

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side**

**The Hon'ble Justice Subrata Talukdar
And
The Hon'ble Justice Lapita Banerji**

M.A.T No.1089 of 2018

With

IA No. CAN 1 of 2018 (Old No. CAN 7801 of 2018)

Jyotirmoy Roy

Vs.

The State of West Bengal and Others

With

C.O.T.No. 132 of 2018

Arising out of

W.P.No.7198 (W) of 2018

University of Calcutta

Vs.

Jyotirmoy Roy

For the appellant	: Mr. Bijay Adhikari
For the respondent/ University of Calcutta in MAT 1089 of 2018	: Mr. Chayan Gupta Mr. Sandip Dasgupta, Mr. Saaqib Siddiqui

Hearing concluded on : 22.06.2022

Judgment on : 03.08.2022

1. **Lapita Banerji, J.:-** The appeal and the application arises out of an Order dated August 8, 2018, whereby, the Hon'ble Single Bench rejected the writ petitioner's/appellant's prayer of allowing him to join the respondent No.2/The University of Calcutta (for short "the University") as the Deputy Registrar (BCW). The writ petitioner challenged the Order dated February 13, 2018, communicated vide Memo No.LO/DR/178/6260/2018 dated May 10, 2018 (for short, "the impugned Memo"), whereby, the service of the petitioner being a 'probationer' was terminated on the ground of 'suitability'. It was held by the impugned Memo dated February 13, 2018 that since the writ petitioner did not possess requisite experience, he was not a suitable candidate.
2. The admitted facts of the case are that pursuant to an advertisement published on the website vide advertisement No. EST/568/39A dated December 1, 2016, the writ petitioner applied for the post of Deputy Registrar at the University at Calcutta. The essential eligibility criteria for the post of Deputy Registrar (BWC) were as follows:
 - (i) Uniformly good academic record with a Master's Degree with minimum 55% marks or its equivalent grade in the point scale wherever a grading system is followed.

- (ii) At least 10 years of experience as Lecturer/Assistant Professor in the AGP of Rs.6,000/- and above with experience in educational administration in Academic Institutions like University. Research Establishment and/or in the institute of higher learning of which 5 (five) years must be in a University or in an Institute of Post Graduate Study.

OR

Comparable experience in Research Establishments and other institutions of higher learning;

OR

10 (ten) years' administrative experience, of which 5 years shall be as Assistant Registrar or equivalent post.

However, the said criteria could be relaxed in cases of exceptionally qualified candidates.

3. Prior to that, the writ petitioner worked as a Junior Assistant at Rabindra Bharati University (for short "RBU") on and from November 1, 2001 and as a Senior Assistant at the same University from November 15, 2010. In 2015, the writ petitioner was appointed as the Assistant Registrar of Uttar Banga Krishi Viswavidyalaya (for short, "UBKV"). He joined the post of Assistant Registrar at UBKV on December 10, 2015. A lien was granted by the RBU to his post of

Senior Assistant for a period of 2 years on December 10, 2015, on leave without pay basis.

4. The writ petitioner possessed Post-Graduate Degrees including M.A. in English, M.B.A. and was a Research Fellow at RBU. He also had 15 years of work experience in administrative work at 2 different Universities at the time of his application (Supra). After completion of the stipulated selection process, the petitioner received his letter of appointment dated September 1, 2017 from the Registrar/respondent No.6 vide letter No.EST/1610/33(2)A. The writ petitioner was asked to join the services within 30 days from the date of issuance of the appointment letter. The clear pre-requisite to joining the post of Deputy Registrar was submission of a release order from his erstwhile employer. An application was made by writ petitioner for resignation from his post of Assistant Registrar at UBKV on September 6, 2017. The writ petitioner was released from his post at UBKV on September 6, 2017 with effect from September 11, 2017. The writ petitioner was to be placed on probation for 1 year from his date of joining by the appointment letter (Supra). On his part the writ petitioner tried to join the University on September 12, 13, 15, 2017 but he was not allowed to do so.

