

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE RABINDRANATH SAMANTA**

**WP.ST 107 OF 2016
Sirshendu Ghosh
Vs.
State of West Bengal & Ors.
With
WP.ST. 210 of 2016
Dr. Anup Kumar Hazra & Ors.
Vs.
State of West Bengal & Ors.
With
WP.ST 29 of 2017
+
IA No: CAN 1 of 2019 (Old No: CAN 1939 of 2019)
CAN 2 of 2020
Dipesh Dey
Vs.
State of West Bengal & Ors.
With
WP.ST 204 of 2016
Soudip Ghosh
Vs.
State of West Bengal & Ors.**

- - - - -

Mr. Bikash Ranjan Bhattacharyya,
Mr. Samim Ahammed,
Mr. Arka Maiti,
Ms. Saloni Bhattacharyya.

..... for the petitioners
in WP.ST 107 of 2016
WP.ST 210 of 2016
WP.ST 29 of 2017.

Mr. Tapan Kumar Mukherjee,
Mr. Rabindra Narayan Datta,
Mr. Somnath Naskar,
Mr. Raja Saha,
Mr. Sayan Ganguly.

.....for the State
in WP.ST 107 of 2016

Mr. Tapan Kumar Mukherjee,
Mr. Pronab Halder.

.....for the State
in WP.ST 210 of 2016

Mr. Tapan Kumar Mukherjee,
Mr. Anirban Ray,
Mr. Raja Saha,
Mr. Biswabrata Basu Mallick,
Mr. Sayan Ganguly,
Mr. Pranab Halder.

.....for the State
in WP.ST 29 of 2017.

Mr. Siddhartha Sankar Mandal.

.....for the petitioner
in WP.ST 204 of 2016

Mr. Tapan Kumar Mukherjee,
Mr. Pinaki Dhole,
Mr. Somnath Naskar.

.....for the State
In WP.ST 204 of 2016

Heard On : 25.11.2021

Judgment on : 22.12.2021

Rabindranath Samanta, J:-

1. These writ petitions raise a question as to whether the petitioners who were appointed to act as Lecturers in different Government Polytechnics on contract basis may be regularized as against the sanctioned posts of permanent feature.
2. The petitioner Sirshendu ghosh of WPST no. 107 of 2016, the petitioners Anup Kumar Hazra, Santanu De, Azizul

Hossain Mallick, Arindam Biswas, Subhabrata Ghosh, Safiul Alam Siddique of WPST no. 210 of 2016, the petitioner Dipesh Dey of WPST no. 29 of 2017 and the petitioner Soudip Ghosh of WPST no. 204 of 2016 filed applications in the West Bengal Administrative Tribunal seeking the orders which may be stated as under:-

- i) A mandatory direction upon the respondent authorities to regularize the respective services of the respective applicants retrospectively from a date on which each of the applicants have been entitled to regularization in terms of the scheme of the Government vide Government notification dated 11.01.2008 for regularization of their respective services.
- ii) The respondent authorities be directed to pay each of the applicants all the financial benefits attached to the post of Lecturers to which the respective lecturers would have been entitled to had the respective applicants been appointed on regular basis with effect from a date on which each of the applicants is entitled to regularization in terms of the scheme of the Government vide Government

notification dated 11/01/2008 together with interest at the rate of 18% per on all sum fallen due and payable to each of the applicants on that score,

- iii) The respective respondent authorities be directed to consider formation of a unified cadre of lecturers amongst all the colleges under the Technical Education and Training Department of the Government of West Bengal.

3. The applications which were made by the petitioners before the Tribunal were registered as O.A no. 1083 of 2012, O.A. no. 585 of 2013, O.A. no. 1222 of 2012 and O.A. no. 1273 of 2012. By separate judgments passed in the aforesaid applications the Learned Tribunal dismissed all the applications.
4. Being aggrieved by and dissatisfied with the judgments and orders passed by the Learned Tribunal the petitioners have preferred the instant writ petitions.
5. The facts which are necessary for adjudication upon the plea of the petitioners may be summarized as under:-

