
(2000) 08 GAU CK 0003

In the Gauhati High Court

Case No : Writ Appeal No's. 107, 108 and 109 of 1998 in Civil Rule No's. 84, 92 and 279 of 1992

State of Tripura and Others

APPELLANT

Vs

Remendra Nath Dey

RESPONDENT

Date of Decision : 31-08-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 226
Tripura University Act, 2006 — Section 6(2)

Citation : (2000) 3 GLT 214

Hon'ble Judges : J.N. Sharma, J;H.K.K. Singh, J

Bench : Division Bench

Advocate : Mr. U.B. Saha and Mr. S. Chakraborty, for the Appellant; Mr. A. Chakraborty and Mr. P.K. Pal, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Sarma, J.—All these writ appeals have been filed by the State of Tripura against the common judgment dated 7.10.1998 passed by the learned Single Judge in Civ. Rule Nos. 84/92, 279/92 & 92/92. The facts of the Civ. Rules are given below :

Civ. Rule No. 84 of 1992

2. This writ petition has been filed by the petitioner, Ramenora Nath Ley praying the following reliefs :

(a) to direct the respondents to pay the pay-scale recommended by the University Grants Commission, hereinafter called as UGC, to the petitioner as Assistant Professor with effect from 1.12.1977 and in the senior scale of pay with effect from 1.12.1977 and 1.12.1985 respectively.

(b) to direct the respondents not to appoint any person as Vice-Principal in the Government Music College, B-Music wing (Degree Course).

3. The petitioner herein is an M.A. (Classical Vocal) Music and M.A. in Bengali, B.Ed, and Sangeet Visharad. The petitioner was offered the post of Senior Lecturer in the Govt. Music College, Agartala vide Annexure- 1 to the writ petition. The Annexure- 1 reads as follows :

***** Memorandum

With reference to his/her application dated ___ to the Secretary, Tripura Public Service Commission for appointment under the Govt. of Tripura and his/ her subsequent interview, the governor has been pleased to offer Shri Ramandra Nath Dey a temporary/permanent post of Senior Lecturer in Vocal Music in the scale of pay of Rs. 500-40-900-50- 1300 (E.B. after 8th & 15th stages)."

4. in 1977 the B. Music wing of the Government Music College was affiliated to the Calcutta University and recognised the said B. Music wing as Degree Course. After establishment of the Tripura University the B. Music wing came under the Jurisdiction of the Tripura University as affiliated to it. That notification to that effect dated 29.10.1987 i.e. the Annexure-2 to the writ petition reads as follows:

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***** Notification

In exercise of the powers conferred by Sub-section (2) of Section 6 of the Tripura University Act, 1987 (Act No.11 of 1987). The Government of Tripura hereby appoint the 2nd day of November, 1987 as the date on which the following colleges existing within the limits of the State of Tripura shall be deemed to be affiliated untill the University otherwise directs and the name of this College is at SI. No. 15 and it is specifically mentioned that it is the B. Music Wing which was affiliated.

5. There are two sections in the Music College-one is a diploma course and the other is the degree course. Only the B. Music wing which holds classes in day time has been affiliated firstly to the Calcutta University and then to the Tripura University. It is the case of the petitioner that according to the Govt. notification which extended the UGC scale in 1986 to the college teachers of Tripura, the petitioner is entitled to receive the said scale meant for Assistant Professor with effect from 1.12.1987. The petitioner was originally appointed as Senior Lecturer and later on it was re-designated as Assistant Professor. It is the further case of the petitioner that after expiry of eight years i.e. after 1.12.1977, the petitioner is entitled to senior scale meant for Assistant Professor under U.G.C. Rules.

6. Earlier to it, one Tripurendra Bhowmik, the then Principal of the the College filed a writ petition being Civ. Rule No. 78 of 1980 claiming pay scale recommended by the UGC and the matter came up for decision before a Division Bench of this Court. When this claim was made by the Principal, the contention of the Govt. was that the petitioner meaning here the principal has no legal rights to claim the above pay scale, which was rejected by the Division Bench of

this Court as follows:

"*** if we find any element of discrimination this Writ Court is legally bound to grant relief."