5. By a letter dated September 20, 2017, issued by the respondent No.6 to the writ petitioner, the University proposed to withdraw the letter of appointment and keep the appointment of the writ petitioner in abeyance. A show-cause was called for within 7 working days from the writ petitioner as to why his appointment should not be cancelled.
6. The writ petitioner duly submitted his explanations and refuted the allegations by his reply dated September 25, 2017.
7. Admittedly, the writ petitioner worked at administrative posts of two Universities for more than 15 years but did not work in the post of Assistant Registrar for more than 2 years. The said fact can be evinced from Column 16 & 17 of the application forms submitted in triplicate by the petitioner to the Deputy Registrar, Deputy Controller of Examinations and Secretary, FC for PG studies in Arts & Commerce.
8. The posts that the writ petitioner held from time to time were all enumerated in a chronological order in Column – 17 of the application form. The relevant part of the table is reproduced hereinbelow:

Employer	Post Held	From	To
RBU	Jr. Assistant	01-11.2001	14-11-2010
-Do-	Sr. Assistant	15-11-2010	09-12-2015
UBKV	Assistant Registrar (online)	10-12-2015	Till date

9. From the table it appears that even though the writ petitioner worked as an Assistant Registrar from December, 2015 till December, 2016, prior to the submission of his application form at the Calcutta University, he had much more than 10 years of experience in administrative work with the Universities.
10. Being aggrieved by the withdrawal letter dated September 20, 2017 disallowing the writ petitioner from joining the post of Deputy Registrar, he challenged the same by filing a Writ Petition being W.P. No.25969 (W) of 2017.
11. By an Order dated February 2, 2018 the Writ Petition being W.P. No. 25969 (W) of 2017 was disposed of with the observation that an objective hearing would be given to the petitioner by the University and a reasoned order would follow.
12. Pursuant to the Order dated February 2, 2018, a hearing was given to the writ petitioner on February 13, 2018 by a committee constituted by the University. During the hearing the University came to the finding that since the writ petitioner did not have more than 2 years of experience as an Assistant Registrar, he did not have requisite experience for the post and was an unsuitable candidate. By the

impugned Memo dated February 13, 2018, the writ petitioner's services as a probationer were "terminated on the touchstone of suitability". It was held that the petitioner was not suitable for the post as he did not possess the requisite experience. The impugned Memo was communicated to the writ petitioner on May 10, 2018.

13. The writ petitioner assailed the impugned Memo dated February 13, 2018 in the present Writ Petition being W.P. No. 7198(W) of 2018.
14. The Hon'ble Single Bench refused to grant any relief to the writ petitioner/appellant. Hence, the present appeal being M.A.T. No. 1089 of 2018.
15. A cross appeal being C.O.T. No. 132 of 2018 was filed on behalf of the University singularly on the ground that the Ld. Single Judge has failed to consider the ratio of judgment passed by The Supreme Court in District Collector and Chairman, Viziangram, Social Welfare Residential School Society, Viziangram and another vs. M. Tripura Sundari Devi, reported in (1990) 3 Supreme Court Cases 655.
16. The Hon'ble Single Bench refused to grant relief to the writ petitioner based on the following findings:-

- (a) No relaxation could be made with regard to the essential eligibility criteria in respect of 'experience' and the only relaxation that could be made was in respect of the 'age'.
- (b) Even though keeping his employment secure at Rabindra Bharati University, the petitioner described himself as unemployed but that factor could be overlooked since he exercised his lien on 'leave without pay basis'.
- (c) The University inadvertently overlooked the petitioner's eligibility criteria with regard to his experience.
- (d) The writ petitioner contributed to the mistake made by the University since the petitioner applied for the post knowing fully well that he did not have the essential eligibility criteria of experience.
- (e) Since the writ petitioner wrote the number of years of work experience only without briefly stating his nature of work that was a contributory factor leading to the mistake made by the University.
- (f) Mistake on the part of the University was in not scrutinizing the particulars.

