

**Calcutta High Court  
In the Circuit Bench at Jalpaiguri  
Constitutional Writ Jurisdiction  
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya**

**W.P.A. No. 18 of 2019**

**Dr. Dilip Roy Chowdhury  
Vs.  
The University of North Bengal & Ors.**

For the petitioner : Mr. Joydeep Sen,  
Mr. Guddu Singh

For the respondents : Mr. Joyjit Chowdhury,  
Mr. Rohit Agarwal,  
Mr. Ajoy Singhat

Hearing concluded on : 26.08.2019

Judgment on : 29.08.2019

**Sabyasachi Bhattacharyya, J.:-**

1. The grievance of the present petitioner is that the petitioner joined the Department of Computer Science and Applications of the respondent no.1-university on contractual basis in the month of September, 2008. Initially, he was appointed as a 'guest teacher' and thereafter, from the year 2012 onwards, the petitioner was appointed as contractual Assistant Professor, which was renewed from time to time, the last such contract being for three years, which reached its logical culmination on September 2, 2018.

2. During such last term, the petitioner faced a termination on the ground of sexual harassment, which was challenged by the petitioner by way of a writ petition bearing W.P. No. 6667(W) of 2018. The writ petition was disposed of by a learned Single Judge of the principal bench vide order dated December 6, 2018 by setting aside and quashing the impugned termination based on a report dated April 6, 2018. The university, being the present respondent no. 1, was directed to constitute an Internal Complaints Committee (ICC), which was to try the complaint against the petitioner as per the procedure provided and to submit a report on its inquiry.
3. The learned Single Judge observed that the petitioner's service would stand protected till four weeks after the report of the ICC was submitted to the university, with copy to him. In the four weeks' time, the university was to consider the claim of the petitioner to continue to serve in the context of the report filed and, in the event of acquittal, based on its need of services of the petitioner. In the meantime, the petitioner was to be paid his salaries, both arrears and current.
4. The learned Single Judge recorded the submissions of counsel for the respondent no.1-university that the petitioner's contract had expired in the meantime during pendency of the writ petition, and that, in the event the petitioner was found to be acquitted on fresh inquiry proceedings, as directed by court, his claim to be reappointed on contract and his further claim of being entitled to work till he

attains the age of sixty years would, at that stage, be duly considered and appropriately dealt with by his client, being the university.

5. Learned counsel for the petitioner, inter alia by relying on such stand of the respondent no.1, impugns a notice dated March 14, 2019 [Ref. no. 421/R-19), which is annexure P13 at page 127 of the present writ petition, by which the university informed the petitioner that the university did not need the petitioner's further service.
6. The only ground cited by the university, that is, the present respondent, in the said notice was that the contractual tenure of the petitioner had already expired on September 2, 2018 and that the said service would stand protected only till four weeks from February 22, 2019 as per the order of the High Court.
7. It is argued on behalf of the petitioner that no reason whatsoever was indicated objectively in such notice, including whether the respondent no. 1 had any need of the petitioner's service, in detail or in unequivocal terms.
8. Learned counsel for the petitioner cites a memorandum issued by the Government of West Bengal, Finance Department, Audit Branch, bearing No.3967-F(P) dated August 1, 2014 which provided, inter alia, that it would govern any statutory body funded wholly or partially by the Government. The said memorandum, apart from governing regular employees and casual/piece-rated/daily-rated workers, also covered contractual employees. It was decided by the said memorandum that as far as contractual employees were concerned,

contract of such employees in the parent office may be terminated and thereafter fresh contract might be executed for engagement in other entity, local fund or Government office as the case may be with the express condition, inter alia, therein that such engagement would not be regularized in future in any manner whatsoever. The contractual remuneration might be the same as was in the parent office. It was further provided in the memorandum that accordingly, the controlling departments of said local fund or entity might, at first, work out the details and manpower to be detailed or deployed in other local fund, entity or in Government office, project or scheme and then take up with other department for detailment or deployment or engagement as the case may be. After working out such details, the concerned controlling department was to send specific proposals to the Finance Department for concurrence.

