9th December, 2010 in favour of the petitioner within a period of four weeks from the date of communication of this order.

With the above observations and directions, the writ petition is disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.