

23/12/2020
Item 19
Court No.12
AB

Through Video Conference

**MAT 787 of 2020
With
I. A. No. CAN/1/2020**

**The Indian Institute of Science Education &
Research, Kolkata & Others
Vs
Joydeep Sil & Anr.**

Mr. Dibyendu Narayan Rai,
Mr. Biswarup Nandy ...for the Appellants.

Mr. Biswaroop Bhattacharya,
...for the Respondent /
Writ Petitioner.

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

The termination of the Registrar of the appellants by a cryptic communication dated 14th October, 2020 after the writ petitioner served the appellants for over 12 years of his appointment as Registrar was the subject matter of challenge in a writ petition that had resulted in the impugned order dated November 12, 2020 being passed by the learned Single Judge.

Prima facie, it appears that the writ petitioner was appointed to the post of Registrar on 30th October, 2008 and on successful completion of probation period

of one year his service was confirmed on 5th November, 2009. The Office Order confirming his service is reproduced hereunder :-

“On Successful completion of one year of continuous service in the Indian Institute of Science Education & Research, Kolkata, on 30th October 2009, the probation period of Shri Joydeep Sil, Registrar, is declared as completed and his service is confirmed in the revised pay band (6th CPC) of Rs.37400-67000 (PB-4) plus Grade Pay of Rs.10,000/- and with other allowances as admissible as per the GOI rules.

It is however, communicated to Mr. Sil, that the reviewing officer feels that Shri Sil should spend more time in the Mohonpur campus in view of the upcoming construction activities.

This is issued with the approval of the Director, who has authorized the undersigned for this purpose.”

Following the same, he discharged his duties as the Registrar of the appellants without any complaint. However, by a letter dated 14th October, 2020, claimed to have been received by the writ petitioner on 15th October, 2020, the service of the writ petitioner was terminated on a specious plea that the advertisement for the post of Registrar had been made by the Institute on the specific condition of Deputation on Foreign Service terms and although the service of the writ petitioner might have been continued over a period of 12 years, but in absence of any exclusive

order of absorption, the writ petitioner cannot continue to function as the Registrar of the University.

Learned Counsel appearing for the appellants has relied upon Rule 13 to show that as the Registrar can be appointed for a fixed term not exceeding five years either on deputation or on contract basis and since the writ petitioner was on deputation and the period of five years had expired, the writ petitioner has no right to continue in the said post. However, it appears that he was permitted to function as Registrar for over a period of 12 years and at the time of his appointment, there was no such Rule similar to Rule 13 of the Notification dated 6th August, 2014 of the First Statute for All Indian Institutes of Science Education and Research. On the contrary, it appears that his appointment was governed by Rule 14 of the previous Rule, namely, Indian Institute of Science Education and Research, Kolkata, Memorandum of Association and Regulations was applicable. These are the primary considerations for which we hold that a prima facie case has been made out by the writ petitioner for stay of the letter of termination. If Rule 14 of the Memorandum of Association answered in favour of the writ petitioner, then the appellants cannot terminate service of the writ petitioner relying upon the Notification dated 6th August, 2014 of the

First Statute for All Indian Institutes of Science Education and Research.

On such consideration, we feel that the learned Single Judge was justified in passing the ad interim order of injunction restraining the appellants from giving any effect to the letter of termination. In fact, we have been informed by the parties that the writ petition is appearing before the learned Single Judge and the appellants have not filed any affidavit in opposition in spite of earlier directions.

We, however, make it clear that the continuation in service of the writ petitioner shall abide by the result of the writ petition and this period shall not create any equity in favour of the writ petitioner, in the event ultimately it is found that he is not entitled to continue in the said post, as claimed by the appellants.

At this stage, prayer is made by Mr. Roy for extension of time to file opposition in the writ petition. By consent of the parties, time to file opposition is extended by three weeks from date. Reply thereto, if any, be filed within two weeks thereafter and the matter will be listed eight weeks after the Christmas Vacation.

The interim order passed by the learned Single Judge shall continue till the disposal of the writ petition.

The Appeal and the connected application are, accordingly, disposed of.

However, there shall be no order as to costs.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)