

15-12-2020

Ct. 12

MAT 193 of 2019
With
CAN 1 of 2019 (Old CAN 1480 of 2019)

The Rabindra Bharati University & Ors.
Versus
Sri Ashish Mukherjee

(Through Video Conference)

Mr. Arunangshu Chakrabarty, Adv.
Ms. Mahefuza Khatun, Adv.
...for the appellants

Mr. Piush Chaturvedi, Adv.
Mr. Tarun Kumar Das, Adv.
...for the petitioner/respondent

Mr. Bhaskar Prasad Vaisya, Adv.
Mr. Suman Dey, Adv.
...for the State

By consent of the parties, the appeal and the application are treated as on day's list and disposed of by this common order.

The appeal is directed against the order passed by the learned Single Judge on 28th January, 2019 in connection with a writ petition filed by one Ashish Mukherjee challenging his date of retirement.

Admittedly, the petitioner was appointed as Accompanist after 1985. The said year is important as, by reason of an Amendment to the Rabindra Bharati Act, 1981 in the year 1985, the word 'Accompanist', amongst others, was included in the definition of "teacher of the University" and he continued to function as an Accompanist till his service was arbitrarily superannuated on completion of 60 years of age and not 62 years, which a teacher of the University is entitle to.

The learned Single Judge noticed the amendment carried out in 1981 Statute and has considered the amended Clause 22 of Section 2 of the said Statute which reads as follows:

“22. “Teacher of the University” means a Professor, Reader, Lecturer, Accompanist or any other person, appointed or recognized as such by the University, either whole-time or part-time, for the purpose of imparting instruction or conducting research or assisting in the teaching of music or dance by providing instrumental or vocal accompaniment, in the University.”

Mr. Ashish Mukherjee was appointed as an Accompanist in the year 2004. There is no dispute that when he was appointed, the definition of ‘teacher of the University’ means an Accompanist and accordingly, he enjoyed the status of “teacher of the University”. It is now argued that in 2012, by an amendment [West Bengal University Laws (Amendment) Act, 2012], the word ‘Accompanist’ has been deleted and hence the writ petitioner cannot be treated at par with a teacher and his service conditions would be governed by the service conditions of a non-teaching staff.

Mr. Arunangshu Chakrabarty, learned Counsel appearing on behalf of the University, submits that an Accompanist cannot be treated as a teacher and this anomaly was noticed by a coordinate Bench in MAT 427 of 2018 (*Biswajit Ghosh vs. Dhimadhab Kirtania & Ors.*). The learned Counsel has also drawn our attention to the interim order passed on 28th September, 2018 in Biswajit Ghosh (supra) during the hearing of the appeal to show that the coordinate Bench was satisfied with the argument made on behalf of the University.

West Bengal University Laws (Amendment) Act, 2012 omits ‘Accompanist’ as included in definition section 2 of Rabindra Bharati Act, 1981. He relies on clause (b) under sub-section (1) in section 11 of the Act, which is reproduced below:

“11. In the Rabindra Bharati Act, 1981,-

(1) in section 2,-

(b) for clause (22), the following clause shall be substituted:

‘(22) “Teacher of University” means a Professor or an Associate Professor or an Assistant Professor or any other person, holding a who-time substantive teaching post and appointed in a permanent vacancy in a University or recognized as such by the University with prior approval of the State Government;’”

He submits, there thus has been substitution of meaning of ‘teacher of University’ by competent legislation, deliberately omitting ‘Accompanist’. As such petitioner is not covered by notification dated 27th January, 2017 to claim retirement at age of 62 years.

Mr. Chakrabarty, learned Counsel, however, submits that there was anomaly in the Statute for which the amendment was necessary and the said amendment is merely clarificatory and introduced to put an end of the anomaly existing in the earlier Statutes.

We are not convinced with the argument made by Mr. Chakrabarty. The status of the writ petitioner should be decided on the day when he was appointed as an Accompanist. The status of the said writ petitioner cannot be altered by the Amendment Act, 2012. The said Act cannot have any retrospective effect. Any interpretation giving retrospective effect in the said Statute would be unfair and arbitrary.