(g) Since both the parties contributed to the mistake, the petitioner was not entitled to any relief.

17. Mr. Adhikary, Ld. Counsel appearing for the appellant/writ petitioner argued that relying on the assurance made by the University vide appointment letter No.EST/1610/33(2)A dated September 1, 2017, the writ petitioner changed his position materially, to his detriment by giving up his job at UBKV, where he was gainfully employed as the Assistant Registrar. With malafide intent the respondents refused the writ petitioner from joining the University on several occasions, citing frivolous grounds. He further submitted that the academic qualification of the writ petitioner was much better compared to the other candidates, who were interviewed. After being interviewed, by the standing committee and upon perusal of all the relevant documents by it, the standing committee selected him as the first candidate for the post of Deputy Registrar. The standing committee upon finding the writ petitioner eligible for appointment to the post of Deputy Registrar (BCW) issued the letter of appointment in his favour. After scrutinizing all the documents submitted by the writ petitioner along with his application form, there could be no bonafide reason for the University to resile from its position. The writ petitioner resigned from UBKV relying on the assurance given by the University and also was on 'leave without pay' basis/lien at RBU. Therefore, the writ

petitioner's fundamental right to livelihood was violated by the University due to its malafide act/conduct.

18. He submitted that the University has acted in grossly unfair and discriminatory manner and should be estopped from cancelling/withdrawing the letter of appointment (Supra). Consequently, the impugned Memo dated February 13, 2018 should be cancelled and/or revoked. Mr. Adhikary argues that even if there was the eligibility criteria which required 5 years' experience as an Assistant Registrar, the same was relaxed by the standing committee when the interview was held and the documents/testimonials of the petitioner were scrutinized in original. After scrutinizing the documents of the writ petitioner, holding his interview and issuing the letter of appointment, the University has sought to resile from its position by issuing the purported show-cause dated September 20, 2017 and subsequent impugned Memo dated February 13, 2018, in colorable exercise of power. Such arbitrary and illegal acts by a public body are subject to judicial scrutiny.

19. Mr. Adhikary cites various Judgements which merit some discussion:

- (a) In the Chancellor & Anr. Vs. Dr. Bijoyananda Kumar & Ors. reported in (1994) 1 SCC 169, a day after the selection of the petitioner was made, 2 Members of the Selection Committee

addressed a letter to the Vice-Chancellor alleging that the petitioner/selected candidate did not possess requisite qualifications. It was held by the Apex Court that normally it could not be considered as a bonafide act on the part of some Members of the Selection Committee to allege the same after the selection was over. The sanctity of process of selection was to be maintained. It can be a travesty of selection process if an unsuccessful candidate was allowed to meet the Members of the Selection Committee after the selection was over, to instigate them to renege the selection made. Reliance cannot be placed on this decision as the impugned decision of the Selection Committee was not instigated by an unsuccessful candidate by approaching some of its members but due to the admitted fact that the writ petitioner did not work as an Assistant Registrar for 5 years which was an eligibility criteria in the advertisement.

- (b) In *Dr. Kumar Bar Das vs. Utkal University & Ors.*, reported in (1991) 1 SCC 453, “about 10 years’ experience in teaching and/or research” was advertised as the criteria for the post of Professor (SBI Chair). The appellant was the selected candidate. The Selection Committee having regard to his teaching experience of 7 years 7 months and 14 days and

research experience of 1 year 5 months and 14 days aggregating 9 years and 1 month of experience of the selected candidate treated the same as equivalent to “about 10 years’ experience”. The Vice-Chancellor (VC) upon representation made by the second recommended candidate annulled the appellant’s appointment as being ineligible against the recommendation of the Selection Committee. It was held that the VC was wrong in holding that ‘about 10 years of experience’ must be a minimum of 10 years’ experience. The VC could not normally interfere with the subjective assessment of the merit of a candidate made by an expert body unless malafide or collateral reasons are shown. In the present case, there was no dispute between the decision taken by the Selection Committee and the VC. It was the Selection Committee that later came to the opinion that the eligibility criteria with regard to ‘experience’ was not met. In the present case, the question of interference of subjective assessment by the VC or any other authority did not arise and, as such, this decision does not come to the aid of the writ petitioner.