Admittedly, the petitioner Sirshendu Ghosh of WPST no. 107 of 2016 was initially appointed on 01.08.2006 as a Lecturer temporarily and on contract basis for six

months with a consolidated pay of Rs. 8,000/- per month without any allowance. The petitioners Anup Kumar Hazra, Santanu De, Azizul Hossain Mallick, Arindam Biswas, Subhabrata Ghosh, Safiul Alam Siddique were initially appointed as Lecturers in Polytechnics on 11.03.2003, 22.08.2005, 19.07.2006, 08.10.2003, 29.10.2003 and 18.01.2001 temporarily and on contract basis for six months with a consolidated pay of Rs. 8,000/- per month without any allowance. The petitioner Dipesh Dey of WPST no. 29 of 2017 was initially appointed on 05.07.2005 temporarily and on contract basis for six months with a consolidated sum of Rs. 8,000/- per month without any allowance. The petitioner Soudip Ghosh of WPST no. 204 of 2016 was initially appointed on 06.04.2001 temporarily and on contract basis for six months with a consolidated sum of Rs. 8,000/- per month without any allowance. All the petitioners were appointed till the posts were filled up by regular candidates selected by the Public Service Commission, West Bengal as per the existing rules.

6. It is not in dispute that the services of the petitioners were extended from time to time, but on contract basis as the posts held by them could not be filled up by the Public Service Commission, West Bengal in accordance with the rules. The petitioners excepting the petitioner Soudip Ghosh who is no longer in service, are now

drawing a consolidated amount of Rs. 35,000/- per month without any allowance.

7. The petitioners submit that the Department of Technical Education and Training, Polytechnic Branch, Government of West Bengal by virtue of a notification dated 11.01.2008 regularized the services of nine lecturers who were initially appointed on contract basis. But, such benefit has not been extended to them and thereby they have been discriminated in violation of the fundamental right guaranteed under Article 14 of the Constitution.
8. Learned Counsels appearing for the petitioners submit that the petitioners are in continued service for more than 10 years since their initial appointment and, therefore, the services of the petitioners should be regularized in view of the legal principle enunciated by the Hon'ble Apex Court in the case of **Secretary, State of Karnataka and Ors. -Vs- Uma Devi(3) and Ors** reported in **(2006) 4 SCC 1**. That apart, in order to buttress their submission Learned counsels appearing for the petitioners have cited a catena of decisions which are as follows:-

1. State of Karnataka – Vs- M.L Kesari and Ors, (2010) 9 SCC 247.

2. Nihal Singh and Ors – Vs- State of Punjab and Ors,(2013) 14 SCC 65.

3. Amarkant Rai –Vs- State of Bihar and Ors, (2015) 8 SCC 265 and

4. Narendra Kumar Tiwari and Ors – Vs- Sate of Jharkhand and Ors, (2018) 8 SCC 238.

9. Learned Counsels further submit that by notification dated 11.01.2008 of the Department of Technical Education & Training, Poly technic Branch of the Government of West Bengal regularized the services of nine lecturers who were appointed temporarily and on contract basis like the petitioners. But, such benefit has not been extended to the petitioners by the State and thereby the State has treated the petitioners unequally. On such score, this Court should direct the State to extend the same benefit of the said notification to the petitioners also.

10. Per contra, Mr. Tapan Kumar Mukherjee Learned Lawyer appearing for the State submits that the services of the petitioners who were appointed purely on contract basis till filling up the posts by the Public Service Commission, West Bengal in accordance with the existing rules cannot be regularized in view of the judgment of the Constitution Bench of the Hon'ble Apex Court in the case of **Secretary, State of Karnataka and Ors –Vs- Uma Devi(3) and Ors reported in (2006) 4 SCC 1**. In the light of such decision the Government notification dated 11.01.2008 has no longer any legal force.

11. What we find, the Learned Tribunal by the judgments impugned has negated the reliefs claimed by the petitioners solely banking upon the decision in ***Uma Devi (3)*** supra.
12. As stated above, the petitioners were initially appointed as Lecturers of different Polytechnics for six months purely on contract basis. Thereafter, their services were extended from time to time, but the nature of their service always remained contractual. We find that the Public Service Commission, West Bengal undertook exercise to fill up the posts held by the petitioners and some of the petitioners participated in the examination conducted by it. The Public Service Commission could not fill up those posts because of an interim order dated 20.07.2017 passed by this Court whereby the State was directed not to fill in seven posts in which the petitioners are teaching today according to the categories to which the petitioners belong.
13. As regards regularization of the services of the employees appointed irregularly or on contract basis the law declared by the Constitution Bench of the Hon'ble Apex Court in the decision in the case of ***Secretary, State of Karnataka and Ors – Vs- Uma Devi(3)and Ors*** reported in ***(2006) 4 SCC 1*** occupies the field as a torch bearer. At paragraph 53 of the judgment the Hon'ble Apex Court has held as under :-