9. Learned counsel for the petitioner next cites a memorandum bearing No. 3998-F(P2) dated July 15, 2019, also issued by the Government of West Bengal, Finance Department, Audit Branch which provided, inter alia, that, with a view to ensuring the optimal use of public funds and to use the available manpower in the most productive and effective way in the event of restructuring or winding up of several entities, namely Companies, Corporations, Undertakings, Statutory Bodies etc., wholly or partially owned or controlled by the Government of West Bengal or by any Body funded wholly or partially by the Government of West Bengal it was decided in terms of Memo No. 3967-F(P) dated August 1, 2014 (as

previously mentioned) to redeploy the excess contractual and other workers to other entities/organizations etc.

10. It was provided in the memorandum dated July 15, 2019 that the question of improving the conditions of service of such workers had been under active consideration by the Government for some time past and after careful consideration of the matter, the Additional Chief Secretary of the Finance Department was directed by order of the Governor to lay down the service conditions, as stipulated therein, in respect of such workers.
11. Sub-paragraph (i) thereafter provided that such workers who have rendered 10 years of service continuously in the previous organization and present organization taken together with at least 240 days attendance each year may remain engaged in the same status and capacity till their attaining the age of 60 years.
12. It is submitted that the scope of termination of service of such workers was specified in clauses (vii) and (viii), which envisaged criminal case, misconduct, delinquency, incapacitation, misappropriation of public money, forgery or tampering records etc.
13. Learned counsel for the petitioner submits that none of the occasions for termination arose in the present case, which renders invalid the non-renewal of the contract of the present petitioner.

**14.** It is further submitted on behalf of the petitioner that, having failed to successfully conspire against the petitioner by bringing a false charge of sexual harassment, which was held to be collusive in the Internal Committee report submitted pursuant to the order of the co-ordinate bench, a coterie of people in the University of North Bengal, that is, the respondent no. 1, have now taken resort to ventilate their vindictiveness by the mala fide and arbitrary action of refusing to renew the services of the petitioner, who has been acting as a Guest Teacher first, and then Assistant Professor, successfully since 2008 and his competence was never doubted from any corner.

**15.** Learned counsel for the respondents, on the other hand, submits that the last contract of the petitioner expired on September 2, 2018. The respondent no. 1, thereafter, complied with the order dated December 6, 2018 passed in W.P. No. 6667(W) of 2018 to the letter by considering the claim of the petitioner to continue in service, in view of the petitioner having been acquitted from the charges of sexual harassment in the context of the report filed by the Internal Committee, and based on there being no need of the respondent no. 1 for the services of the petitioner. It is further submitted that the petitioner's dues by way of salaries, both arrears and current, were disbursed duly to the petitioner in terms of the said order.

**16.** Learned counsel for the respondents submits that the norm established by law is that the courts generally do not interfere with internal decisions of the

University, in particular in case of contracts of personal service, unless such action is palpably punitive, arbitrary, mala fide, biased, discriminatory or the result of a personal vendetta.

17. Learned counsel for the respondents submits that the process of filling up the vacant posts of the University was already initiated in the year 2015. In the year 2018, a Selection Committee was formed, as per the recommendations of which the University has been filling up the requisite posts.
18. By placing reliance on annexure R-1 at page 28 of the affidavit-in-opposition filed by the respondent nos. 1 to 5, learned counsel highlights that the applications in the prescribed format were invited within June 25, 2018 from bona fide Indian Citizens, for filling up of vacancies to the substantive teaching posts as mentioned therein. Such posts included the posts of Professor, Associate Professor and Assistant Professor. It was categorically mentioned in the said notification dated May 30, 2018, issued by the Registrar of the University, that one who had already applied for posts of Assistant Professor/Professor in response to their earlier advertisement dated December 12, 2015 or December 16, 2015, was required to apply again and submit API scores in the manner indicated therein. The said notification also indicated that all the permanent posts for professors, associate professors and assistant professors in the subject of Computer Science and Applications, which the petitioner taught, were

earmarked for reserved categories, whereas the petitioner was a general candidate.

19. The present petitioner, having not applied as per the notification dated May 30, 2018, could not be considered for such posts. It is submitted that the petitioner, at the relevant juncture, was not even qualified for such posts at all, having obtained his doctoral degree subsequently.
20. It is argued on behalf of the respondents that, although the respondent no. 1 is a State-aided University as far as funds are concerned, the appointments to the University are controlled by the University Grants Commission (UGC) and its regulations. In this context, learned counsel for the respondents cites a notification dated July 18, 2018 issued by the UGC containing the UGC regulations on minimum qualifications for appointment of teachers and other academic staff in Universities and Colleges and measures for the maintenance of standards in higher education, 2018.
21. Placing particular reliance on sub-clause (ii) of Rule 1.1, it is argued that, for appointment to the post of Assistant Professor and equivalent positions pertaining to disciplines in which the National Eligibility Test (NET), conducted by the UGC or Council of Scientific and Industrial Research as the case may be, or State Level Eligibility Test (SLET) or the State Eligibility Test (SET) conducted by bodies accredited by the UGC for the said purpose, qualifying in NET/SLET/SET shall be an additional requirement.