- (c) In *Dr. Dalpat Abasaheb Solunke & Ors. vs. Dr. B.S. Mahajan & Ors.*, reported in (1990) 1 SCC 305, it was held by the Apex Court that it was not the function of the Court to sit in appeal over the decision of the Selection Committee and scrutinize

the relative merits of the candidates. Whether a candidate is fit for a particular position is to be decided by a duly constituted Selection Committee which has expertise on the subject. The decision of the Selection Committee cannot be interfered with unless there is an illegality or patent material irregularity or malafide affecting the selection. On principle, there is no dispute with the ratio of the case. It is, however, not appreciated how the reliance on the said case aids the writ petitioner's case.

- (d) In *State of Gujarat & Anr. vs. Gujarat Revenue Tribunal Bar Association & Anr.* reported in (2012) 10 SCC 353, the question that fell for consideration was whether the post of The President of the Gujarat Revenue Tribunal could be filled by a Judicial Officer or an Administrative Officer. The petitioner's appointment as the President was disputed on the ground that he previously held an administrative office. It was held that the President's post could only be filled up by a Judicial Officer of the rank of a District Judge and not by an Administrative Officer. The President of the Tribunal could only be a Judge of the High Court or a District Judge or the Chief Judge of the Small Causes Court. However, this case is not applicable to the present facts in any manner.

- (e) In *Kumari Shrilekha Vidyarthi & Ors. vs. State of U.P. & Ors.* reported in AIR (1991) SC 537, it has been held that even if the post is a provisional one and there is only a contractual agreement with the State still there may be a public element attached to it and the action of the Government cannot be arbitrary. Any decision taken by the Government is subject to judicial review. There is an obvious difference between a contract between two private parties and a contract in which The State is one of the parties. There is no dispute with regard to the aforesaid proposition as the University has never argued that it is not a 'State' within the meaning of Article 12 of the Constitution of India and, therefore, not amenable to writ jurisdiction.
- (f) In *Union of India & Ors. Vs. K.V. Jankiraman & Ors.* reported in AIR (1991) SC 2010, the question that fell for consideration related to promotion of an employee when disciplinary/criminal proceedings were pending against him. There is no dispute with regard to the principle that the State's action when arbitrary will be struck down. It is beyond comprehension as to why this case has been cited as there is no dispute with regard to the fact that the

University/respondent is amenable to writ jurisdiction and its actions are subject to judicial scrutiny.

(g) In *B.L. Sreedhar & Ors. Vs. K.M. Munireddy (Dead) & Ors.* reported in AIR (2003) SC 578, the question of estoppel was explored by the Apex Court. In principle, there is no dispute that estoppel may create substantive rights in favour of a person. Estoppel may be the foundation of a right against the person estopped. It was argued that in this case the University is estopped from agitating that the eligibility criteria of experience was 'essential' after having the opportunity of interviewing the candidate along with his original documents/testimonials. The negligence, deliberate or otherwise, on the part of the University defeated its rights and created rights in favour of the petitioner. Since the petitioner resigned from his job relying on the assurance of the University, the University was estopped from agitating the eligibility criteria at a belated stage, thereby cancelling the petitioner's Letter of Appointment. The said case is genuine in nature and the facts are not applicable to the present case.

(h) In *Brijesh Kumar Tiwari Vs. Banaras Hindu University*, High Court of Judicature at Allahabad, (unreported Judgement passed on April 12, 2016) the selection process for the post of Assistant

Professor in different departments at Banaras Hindu University was challenged by unsuccessful candidates. The Court held that even though there were certain human errors in processing the credentials, the expert committee carefully examined and scrutinized the qualification/experience of the candidates. The Court should not sit in appeal over the decisions of academicians and experts. The expert committee stood by its decision and the entire selection process was not vitiated. In the present case, the expert/selection committee is seeking to resile from its own position by withdrawing its Letter of appointment. Therefore, no factual reliance can be placed by the writ petitioner on this case.