It is the further finding of the Division Bench which reads as follows:

"5. The decision of the government is absolutely clear and unambiguous. The Government decided to grant University Grants Commission pay scales to teachers of all colleges affiliated to University. From the supplementary affidavit filed by the petitioner we find that recently state Government decided to grant the said pay scale even to the members of the Regional College of Physical education affiliated to University for the purpose of degree as well as diploma. That being the position we do not find any justification for not granting the University Grants Commission pay scale to the present petitioner of the College as the college is conducting B. Music Course and it is affiliated to the University. Mr. Majumder has raised another contention that as the college is also conducting diploma and certificate courses the petitioner is not entitled to get the pay scale as those courses are not affiliated to any University. in reply, Mr. Lodh has rightly submitted that this is an additional work connected by the college in question and for that reason the present petitioner cannot be denied of his right to get the pay scale of the University Grants Commission. From the affidavit-in-reply filed by the State on 4-1-1989 we find that three members of the teaching staff including the principal of the Music College are conducting B. Music Course. This is the admitted position. So, we are constrained to hold that denial of University Grants Commission pay scale to the present petitioner is discriminatory and also arbitrary and is hit by Article 14 of the Constitution."

Thereafter, in paragraph- 6, the Division Bench gave the following directions :-

"6. in the result, the present petition is allowed and we direct the respondent to pay the pay scale prescribed by the University Grants Commission to the petitioner, who is the principal of the College, from the date of affiliation of the college to the University which was sometimes in the year 1976-1977. This Order shall be implemented by the respondents by April. 1989. Parties to bear their own cost".

7. Thereafter on 31.5.1993 an Addendum was issued by the Govt. which reads as follows :-

" Please add the words "Principal, Govt. Music College (for B. Music) Agartala" after the words " Govt. Law College" as occurred in the 4th line of para 2 of this Department Notification No. F. 1 (499) -DHE/88 date 31.3.1989."

. 8. in terms of this notification the earlier Principal, Sri Bhowmik was given the benefit of U.G.C. scale, but when he retired, the present petitioner who became the principal was not given the same benefit. This present petitioner filed the Civ. Rule No. 195/ 97 before this Court, but that case was with regard to seniority and the claim of seniority was against the respondent No.5 and this Court

dismissed that writ application. Reference has been made to this aspect of the matter as it has also been argued on behalf of the appellant that this case will have a role to play in the shape to constructive resjudicata in this case.

7. The petitioner was apprehending that the authority may appoint Vice Principal and that is why there was other prayer not to appoint any person as Vice Principal. The petitioner herein filed the representation vide Annexure-6 to the writ petition on 18.7.1991 by which he claimed that he was entitled to get the UGC scale of pay but that has not been given to him and he claimed the scale of pay with retrospective effect from the date of his joining i.e. from 29.4.1977. As nothing was done, so this writ application.

8. Affidavit-in-opposition has been filed-on behalf of the state-respondents wherein it has been stated, inter alia, as follows :

(a) There is no separate senior Lecturer for B. Music course. Besides, the petitioner was already in service in the Music College before the B.Music Course was introduced in the said college. Therefore, he cannot claim any special benefits by way of his designation of his post as Assistant Professor and the pay scale under University Grants Commission.

(b) The name of the Govt. Music College was not included in the Govt. Notification introducing the UGC scale of pay. So there is no question of extending the said UGC scale of pay to the petitioner,

(c) That the case of the Principal of the Govt. Music College cannot be compared with that of the petitioner

(d) As the petitioner is not entitled to any benefit, there remains nothing for consideration of this representation by the authority.

9. It may be stated herein that in the meantime the petitioner has retired from his service and any benefit if available to him that only will be of some monetary benefit.