Moreover, clause (14) in section 2 of Rabindra Bharati Act, 1981 was not correspondingly amended to include ‘Accompanist’ in

definition of non-teaching staff. Thus intention of legislature is clear for ‘Accompanist’ to be included in substituted amended clause (22) in section 2, to be any 5 other person appointed whole time, assisting in teaching.

Clause (14) in section 2 of Rabindra Bharati Act, 1981 is reproduced below:

“14. “non-teaching staff” in relation to the University or a college, institution or centre affiliated to the University means the non-teaching staff, not holding any teaching post (including part-time teaching post), appointed or recognized as such by the University, and includes technical staff but does not include a Librarian or an officer.”

It has been ascertained that petitioner accompanies a teacher in assisting in the teaching of music and dance by providing instrumental or vocal accompaniment. This function does not appear to be included in meaning technical staff given in clause (14) of section 2 in Act of 1981. Controversy in the writ petition was regarding retirement age of petitioner who was duly appointed.

It is a question of the notification applying to his service as already appointed to the post. Since the Legislature has amended clause (22) in section 2 to omit word ‘Accompanist’ but corresponding amendment not made to clause (14) in section 2, as existing before substitution by amending Act XXX of 2012, Court was inclined to interfere in favour of petitioner.

In a similar matter, the coordinate bench decided that the appellants in the said appeals namely, Biswajit Ghosh and Dhimadhab Kirtania similarly placed as that of the present writ petitions were entitled to the benefits on the basis of the definition under Clause 22 of Section 2 of the Rabindra Bharati Act, 1981.

The points that have fallen for consideration in the present appeal are squarely covered by the decision in Biswajit Ghosh (supra) where the University denied similar benefits to two of the Accompanists namely, Biswajit Ghosh and Dhimadhab Kirtania.

The said decision of the co-ordinate Bench squarely applies in the instant case. The relevant portion of the judgment are reproduced below:

“It is now time for us to consider the observation/finding made by the learned Judge in the impugned judgment to the effect that Section 2(22) of the 1981 Act, as amended, alters and modifies the designation of Accompanist Teachers and describes them as non-teaching employees.

For examining this point, we are required to look into the 1981 Act as it stood upon an amendment being introduced by the Rabindra Bharati (Amendment) Act, 1985 (West Bengal Act, XXXVI of 1981). By such Act, ‘teacher of the University’ was defined as follows:-

“(22) “Teacher of the University” means a Professor, Reader, Lecturer, Accompanist or any other person, appointed or recognized as such by the University, either whole-time or part-time, for the purpose of imparting instruction or conducting research or assisting in the teaching of music or dance by providing instrumental or vocal accompaniment, in the University.”

The word “Accompanist” being included in the definition of ‘teacher of the University’, there could hardly be any reason to doubt that the appellants who have all been appointed post 1985, were treated as teachers of the University. It is, however, true that the work “Accompanist” appearing in the previous version, pursuant to the amendment introduced in 2012, is not to be found in the definition of

‘teacher of University’ introduced by the West Bengal University Laws (Amendment) Act, 2012, insofar as it seeks to amend the 1981 Act. But as has been argued before us, it would after-all be a matter of interpretation as to whether the amended definition of ‘Teacher of University’ would apply to the appellants who had been recruited post enactment of the Rabindra Bharati (Amendment) Act, 1985. Normally, substantive laws operate prospectively unless of course they are made to operate with retrospective effect and, therefore, we are of the considered opinion that this aspect of the matter ought to have been borne in mind by the learned Judge before sealing the fate of the appellants by making the impugned solitary observation/finding in the judgment and order under challenge.”

There cannot be any doubt that the writ petitioner becomes the teacher of the University as on the date of his appointment and his retirement should be considered on the basis of the status he earned on the date of his appointment.

On such consideration, we do not think any reason to interfere with the order passed by the learned Single Judge.

All service benefits be disbursed considering the writ petitioner/respondent as a teacher in terms of the definition of Clause 22 of Section 2 of the Act, 1981 within a period of eight weeks from date.

The prayer for stay is considered and, rejected.

The appeal and the application are, accordingly, dismissed. However, there shall be no order as to costs.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)