- (i) In *Basharat Shafi Vs. University of Kashmir & Ors*, Jammu & Kashmir High Court, Srinagar Bench, (unreported Judgement passed on November 19, 2014) it was held that initially even though the Selection Committee found the experience criteria of the selected candidate not to be in conformity with the advertisement, but later on, upon interviewing the candidate, the Selection Committee on the basis of academic merit, past performance of the petitioner found him eligible and recommended him for appointment to the post of Deputy Registrar. The Selection Committee had a threadbare

discussion with the selected candidate and found his service to be 5 years of comparable service. Mr. Adhikary argued that even in the present case after interviewing the candidate he was found to hold 5 years of comparable experience to the eligibility criteria of requiring “at least 5 years of service to the post of Assistant Registrar”. In the said case, the Selection Committee determined the eligibility of the candidate and stood by its decision after relaxing the criteria with regard to ‘experience’, but, in the present case, the Selection Committee has resiled from its position by withdrawing Letter of Appointment. The Selection Committee relaxed the criteria with regard to the ‘experience’ in that case.

20. Mr. Abhrotosh Majumder, Learned Counsel leading Mr. Chayan Gupta, Learned Counsel appearing for the University rebuts the aforesaid allegations by submitting that the ‘eligibility criteria’ of 10 years of administrative experience, out of which, 5 years were required as an Assistant Registrar or equivalent post was a ‘mandatory criteria’ and could not be diluted. No relaxation could be made in respect of the ‘criteria of experience’. The only relaxation envisaged in the advertisement was in respect to the age of exceptionally qualified candidates and not in respect of the experience criteria.

21. He submits that a genuine mistake was made by the University where the eligibility criteria with regard to experience was overlooked and appointment letter (Supra) was issued. Since writ petitioner did not meet the eligibility criteria, there was no illegality committed in withdrawal of the said appointment. The writ petitioner/Appellant himself contributed to the mistake of the University by only stating the number of years of his experience in administrative work without clarifying the term for which he worked as an Assistant Registrar. The said omission on his part disentitled him to any relief. Furthermore, the writ petitioner/appellant had a subsisting lien at RBU as a Senior Assistant and could have gone back to the said employer.
22. Mr. Gupta, strongly relied on the case of District Collector and Chairman, Viziangram, Social Welfare Residential School Society, Viziangram and another vs. M. Tripura Sundari Devi reported in (1990) 3 Supreme Court Cases 655. In the said case, the eligibility criteria for the post of a teacher required Second Class Degree in M.A., whereas, the respondent held a Third Class Degree and an Order of appointment was wrongly issued. The order of appointment clearly stated that the same would be, inter alia, subject to production of original certificates at the time of appointment. When the original certificates were perused, it was noticed that the respondent was not qualified for the post.

23. In such a circumstance, it was held that the selection committee wrongly presumed that the candidate/respondent had necessary qualification. The order of appointment was subject to production of original certificates. Upon perusal of the certificates when it was found that she was under-qualified, it could not be argued that the standing committee appointed her with the knowledge of under-qualification. Sometimes wrong notes may be made by selection committee but upon perusal of original certificates, the said mistake comes to light. There was nothing wrong in disallowing her from joining the services.
24. Having considered the rival submissions of the parties and the materials on record, this Court is of the considered view:
- (a) The appellant/writ petitioner did not deliberately try to suppress his administrative/professional experience from the respondent/University. Although in Column 16 of the application form he wrote only 15 years and 1 month as his tenure of administrative/professional experience without explaining the brief nature of work, but, in Column 17 of the said form he clearly wrote the tenure of each post that he held from 2001 till 2016. Column 17 was self-explanatory. From the perusal of the details given in Column 17 the date

of joining the post of Assistant Registrar at UBKV becomes clearly evident.