22. Sub-clause I of Rule 3.3 provides that the NET or an accredited test shall remain the minimum eligibility for appointment of Assistant Professors and equivalent positions wherever provided in the regulations. Rule 3.4 provides that a minimum of fifty five percent marks or an equivalent grade in a point-scale wherever the grading system is followed, at the Master's level, shall be the essential qualification for direct recruitment of teachers and other equivalent cadres at any level. Other tests for the eligibility as Assistant Professor, as provided in clause 4.1, sub-clause I, Part A of the aforesaid notification was also placed by learned counsel for the respondents.
23. Learned counsel next argues that the West Bengal Universities (Control of Expenditure) Act, 1976 and the Amendment thereto, effected in 2017, has been holding the field, during the relevant period, in regulating the appointments and payment of teachers in West Bengal.
24. By placing reliance on a Kolkata Gazette Notification dated January 27, 2017 issued by the Government of West Bengal, Department of Higher Education, Science and Technology and Bio-technology (Integrated Law Cell), it is argued that the retirement age for full-time regular teachers of State-aided Universities was enhanced from 60 to 62 years. A subsequent notification dated January 24, 2019 increased such age of retirement further, from 62 to 65 years. Comparing such notifications with the memorandum dated July 15, 2019 cited by the petitioner, learned counsel for the respondents argues that it is evident that the

retirement age, fixed at 60 years in the said memorandum, betrays the fact that the said memorandum and the preceding memorandum dated August 1, 2014, relied on by the petitioner, did not pertain to teachers or teaching staff but only to other contractual and casual employees, since the retirement age would not be restricted to 60 years for teachers, as done in the memorandum dated July 15, 2019, in spite of such age having already been increased previously to 65 years. It is pointed out that even the language of the said memoranda indicates so. As such, the said memoranda could not govern the terms of service of the present petitioner at all.

25. Next placing reliance on Rules 12.0 and 13.0 of the UGC notification dated July 18, 2018, learned counsel for the respondents argues that teaching posts in Universities, as far as feasible, may be created in a pyramidal order, for instance, for one post of Professor, there shall be two posts of Associate Professors and four posts of Assistant Professors, per Department. Rule 12.2 says all the sanctioned/approved posts of the University system shall be filled up on an urgent basis. Rule 13.0 says that the appointment should be on contract basis and that the teachers should be appointed on contract basis only when it is absolutely necessary and when the student-teacher ratio does not satisfy the laid-down norms. The norms were indicated therein as well. Learned counsel for the respondents next argues that Section 2(22) of the North Bengal Universities Act, 1981 describes “Teacher of University” to mean a Professor or Associate

Professor or an Assistant Professor or any other person, holding a whole-time substantive teaching post and appointed in a permanent vacancy in an university or recognized as such by the university with prior approval of the State Government. Section 2(13) of the said Act also defined “non-teaching staff”, which specified that the non-teaching staff could not include staff holding any teaching post.

26. Citing Section 21(viii) of the 1981 Act, it is submitted on behalf of the respondents that the Executive Council, as contemplated in the said Act of 1981, could only create, with the approval of the State Government, posts of Officers, Teachers and other employees of the University or to recommend to the court for creation of posts of Officers and Teachers of the University.
27. It is thus argued that the creation of such posts was not within the domain of the State directly but was subject to the decision of the Executive Council, only with the approval of the State Government in case of necessity, as, in turn, governed by the UGC notification.
28. It is thus submitted that the petitioner’s appointment, which was temporary and of a contractual nature, spent its force automatically and was not renewed by the respondent no. 1 by taking a decision thereon pursuant to the co-ordinate bench decision. It was not a case of termination at all.
29. Moreover, no mala fides or arbitrariness has been attributed categorically against the respondents at all in the writ petition.

