

17.12.2020
KC(8)

M.A.T. 1118 of 2019
Dr. Sk. Musiar Ali
-versus-
The State of West Bengal and Ors.
(Via Video Conference)

Mr. Samiran Giri.....For the appellant.

Mr. Amal Kumar Sen,
Mr. Lal Mohan Bose.....For the State.

Ms. Lina Majumder.....For the University.

We have gone through the impugned judgment and order dated 22nd July, 2019.

We notice that the University has attempted to comply with the order of the division bench of this court dated 19th February, 2019 in an earlier appeal preferred by the appellant (M.A.T. 154 of 2019 with CAN 984 of 2019) by appointing the appellant on 9th April, 2019 in the post of Editor under the N.A.R.P. Directorate of Research Bidhan Chandra Krishi Viswavidyalaya at Kalyani.

The appellant is not satisfied with this appointment. He says that he has been placed in a grade-III post although the post where he was initially appointed was a grade-II post.

At this point of time we set out a relevant portion of the said order of the division bench:

“However, since the equity is so far tilted in favour of the petitioner, it must not be allowed to tilt absolutely and completely so as to create an equitable balance to the prejudice of the university. Since the university shall be paying to the petitioner month by month salary and emoluments equivalent to the salary and emoluments which the holder of the post of the Assistant Director of Extension Education would have earned, the university shall have every right to have the service from him commensurate with the money that they will be paying. It shall be decided by the Executive Council or by the Vice Chancellor or any other authority of the university as may be nominated to that effect by the Executive Council. The nature of job that the petitioner shall be required to discharge, if the university decides so to do, should be commensurate to his status, educational qualification, age and experience. The university shall go on paying such amount month by month in the manner as directed by the learned single judge.

In the very special facts of the case the university shall try to absorb the petitioner in any vacant post, permanent or otherwise, so that the monthly payment does not become onerous to them. It goes without saying that such payment shall be made by the university out of fund that may be placed at the hands of the university by the state government for this specific purpose in accordance with law. The university shall go on making this payment. The writ petitioner shall also be entitled to receive the salary for the post to which he was appointed till his appointment was terminated.

With the directions as above, we dispose of the appeal and the writ petition. With the disposal of the appeal the application for stay being, CAN 984 of 2019 has become infructuous and the same is also disposed of as that.”

We enquired of learned counsel for the University whether at the time of compliance with the said order of the division bench there was any recording by the University as to how the following stipulations had been considered and decision thereon made:

Vacancy position permanent or otherwise, status, educational qualification, age and experience of the appellant and whether the appointment being made was commensurate with these attributes. No such record could be produced.

In those circumstances, we are of the opinion that the appellant shall continue in the said post where he has been appointed. However, the University shall take a reasoned decision whether the said appointment fulfills the above stipulations in the said order of the division bench and communicate the same to the appellant within eight weeks of communication of this order.

If according to the decision the appointment is not in terms of the said division bench order the University will take steps to give the appellant a suitable appointment, in terms of the division bench order, within a further period of eight weeks.

The appeal is accordingly disposed of. The judgment and order under appeal is modified to the above extent.

(I.P. MUKERJI, J.)

(KAUSIK CHANDA, J.)