“One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanjundappa and B.N. Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more byt without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already

made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

14. Referring to the observations supra, the Hon’ble Apex Court in a later decision in the case of ***State of Karnataka and Ors –Vs- M.L Kesari and Ors*** reported in ***(2010) 9 SCC 247*** has clarified further that the employees though appointed irregularly but rendered continuous service for 10 years or more before the cut off date on 10.04.2006 when the judgment in ***Uma Devi (3)*** was rendered and the State government or its instrumentality voluntarily accepted their services, their services may be regularized provided they are found eligible for the posts they hold. But, here all the petitioners rendered services less than 10 years on the cut off date on 10.04.2006. As pointed out above, the services of the petitioners were or are to continue till the posts held by them are filled up by Public Service Commission in accordance with the existing rules. That being so, the appointment of the petitioners cannot be termed as regular appointment in accordance with rules inforce.
15. In the case of ***Nihal Singh and Ors – Vs- State of Punjab and Ors*** reported in ***(2013) 14 SCC 65*** the

employees whose services were directed to be regularized were appointed as per the service rules then existing in Punjab, though their salary /wages were paid by different banks where they served as special police officers. Similarly, the facts in the case of ***Amarkant Rai -Vs- State of Bihar and Ors*** reported in **(2015) 8 SCC 265** and in the case of ***Narendra Kumar Tiwari and Ors - Vs- State of Jharkhand and Ors*** reported in **(2018) 8 SCC 238** are quite distinct from the facts on hand and accordingly those are not applicable to the instant writ petitions.

16. Having heard Learned Counsels appearing for the parties and giving our anxious thought to the grievances ventilated by the petitioners we are unable to extend the benefit as sought for by the petitioners to them in view of the law declared by the Hon'ble Apex Court in ***Uma Devi (3)*** in this regard. Because of this mandate of the Hon'ble Apex Court the aforesaid Government notification dated 11.01.2008 loses its legal force.

17. We have pondered over another angle of the matter bearing in mind the legal principles expounded by the Hon'ble Apex Court in the decision in the case of ***State of Punjab and Ors - Vs- Jagjit Singh and Ors.*** reported in **(2017) 1 SCC 148**. In this decision the Hon'ble Supreme Court has held that the employees appointed temporarily or on contract basis are entitled to equal pay for equal work at par with those employees of

permanent posts who perform the same work. Here, the posts held by the petitioners could not be filled up by the Public Service Commission because of the aforesaid interim order passed by this Court. Initially, the petitioners would draw a consolidated sum of Rs. 8,000/- per month, but their pay has been enhanced to Rs. 35,000/-per month. It is not contended on behalf of the petitioners that their present consolidated pay of Rs. 35,000/- per month is not the minimum pay of the scale of pay enjoyed by the regular lecturers of the sanctioned posts. However, we find that the drawal of consolidated sum of Rs. 35,000/- per month by the petitioners is the minimum pay of the pay band of Rs. 15,600-39,100 with AGP of Rs. 5,000 meant for the regular lecturers of polytechnics. Under such circumstances, we are unable to extend any benefit to the petitioners in the light of the legal principles as above.

18. The Learned Tribunal, in its judgments has delved into all the facets of the case and ultimately declined to grant any relief to the petitioners in view of the decision in ***Uma Devi (3)*** supra.
19. We find no reason to interfere with the decisions arrived at by the Learned Tribunal.
20. The petitioner Soudip Ghosh of WPST no. 204 of 2016 is no longer in service and consequently the writ petition brought by him being infructuous is liable to be dismissed. The other writ petitions, in view of the observations as above, do not succeed.

21. In view of the above, the question as raised is answered in the negative and the writ petitions merit dismissal.
22. Accordingly, the writ petitions being WPST no. 107 of 2016, WPST no. 29 of 2017, WPST no. 204 of 2016 and WPST 210 of 2016 are dismissed.
23. All other connected applications are also dismissed. All interim orders of stay stand vacated.
24. No order as to costs.
25. Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta, J.)

I agree,

(Harish Tandon, J.)