Civ, Rule No. 279/92 & Civ. Rule No. 92/92

in C.R. 92/92, the petitioner is an M.A. in Music from Rabindra Bharati University, Calcutta, West Bengal. She is also Sangeet Frabhakar in Rabindra Sangeet from Prayag Sangeet Samiti, Allahabad. She is Graduate in Arts from the Calcutta University and obtained B.ED, degree from the Calcutta University. in the year 1966, the petitioner Joined as Assistant teacher in the Maharani Tulsibati Girls Higher Secondary School, Agartala under the "Respondents. The Music College was established in the year 1964 but it became as a degree college in the year 1977 when the Calcutta University gave affiliation to it and since then degree course is being conducted in the said institution. As the Music College required teacher having Master degree in Music who were able to conduct classes in the B.Music course of the college in the stream of Rabindra Sangeet, western Music and Karnataka Music, the name of the petitioner was recommended by the

Headmistress of Maharani Tulsibati Girls Higher Secondary School in response to the said requisition. The petitioner was found suitable person to be deputed to such a position in the Govt. Music College and accordingly she was sent on deputation to the College and she joined the same on 9.12.1977 and that reads as follows:

"Smt. Ashima Bhattacharjee (M.A. in Music) Asstt. Teacher, M.T. Girls" H.S. School Agartala is temporarily deputed to work in the Govt. Music College. Agartala with her existing pay and scale of pay plus admissible allowances until further orders. She will report for her duties to the Principal, Govt. Music College, Agartala ; immediately".

10. in C.R. 279/92, the petitioner was appointed as Lecturer in 1966 in a Higher Secondary School and thereafter she worked in different Higher Secondary Schools and lastly she was transferred to/ Budhjung Girls" Higher Secondary School at Agartala. The petitioner is an M.A. in Bengali with Honours and also possessed a B.T. degree. By order dated 21.11.77 the petitioner was temporarily deputed to work in the Govt. Music College, Agartala with his existing scale of pay plus admissible allowances until further orders. Thereafter both these petitioners continued in Govt. Music College and they were not recalled at any time by the authority. These two petitioners also claimed that they were working as Lecturer in the College and they were entitled to receive UGC scale of pay and with a further prayer that they may be absorbed in the degree College, the Govt. Music College in the post of Assistant Professor/ Lecturer as may be found suitable. There were some other prayers made in the writ application, but as it then was, at the present we are not concerned with them.

11. An affidavit-in-opposition has been filed in both cases on behalf of the State-respondents and the stand of the State of Tripura is that these petitioners are not entitled to receive the UGC scale of pay as at no point of time they were appointed as Lecturer or Assistant Professor in the college. They were only sent on deputation, and, as such, they were not entitled to claim absorption in the college. It may be stated herein that after filing of the writ petition sometime in the year 1995, the authority passed an order asking Smt. Ashima Bhattacharjee to come back to the parent department. That order was also cancelled/ withdrawn in view of the order of this court. It is on this back ground that the matter came up for hearing before the learned Single Judge, Earlier the Division Bench of this Court decided that the teachers of Music College are entitled to receive the UGC Scale of pay and thereafter by issuing notification this Music college was specifically excluded. So the admitted position in this case is that the Govt. vide Notification dated 31.3.1989 extended the UGC scale to the college teachers of Tripura with effect from 1.1.1986. while implementing the UGC scale in respect of college teachers, the Govt. excluded from its purview certain colleges including the Govt. Music college and that finds place in para-2 of the Govt. Notification. The question which arose for determination before the learned Single Judge was whether this exclusion was an arbitrary exercise of power and

the learned Single Judge on consideration of the materials on records has, inter alia, found as follows:

"15. The above decision irresistibly leads to the conclusion that the senior Lecturers of the Music College who are similarly situated with the Principal cannot be denied the UGC scale unless they fall short of U.G.C. norms, or otherwise disqualified. So far the petitioner Shri Dey is concerned, the materials on record show that he is a Master Degree holder in Bengali and Music and also possess a bachelors degree in Education. Annexure-4 issued by the Joint Secretary to the Government of Tripura itself shows that the petitioner Shri Dey, on consideration of his qualification and other eligibility, was allocated to the degree course in the Government Music College along with Smti Ashima Bhattacharjee, the writ petitioner of Civil Rule No. 92/92. This allocation was made on fulfillment of the eligibility criteria, prescribed by the University Grants Commission. This is evident from the penultimate para of the office order referred to above. Therefore, the eligibility of the petitioner for entitlement to the U.G.C Scale also stands cleared from the order passed by the Joint Secretary, Education Department. That apart, there is no effective challenge to the claim that the petitioner is a whole-time teachers. This narrows down the scope of enquiry in this case to the sole question where non-receipt of U.G.C. scale from before would be an acceptable ground to keep them out of the purview of the Scheme".

