

(2002) 03 SC CK 0061
In the Supreme Court Of India
Case No : Ca No. 9100/1994

State of West Bengal

APPELLANT

Vs

Aloke Kumar Ghosh

RESPONDENT

Date of Decision : 20-03-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2002) 94 FLR 90 : (2003) 1 JCR 168 : (2002) 1 JT 187 Supp

Hon'ble Judges : S. N. Phukan, J;B. N. Agrawal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal by special leave is directed against the judgment of the division bench of the Calcutta High Court dated 12th January. 1993 in FMAT No. 418 of 1992. The division bench set aside the judgment of the learned single judge and granted relief to the respondent.
2. The High Court also directed the university to give pay and allowances as per circular dated 6th June, 1988 (effective from 1.4.1987) of the university grants commission.
3. In March 1984, the university who was respondent in the writ petition, advertised for recruitment of research associate in the department of History. The respondent was appointed as research associate in January 18, 1985. The writ petitioner filed an application to the university demanding his post be declared to be a post of lecturer w.e.f. the date of his recruitment as a research associate and also issue a writ of mandamus directing the university and the state government to give the petitioner pay and allowances w.e.f. 1.4.1987, as revised by the university grants commission by circular dated 6th June, 1988.
4. We may state here that against the impugned judgment, no appeal was filed by the university before this Court and the state is in appeal.

5. We have heard Mr. Tapas Ray, learned senior counsel for the appellant and Mr. Jaideep Gupta, learned counsel for the respondent.

6. By the impugned order, the High Court gave the following directions:

"We entertain no doubt that the petitioner is entitled to a writ commanding the university and the other respondents state to give the petitioner the pay and allowance as mentioned in the circular dated 6th June, 1988. We accordingly direct the respondents to give the aforesaid pay and allowance with effect from 1.4.1987 as mentioned in the circular itself, within a period of six months from date.

.....

We accordingly fail to understand as to why the appellant shall not be regarded as a teacher as defined in section 2(19) and section 2(20) of the Kalyani University Act, 1981. We accordingly direct issuance of a writ commanding the respondents to treat the petitioner as a teacher of the university with effect from the date he has been imparting instructions to the students of the university."

7. The first contention of Mr. Ray is that the state government is not bound to give pay scale of the lecturer to the respondent and, therefore, the impugned Judgment to that extent is liable to be set aside. On the contrary, Mr. Gupta, learned counsel for the respondent, submitted that no direction was given by the High Court to grant the pay scale of the lecturer to the respondent and what the High Court had directed was to give the pay scale as per the circular dated 6th June, 1988 of the university grants commission. In this connection, learned counsel has drawn our attention to the said circular of the UGC wherein pay scales of the research associates have been laid down and the rates are as follows:

i. 2200-100-2700 ii. 2700-100-3200 iii. 3200-100-3700 iv. 3700-125-4325 8. After issuance of the advertisement, the respondent was appointed as research assistant and it was duly approved by the executive committee in their meeting held on 26th August, 1985. The executive committee gave the following approval:

"The UGC revision of the pay scale of the research associates was accepted and even ' in the meeting of the executive council held on 14.5.1993, no question was raised on this point. So far as the second part of the judgment giving Shri Ghosh the status of university teacher is concerned, the university should have no reservations since the hon'ble court has not passed any orders to disquiet Shri Ghosh as a lecturer or a reader. Their lordships have simply directed the university to treat him as a teacher which is very much within the provisions of the K.U. Act, 1981."

9. From the above decision of the executive committee, it is clear that the respondent was appointed as research assistant and not as a lecturer. Therefore, the contention of Mr. Tapas Ray that the respondent was directed to be appointed as a lecturer is not correct. Regarding the circular of the UGC, the state

government has accepted the proposal under the said circular of UGC by its letter dated 19th March, 1984 and the relevant portion is quoted below:

"The government to undertake the financial liability to the extent of Rs. 7.96 lakhs (rupees seven lakhs and ninety six thousand) only for maintenance of the posts (both teaching and non-teaching) noted in the margin sanctioned by the UGC in their letter no. F. 9-7/790(E-1) dated 19.9.1983 on the expiry of five years with effect from the dates when the respective posts are filled up."

10. In view of the above decision of the government, the state government is liable for the expenditure incurred by the university in terms of the circular of the university grants commission and there is no question of paying the pay scale of the lecturer to the respondent as he was never appointed in that capacity.

11. As the university is not before us and the judgment has become final against the university, and, therefore, the university has rightly taken follow up action and implemented the judgment of the High Court.

12. In view of the above, we find no merit in the appeal and it is dismissed with no order as to costs.

13. Before parting with the case, we may make it clear that the state government and the university shall comply the directions of the High Court, if not yet done, within a period of six months from today.