(b) Even assuming, that there was an element of contributory mistake on the date of the application, the same could not be alleged on August 12, 2017, when the petitioner was interviewed. The writ petitioner/appellant was asked to bring all the certificates and testimonials in original. The Standing Committee had the opportunity to scrutinize all the original documents. Thus, it is held that the Standing Committee either scrutinized or is deemed to have scrutinized the documents prior to the issuance of the appointment letter on September 1, 2017. Therefore, this Court disagrees with the findings of the Hon'ble Single Bench that no relief can be granted to the writ petitioner on the ground of contributory mistake. Mistake, inadvertent or otherwise, is solely due to the negligence of the University on the date of the interview and subsequent thereto.

(c) Furthermore, from the perusal of the letter dated August 3, 2017 issued by the University, it clearly appears that the writ petitioner was required to bring all the certificates/testimonials, in original, when he was called for

an interview on August 13, 2017 before the standing committee. Undoubtedly, the standing committee had the opportunity to scrutinize the original certificates of the petitioner while interviewing the suitability of the candidate. This court agrees with the writ petitioner's case that the standing committee upon scrutinizing the writ petitioner's certificates and upon interviewing him, found him suitable for the post of Deputy Registrar (BCW) at the University. No case has been made by the University regarding the reasons for non-scrutinizing of certificates on the date of the interview. The case of Basharat Shafi (Supra) comes to the aid of the writ petitioner in the present case since the standing Committee had an opportunity of interviewing the writ petitioner and formulating its opinion after having an opportunity of scrutinizing his documents during the interview.

- (d) The case of Tripura Sundari (Supra) does not come to the aid of the respondent/University in the facts and circumstances of the present case. Here, upon scrutiny/deemed scrutiny of the certificates, the petitioner was offered an appointment, whereas, in Tripura Sundari (Supra) the appointment was conditional upon verification of original certificates at the

time of appointment. Admittedly, the said certificates were scrutinized on the date of the joining. In the present case, there was no such stipulation in the letter of appointment since the original documents/testimonials were scrutinized/deemed to have been scrutinized at the time of interview held prior to the issuance of the letter of appointment.

(e) The only conditions stipulated in the letter of appointment were that:

- (i) The petitioner was required to join within 30 days from the date of the issuance of the letter; and
- (ii) A release order was required to be submitted by the present employer at the time of joining. Admittedly, both these requirements were fulfilled by the petitioner.

Despite fulfillment of the aforesaid conditions, the University did not allow the petitioner to join, without any legally tenable reason.

(f) The writ petitioner relying on the assurance of the University materially changed the position to his detriment by resigning from his job at UBKV in the post of Assistant Registrar.

Whether or not, the writ petitioner had a lien over the job at RBU, cannot be a consideration in assessing the fairness/legality of the University's action. Admittedly, the lien was renewed after the petitioner's letter of resignation was accepted by UBKV. Therefore, the University did not seek to withdraw the writ petitioner's letter of appointment keeping in mind the fact; that the petitioner's right to livelihood would not be affected because of his lien over his job at RBU. No explanation was given by the University as to why the writ petitioner should be constrained to work at an inferior post due to the negligence/mistake on the part of the University. The University cannot now seek to take advantage of the fact that ultimately the petitioner was granted a lien by RBU and could have worked there at the post of Senior Assistant. This Court is of the view that the University having acted unfairly/negligently should be estopped from reneging the letter of appointment dated September 1, 2017.

- (g) This Court does not agree with the Hon'ble Single Judge's finding that the relaxation was only in respect of the "eligibility criteria" relating to "age" and not "experience". Had that been so, then, in the hearing dated February 13, 2018 culminating

into the impugned Memo of the same date, the hearing Committee would not have dealt with the question whether the eligibility criteria regarding petitioner's experience could be relaxed, keeping in mind whether the candidate/writ petitioner had any exceptional qualification.