12. It was further found by the learned Single Judge that the eligible teachers of the Music College (B-Music wing) including the writ petitioner Ramendra Nath Dey have been left out only on the ground that they were not covered by the UGC scale from before. It was further found that exclusion of the college from the purview of UGC scale was arbitrary and is impermissible. Next coming to the question of other two persons, Smti. Namita Deb Choudhury and Smti. Ashima Bhattacharjee, learned Single Judge found that though they were sent on deputation in the year 1977, they were allowed to continue there in the College for a period of more than twenty years and arrived at a finding that there was no justification to give a different scale of pay to them as they have been discharging the same duties as have been done by the teachers of other colleges, and it was found that there was differential treatment and they were asked to be given the same UGC scale of pay and the learned Single Judge observed that the two petitioners deserved absorption in the Music College as well as pay benefit, and, accordingly, direction was given to give pay benefit and other benefits within a period of three months and, it is this order which is challenged in this writ appeals.

13. We have heard Sri U.S. Saha, learned senior Advocate, Govt. Advocate assisted by Sri. S. Chakraborty, learned Counsel for the appellants and Mr. A. Chakraborty learned senior Counsel assisted by Mr. P.K. Pal, learned Counsel for the respondents.

14. in *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], the Supreme Court in para-59 has pointed out as follows :-

"59. The founding fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court is sentinel in the qui vive is to mete out justice in given facts."

15. in U.P. State Cooperative Land Development Bank Ltd. Vs. Chandra Bhan Dubey and Others, in paragraph-27, the Supreme Court has pointed out as follows :-

"27. The Constitution is not a statute. It is a fountainhead of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals, whether incorporated or not, or even an "individual. Right that is infringed may be under Part-III of the Constitution or any other right which the law validly made might confer Upon him: But then the power conferred upon the High Courts under article 226 of the Constitution is so vast, this Court has laid down certain guidelines and self-imposed limitations have been put there subject to which the High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. The High Court does not interfere when an equally efficacious alternative remedy is available or when there is an established procedure to remedy a wrong or enforce right. A party may not be allowed to by pass the normal channel of civil and criminal litigation. The High Court does not act like a proverbial "but in a china shop" in the exercise of its jurisdiction under Article 226."

15. No doubt the writ court is a court of equity and equity must supplement the law meaning thereby that in exercising the power under Article 226 of the Constitution we cannot issue a mandamus or any other writ directing the authority to violate the law. But at the same time relief can be moulded by the Writ Court in such a manner that justice is given/made as pointed out by the Apex Court in the Judgments quoted above. Writ Court is not a horned bull in a China day shop to put all things topsy-turvy, but whenever and wherever without violating the law or without causing a topsy-turvy situation, relief can be give within the bounds of law, such relief should be given because after-all the aim of the Court is to wipe out injustice, the genuine tears from the eyes of persons, it is in this background that we must decide this case in hand. Another aspect of the matter is that a Writ Appeal is an appeal on principle meaning thereby that this Court is exercising the co-ordinate jurisdiction and accordingly, when we examine the legality and validity of the Judgment of the learned Single Judge, it should be set aside or it should be quashed only when there is patent error on the face of the record of Judgment is against the established/settled principle of law. If two views are possible and a view which is reasonable and logical, has been adopted by the learned Single Judge and the second view has not been

accepted, the decision/view adopted by the learned Single Judge, should be allowed to prevail.

16. Next let us take the submissions made by the learned Government Advocate for the appellants. The learned counsel for the appellants submits as follows :-

(a) Court can not issue a Mandamus to the authority to pay a particular scale of pay to a person as to a person, as the fixation of pay and the payment of the same is a policy decision of the State Govt.

(b) That there cannot be any direction by the Court to the authority not to repatriate or call back a person sent on deputation and there cannot be any direction to absorb a person sent on deputation in the Department to which he is sent.

(c) As the notification was not under challenge the court could not have given the direction for payment of U.G.C. Scale.

