

27-04-2021

Ct. 17

FMA 49 of 2021
With
I.A. No. CAN 1 of 2020 (Old CAN 1454 of 2020)

Dr. Subhrangshu Supakar
Versus
Maulana Abul Kalam Azad University & Ors.

(Through Video Conference)

Mr. Monojit Bhattacharya, Adv.
...for the appellant

Mr. Suranjan Dasgupta, Adv.
Mr. Anijit Chakraborty, Adv.
...for the respondent nos. 1, 2 and 3

The present appeal is directed against an order dated 16th December, 2019 passed by the learned Single Judge, whereby and whereunder the writ application filed by the appellant herein was dismissed and also rejected the claim of the writ petitioner for regularization in the post of Project Officer of Bioinformatics in Maulana Abul Kalam Azad University of Technology (hereinafter referred to as the 'said University') and a prayer for grant of regular pay as a teacher of the said University.

It appears that the writ petitioner was appointed in the post of Project Officer of Bioinformatics Department by an Appointment Letter dated 12th January, 2006. The said appointment letter clearly spelt out that the appointment of the writ petitioner was on purely temporary basis and valid for one year or till such time as will be decided by the competent authority. It has also been submitted by the parties to this appeal that the tenure of the appellant on completion of one year, as stated in the initial Appointment Letter dated 12th January, 2006, got extended from time to time.

On behalf of the appellant it has been submitted before us upon placing reliance on a certificate issued by the Head of the Department of Bioinformatics dated 25th August, 2010 that the appellant was discharging his duty as teacher in M. Tech, M. Sc. and Post B. Sc. Integrated Ph. D. courses in Bioinformatics, Biotechnology and Molecular Biology both in theory and practical. Based on such certificate dated 25th August, 2010 and other relevant materials which are appended to the stay petition, a case has been made out before us by the appellant that he is aspiring to become a part of the teaching faculty of the said University.

We have also perused the order passed by the learned Single Judge, wherefrom it appears that perhaps prayer was made on behalf of the appellant for regularization of his service as a teacher of the said University along with sanction of pay as member of a teaching faculty which was spurned by the learned Single Judge by passing the impugned order dated 16th December, 2019.

Our attention has also been brought to the Office Order dated 17th May, 2018 issued by the Registrar (Acting) of the said University whereby the appellant was temporarily appointed with effect from 6th April, 2018 at Haringhata Campus of the said University and was requested to set up an infrastructure of Bioinformatics Laboratory in that campus at Haringhata. By the said Office Order dated 17th May, 2018, the consolidated monthly salary of the appellant was fixed at Rs.26,500/- and it has been submitted by the learned Advocate representing the appellant before us that the salary which has been fixed vide the said Officer Order dated 17th May, 2018 is not less than the salary which the appellant was enjoying while discharging his duty

as Project Officer of Bioinformatics in the main campus of the said University.

We have heard the learned Advocate representing the appellant as well as the said University and considered the materials on record and the relevant documents in order to adjudicate the issue involved in the present appeal. The two-fold submissions has been made on behalf of the appellant; (i) that the appellant may be permitted to discharge his duty as member of teaching faculty at the main campus of the said University at Kolkata and, (ii) the appellant should be considered as regular member of teaching faculty of the Department of Bioinformatics. Such submission made on behalf of the appellant has been opposed by the learned Advocate representing the University by placing reliance on the Appointment Letter dated 12th January, 2006, which clearly shows that the appellant was initially appointed for a period of one year purely on temporary basis. Furthermore, no case has been made out on behalf of the appellant that following the regular selection process, he was appointed in the post of Project Officer in the Department of Bioinformatics.

While asking why the appellant was not willing to join the post at Haringhata, it is simply submitted before this Court today that the appellant does not want to work at Haringhata campus instead he is interested to discharge his duty as a member of teaching faculty at the main campus of the said University in Kolkata.

Considering the points argued on behalf of the appellant as well as taking note of the nature of the appointment made by the University, whereby the appellant was appointed as Project Officer of Bioinformatics, the prayer of the appellant for regularization as

member of teaching faculty cannot be countenanced specially when the appellant was posted at Haringhata campus of the University, vide order dated 17th May, 2018 with a consolidated monthly salary which is not less than the salary which the appellant was receiving while discharging his duty as Project Officer in the main campus of the said University at Kolkata.

In this conspectus, we are unable to accept the contention of the appellant and we do not find any infirmity in the order passed by the learned Single Judge while dismissing the writ petition.

Taking note of the contents of the office order dated 17th May, 2018, which is the subject matter of challenge in the connected writ petition, we grant liberty to the appellant before this Court to join the post of Project Officer at Haringhata campus of the said University within a period of seven days from date and it is made clear that if the appellant joins the said post pursuant to the said order dated 17th May, 2018, the concerned authority of the University shall permit the appellant to resume his duty as the Project Officer in the campus at Haringhata.

It is also made clear that if the appellant resumes his duty in terms of the Office Order dated 17th May, 2018, he shall be paid the salary as stipulated in the said office order. It is submitted on behalf of the appellant that he has not been paid his monthly salary with effect from February 2019 till date and he is entitled to receive the said service benefits upon resumption of his duty at Haringhata campus of the said University which is opposed by the learned Advocate representing the University. If the appellant pursuant to the liberty granted by us today, resumes his duty at Haringhata campus in that

event, after resumption of such duty within a period of one month the appellant shall be at liberty to make a representation before the concerned authority of the said University for release of arrear salaries with effect from 1st February, 2019 and if such representation is made within the time stipulated above, it shall be considered by the concerned authority of the University within a period of eight weeks after receipt of the said representation, in accordance with law.

With the above observation the order of the learned Single Judge dated 16th December, 2019 is modified to the above extent.

The appeal and the application are, with the consent of the parties, treated on day's list and disposed of.

Parties shall act on the server copy of this order obtained from the official website of the High Court at Calcutta.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)