(h) Discussion in the impugned Memo reads as thus:-

" i. It is an admitted position that Jyotirmoy Roy did not have the requisite qualifying criteria for the post of Deputy Registrar (BCW) as indicated in the advertisement dated 1st December, 2016 which specifically required

"10 (ten) years' administrative experience of which 5 years shall be as Assistant Registrar or equivalent post".

ii. Admittedly, Jyotirmoy Roy did not have any experience as Assistant Registrar for any period more than 2 (two) years.

iii. Though Jyotirmoy Roy did not make out a case or possessing exceptionally high qualifying criteria for a relaxation to apply in his case, however, the advertisement contains a clause that for exceptionally qualified candidates the qualifying criteria may be relaxed.

iv. In that view of the matter and in order to see whether Jyotirmoy Roy could be given the appointment by relaxing the qualifying criteria, the following aspects of the matter was taken into consideration.

The educational background of Jyotirmoy Roy are as follows:

<i>Madhyamik in 1992</i>	<i>-70.33% marks</i>
<i>Higher Secondary in 1994</i>	<i>-53.6% marks</i>
<i>B.A. Hons, in 1998</i>	<i>-41.7% marks</i>
<i>M.A. in 2001</i>	<i>50% marks</i>
<i>MBA in 2007</i>	<i>-75.93% marks</i>

v. It is seen that to Jyotirmoy Roy's educational background cannot be said to be exceptional to warrant relaxation of eligibility criterion.

vi. The academic career of qualifications and/or credentials Jyotirmoy Roy has been considered in great detail and it cannot be said that he has exceptional academic qualification for the relaxation to apply in his case. Such aspect was considered and negated."

Hence, the University after considering the question of relaxation of 'experience' criteria should not be allowed to approbate and reprobate at the same time.

(i) The hearing Committee, on the face of the records, erred in holding that the writ petitioner's candidature was considered only prior to his interviews. It erred in holding that admittedly upon scrutiny of documents it was found that the writ petitioner did not possess requisite qualifying criteria. The facts as culled out would reveal that after his interview and after scrutiny/deemed scrutiny of the documents, the letter of appointment of the writ petitioner was issued. The impugned Memo dated February 13, 2018 suffers from patent illegality and error on the face of the record and is hereby set aside/cancelled.

(j) At the hearing dated February 13, 2018 it was held, that on the ground of unsuitability, the services of an employee appointed on probation may be terminated. It is a well settled principal of law, that the period of probation starts after recruitment to observe the workability, efficiency, sincerity and competence of an employee and if found not suitable for the post, the master may dispense with his service. A probationer does not get any substantive right to the post till such time his

appointment is confirmed but the decision not to confirm cannot be an irrational or arbitrary decision. This court finds that before appointing the writ petitioner/appellant and considering his suitability, his appointment could not be cancelled by the University on the ground that he was a probationer and had no substantive right to the post. The said part of the impugned Memo suffers from error of law and/or is patently illegal and is liable to be also set aside on that ground.

25. In the light of the discussions above, the Order dated August 8, 2018 passed by the Hon'ble Single Bench is set aside. The respondent/University is directed to act in terms of the letter of appointment dated September 1, 2017 and grant the appointment to the writ petitioner/appellant to the post of Deputy Registrar with immediate effect upon completion of necessary formalities. Such an exercise should be completed within 2 weeks from date and notional benefits treating the petitioner to be in regular service should be granted to the appellant/petitioner from September, 2017, when the petitioner sought to join the University.
26. The appeal being **M.A.T. No.1089 of 2018** along with the application being **IA No. CAN 1 of 2018 (Old No. CAN 7801 of 2018)** are **allowed**. The cross appeal being **C.O.T. No. 132 of 2018** preferred by the University is **dismissed**, without any order as to costs.

27. All parties to act on the downloaded server copy of this order from the website.
28. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

I agree.

(Subrata Talukdar, J.)

(Lapita Banerji, J.)