30. Learned counsel for the respondents also relies on ordinances relating to appointment and terms and conditions of service of teachers of the university, promulgated under the North Bengal University Act, 1981, to show the situations where teaching posts were created and the guiding principles regarding the temporary part-time or honourary appointments, which could not exceed one year.

31. It is submitted that none of the said rules were violated in the present case.

32. Learned counsel lastly argues that the scope of judicial review in cases of termination or non-renewal of service contracts was extremely limited. Learned counsel cites in this context a judgment reported at *AIR 2012 SC 729 [GRIDCO Limited & Anr. vs. Sri Sadananda Doloi & Ors.]*, wherein it was held that no right accrued to a contractual service holder as the whole matter rested in contract and termination of the contract did not amount to dismissal or removal from service, amounting to the breach of a fundamental right. The renewal of contract of employment depended upon the perception of the management as to the usefulness of the respondent and the need for any incumbent in the position held by him. Both these aspects rested entirely in the discretion of the authorities and there was limited scope of interference by courts in judicial review in such matters.

33. Next citing a judgment reported at *(2016) 8 SCC 293 = AIR 2016 SC 3333 [State of Maharashtra & Ors. vs. Anita & Anr. Etc..]*, learned counsel argues that the

respondents therein, at the time of appointment, had accepted an agreement containing a contractual appointment and as such, were estopped from challenging the terms of their appointments.

34. Next citing a judgment reported at AIR 2016 SC 467 [*Ratnesh Kumar Choudhary vs. Indira Gandhi Institute of Medical Sciences, Patna, Bihar and others*], it is submitted that a simple termination without any language carrying a stigma, did not amount to a stigma on the employee concerned, in the absence of any specific remark as to unsuitability of the employee for the job.
35. Learned counsel next cites a co-ordinate bench judgment of the principal bench, reported at 2017 LAB IC 1926 [*Jayanti Mondal vs. State of West Bengal & Ors.*], wherein the co-ordinate bench, in a similar circumstance, only deleted the observations attributing stigma to the petitioner therein but upheld the order of termination.
36. In such circumstances, it is argued, the present non-renewal of contract did not attract any illegality and as such, was rightly done.
37. In reply, learned counsel for the petitioner argues that the entire basis of the arguments of the respondents are absent in the affidavit-in-opposition. The first annexure to the affidavit-in-opposition, apparently showing certain posts being reserved for other categories than the general category, were for permanent posts and it is submitted that there are still inductions going on in contractual posts by the respondent no. 1.

38. Learned counsel for the petitioner submits that there are at least two contractual posts still vacant, which have not been filled up as yet. The first annexure to the affidavit-in-opposition only pertains to substantive posts and there is no reflection of the vacancies as regards contractual posts.
39. It is argued that paragraph nos. 33 and 37 as well as ground no. VII of the writ petition categorically attribute mala fides and arbitrariness to the respondents. After having failed to remove the petitioner on false sexual harassment charges, the vindictiveness of the respondents was reflected in non-renewal of the petitioner's contract, despite contractual posts lying vacant and the petitioner having full competence to be reemployed under contract in such posts.
40. It is argued that nowhere in the affidavit-in-opposition have the respondents denied the availability of vacancy for posts on contractual basis or even the abolition of the contractual posts in the respondent no. 1-university. As such, the respondents acted with palpable illegality and arbitrariness in refusing to renew the contract of the petitioner by a one-line directive.
41. Upon hearing both sides, it appears that the memoranda cited by the petitioner, respectively of August 1, 2014 and July 15, 2019 pertained to a scheme for optimal use of public funds and effective use of available manpower in various Companies, statutory bodies, etc., which were wholly or partially owned and controlled by the Government or by any body which was funded wholly or partially by the Government. Although contractual employees were envisaged

therein, the memorandum of August 1, 2014 pertained to contractual employees to the limited extent of termination of such employees in the parent office and thereafter fresh contract being executed for engagement in other entity, local fund or Government office as the case may be.