17. Learned Govt. Advocate places reliance on the-following decisions:

State of West Bengal and others Vs. Tropical School Employees' Union and others, That is a case with regard to equal pay for equal work. The question which arose in the case was whether non-teaching technical staff and Class IV staff in Govt. educational institution can claim UGC scale. That case is absolutely not relevant for the decision of the case in hand inasmuch as this is not a case of an employee of non-teaching staff or a Grade-IV employee. Union of India (UOI) and Another Vs. P.V. Hariharan and Another, That also a case with regard to equal pay for equal work. in paragraph 5, the Supreme Court has pointed out as follows :

"5. *****

Very often, the doctrine of "equal pay for equal work" is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales. *****"

This case is also of no help to the appellants in resolving the dispute or the questions which arise for determination State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., That is a case where the Supreme Court pointed out that the Court can not question the policy decision of the Govt. and/or wisdom of the policy. That was a case with regard to prohibition in A.P. and it was in that background that the Supreme Court pointed out that the policy decision requires application of mind by the proper authority with proper reasons. An authority by issuing a notification or order cannot claim that it is the policy decision of the Govt. Policy decision is something else than a cryptic order or notification issued according to the pleasure or whim. Nothing was shown to as to what was the necessity to exclude this college from the purview of the UGC

scale. The only ground which has been advanced is that there is a financial constraint. Financial constraint is no ground to exclude one college when it included so many colleges and it was rightly found by the learned Single Judge that there is something behind the exclusion of this college. Union of India and others Vs. Makhan Chandra Roy, the Supreme Court pointed out in that case that the Court cannot decide the pay scale attached to a particular office and the court should not tinker or make an attempt to determine the scale of pay of office, that is not the position the case in hand. Here there was a circular by the UGC. The circular was accepted by the State of Tripura for some colleges save and except this college. Learned Single Judge also found no justification to exclude the Music College. So this case is also of no help to the appellants.

JI 1998 (2) SC 514 (State of Orissa and anr. v. Aswini Kumar Dash & ors). That is a case where the State of Orissa decided to provide grants-in-aid to cover the revised U.G.C. scales of pay for those teachers in existing colleges which have received Government concurrence and University affiliation on or before 1st of April, 1989. The date has a direct nexus with the date of the decision to provide for such higher pay scales in the grant-in-aid to be given to the concerned colleges. The date which is so fixed cannot be considered as arbitrary or unreasonable, and the Supreme Court on the back-ground of that case pointed out that the date cannot be deemed to be arbitrary or unreasonable, that is not the position in the case in hand. The position of the case in hand is something different. That disposes the question Nos. 1 and 3 as urged by the learned Govt. Advocate for the appellant.

18. Then we come to the second question, whether the Court can give direction to the authority to absorb a person sent on deputation even though that person is working for a sufficiently long period. Sri Saha on this point legally is on a strong ground. He is correct in contending that the Court cannot issue such a direction and in support of this contention Sri Saha places reliance on two decisions.

1990 SCC 243 (Ratilal B Soni v. State of Gujarat) wherein the Supreme Court pointed out that absorption on deputation post that depends on the Rule for deputation and the Rule of the Department where person is on deputation. If the Rule of the Department gives as option to that particular person to be absorbed there, then he may exercise the option, otherwise he does not have a right to claim absorption in the Department to which he was sent on deputation.

The next case in State of Punjab and Others Vs. Inder Singh and Others, That was a case where certain Constables in Punjab Police were taken on deputation to the Criminal Investigation Department (CID) of Punjab Police for organising it. They continued on deputation in the CID Department for a long period of more than 20/22 years, even some persons had received further promotion in the CID department, retired from the Department and received their pension and others were continuing there. It was at that point of time when CID Deptt. became a full fledged department with its own persons, the constables who were on deputation

they were asked to go back to their parent department. in the Department of CID, they were also getting higher salary and they were enjoying promotion there under. Naturally they were not inclined to go back to the parent department at the post they will have to serve as Constables or Head Constables. Accordingly, they filed a writ petition before the Punjab & Haryana High Court to quash the order of repatriation of those persons to the parent Department, that was done. Against that there was an appeal before the Apex Court and in that case, the Apex court in paragraph-18 has pointed out that what is deputation and what is meaning of deputation.

"18. The concept of "deputation" is well understood in service law and has a recognised meaning. "Deputation" has a different connotation in service law and the dictionary meaning of the word "deputation" is of no help. in simple words "deputation" means service outside the cadre or outside the parent department. Deputation is deputing on transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he was earned promotion in his parent department as per the Recruitment Rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post. The law on deputation and repatriation is quite settled as we have also seen in various judgments which we have referred to above. There is no escape for the respondents now to go back to their parent departments and working there as Constables or Head Constables as the case may be."

The Supreme Court pointed out in the case that whatever may be length of period of service of a person in the Department to where they were deputed, they cannot claim absorption and must go back to the parent Department. But even in that particular case also, the Supreme Court in view of the hard facts moulded the relief and gave the relief to those persons in exercise of the power under Article 142.

19. On the other hand, Sri Chakraborty, learned Sr. Counsel for the respondents contends that the benefit which were available to this College under the earlier decision of this Court in the Civ. Rules 78/ 80 to which reference has been made that benefit also will be available to the respondents and in support of his contention, he has relied on 1975 (1) SLR Amril Lal v. Collector of Central Excise Delhi (S.C.) wherein in paragraph-24, the Supreme Court pointed out as follows

"24 *****

We may, however, observe that when a citizen aggrieved by the action of a Government Department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the

sense of responsibility of the Department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court."

20. It is the submission of Sri Chakraborty that in the earlier Division Bench judgment, it was found that this College shall come within the purview of the UGC scale and to exclude the benefits the notification in the year 1989 i.e. 31.3.1989 was issued, and as indicated above, the learned Single Judge has found it to be an arbitrary and impermissible exercise of power and to be discriminatory also and we do not find anything to differ with that finding of the learned Single Judge.

21. The next case relied by The Chandigarh Administration and Others Vs. Mrs. Rajni Vali and Others, Chandigarh Administration v. Rajni Vali. That is a decision with regard to equal pay for equal work. The Supreme Court has pointed out in the case that financial constrain is not a ground not to give relief to a person if that person is otherwise entitled to the relief or the benefits and it is the financial constrain which has been taken as the ground by the State of Tripura not to extend such benefit to the teachers of the Music College and the teachers are also not many. There are only three or four in the degree course and we do not understand as to how this can be a financial constrain. Regarding the submission of Sri Saha that the deputationists do not have any right to claim absorption, T. Shantharam Vs. State of Karnataka and Others, T. Santharam v. State of Karnataka in that case what happened, the appellant before the Apex Court was a Second Division Clerk in the Revenue Deptt. and by mistakenly he was deputed to hold higher post in Food wing of Deptt. and he was discharging his duties satisfactorily and with higher responsibilities in Food wing and he was working in the said higher post uninterruptedly for about 32 years and thereafter he was sought to be repatriated to the parent Department and the Supreme Court pointed out that that will be a hardship and sheer injustice and on the facts of that case, the Supreme Court found that the appellant was entitled to be absorbed on higher post in the Food wing of the Deptt. Earlier the matter came up before the Tribunal and the Tribunal asked for repatriation and that was set aside by the Supreme Court. Sri Chakraborty on the authority of this decision submits that these persons also have been working though on deputation but for a period of more than 23 years as on today and they have been discharging their duties satisfactorily and it is not the case of the authority that these persons are not duly qualified to the posts. So it will be highly unjust to ask them to go back to the parent Department and there is no necessity to go back to the parent department, that also they were asked to go back only after filing this writ petition and not earlier. The State Govt. was in deep slumber and it woke up only when it got a shake from this Court and not earlier to it. So it is better that the State Govt. should remain in its slumber and should not disturb these two poor employees. They have spent the best part of their life in that particular College and let them retire peacefully from that particular college. So legally though we find that Sri Saha is correct that this sort of direction not to call back the

respondents to the parent department cannot be given, but this Court in exercise of its jurisdiction can mould the relief and considering the human problem and looking at the human face, we decline to interfere with the direction of the learned Single Judge.

22. Appeals stand dismissed. Earlier stay order shall stand vacated. We give three months time to the authority to implement the order of the learned Single Judge.

23. It is needless to say that the authority may also consider the case of other persons similarly situated and this is under consideration as found from the instructions received by the learned Government Advocate in writing vide File No. 10 (85)-DHF/98, which he produced before us and a photo copy of it is placed in record.