42. The memorandum dated July 15, 2019 was in furtherance of the previous memorandum of 2014 and was issued with a view to ensuring the optimal use of public funds and the use of available manpower in the most productive and effective way in the event of restructuring or winding up of several entities, including statutory bodies wholly owned or controlled by the Government of West Bengal.
43. As far as the present petitioner is concerned, there arose no question of restructuring or winding up of any entity. Moreover, the memorandum dated July 15, 2019 spoke of 'workers' having rendered 10 years of service continuously in a previous organization and present organization taken together. Such a scenario is not applicable to the present *lis*.
44. On the other hand, it is evident that the statutes and/or ordinances and/or notifications referred to by the respondents that those also primarily spoke of substantive and permanent posts and do not touch contractual service, apart from certain stray provisions as to creation of contractual posts.
45. The directions passed by the co-ordinate bench on December 6, 2018 in W.P. No. 6667(W) of 2018 specifically indicated that, in the event of acquittal of the

petitioner from the charges of sexual harassment, the respondents had to consider the claim of the petitioner to continue to serve, based on its needs for the services of the petitioner.

46. The impugned notice dated March 14, 2019 merely paid lip-service to such direction and only stated that the tenure of the petitioner had expired previously and that the order regarding protection of service as per direction of the coordinate bench was complied with by the respondent no. 1.

47. This apart, there was no reason or reflection of any semblance of consideration as to the need of the University for the petitioner. Merely a sentence was attributed to refusal of renewal in the following form:

“This is also to inform you that University does not need your further service”

48. It is not clear from the affidavit-in-opposition of the respondents as to what is the current status of vacancies in contractual posts of Assistant Teachers. The annexure to the affidavit-in-opposition merely pertains to permanent and substantive posts and do not give a proper picture of the actual availability of vacancies. Nor was there any ‘consideration’ of the need of the respondent no. 1 to continue the contract of the petitioner, particularly in view of the fact that the petitioner had been an Assistant Professor in the University, in whatever capacity, from 2008, that is, for a prolonged period of 11 years and had done his job successfully to merit several renewals by the Respondent No. 1-University during this period. There was nothing disclosed to show what change of

circumstance occurred to disqualify the petitioner for such renewal all on a sudden and what was the yardstick for such non-renewal.

49. It is somewhat doubtful as to whether the refusal to renew was a reflection of a frustration on the part of the respondent no. 1 in having failed to remove the petitioner on the charges of sexual harassment, which is all the more reflected from the observations of the Internal Committee of the University itself, which hints at a collusion against the petitioner, arising apparently from the petitioner having apprehended some students indulging in malpractice (copying) in an examination and had recommended that action be taken against them.
50. Although it would be premature to attribute any mala fides or palpable vindictiveness to the action of the respondent no. 1 in not renewing the contract of the petitioner, it was the incumbent duty of the respondent no. 1 to attribute proper reasons in the communication to the petitioner notifying that the petitioner's services were no longer required by the University.
51. There had to be a 'consideration' worth the name, factoring in the available vacancies in the contractual posts of Assistant Professor in Computer Science and Applications, for which the petitioner had been deemed eligible for the past 11 years in the same University which now deems it unnecessary to renew the petitioner's contract. There also had to be a consideration of the competence of the petitioner to hold such post, particularly in view of the acquittal of the

petitioner from all charges of sexual harassment and in view of his past satisfactory performance.

52. Although it would be going a bit too far to grant the petitioner a prior right of hearing before such an inquiry is made, since the nature of contract with the petitioner was personal and was inherently determinable, an arbitrariness and patent lack of reasons taints the refusal to renew the contract of the petitioner.
53. In such view of the matter, W.P.A. No. 18 of 2019 is allowed, thereby setting aside the communication dated March 14, 2019 by the Deputy Registrar of the respondent no. 1 vide reference no. 421/R-19, whereby the petitioner was intimated that the University did not require the petitioner's further service.
54. The respondent no. 1 is directed to undertake a proper enquiry as to whether there is any requirement on the part of the respondent no. 1 for renewing the service contract of the petitioner, taking into consideration the exact number of vacancies to contractual posts of Assistant Professors in the subject of Computer Science and Applications available in the respondent no.1-University, as well as the competence of the petitioner for such post, having regard to the past performance of the petitioner as an Assistant Professor in the University. Upon such a full-fledged consideration in accordance with law and in terms of the observations made herein, the respondent no. 1 shall communicate its decision on further renewal or non-renewal of the contract of service to the petitioner within a period of two months from this date. It is further made clear that such

communication has to reflect the exact process of reasoning and grounds for the respondent no. 1 having arrived at such a decision.

55. There will be no order as to costs.

56. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

**( Sabyasachi Bhattacharyya, J. )**