

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.8798 of 2016

DHARAMDEO SINGH AND ANOTHER

-VERSUS-

VIDYASAGAR UNIVERSITY AND OTHERS

AND

W.P.A. No.1776 of 2022

GOURI PRASAD SINGHA

-VERSUS-

VIDYASAGAR UNIVERSITY AND OTHERS

For the petitioners : Mr. Ujjal Ray, Adv.,
Mr. Arpa Chakraborty, Adv.

For the University : Mr. Joydip Kar, Senior Adv.,
Ms. Debjani Sengupta, Adv.,
Mr. Abhijit Chatterjee, Adv.,
Ms. Shahina Haque, Adv.,
Ms. Jonaki Khan, Adv.

Hearing concluded on : 23.08.2023

Judgment on : 15.12.2023

Kausik Chanda, J.:-

The undisputed facts involved in these writ petitions are as follows:

2. Petitioner nos.1 and 2 in W.P.A. No.8798 of 2016 joined Vidyasagar University as casual employees in the year 1986 and 1990 respectively.
3. On March 12, 1996, the advisory committee of the Directorate of Distance Education, (in short, "the DDE") a wing of the said university resolved to absorb ten casual staff including the petitioners as suggested by the Vice-Chancellor of the University. Accordingly, appointment letters were issued in favour of the petitioners as junior peon in the DDE.
4. Subsequent to their appointment, by a letter dated March 30, 2000, the Department of Higher Education of the State accorded approval to the said ten non-teaching posts with the condition that the State would not bear any financial liability for those posts.
5. There is no dispute that the DDE promoted the petitioners to the post of Senior Peon on March 29, 2006.
6. In the year 2015, the university formed an enquiry committee of six members regarding the fate of the employees who were appointed on contractual basis without any approval from the Executive Council of the university. The enquiry committee submitted its report before the Executive Council of the university with the following observations:

"No substantive evidence of publication of advertisement, constitution of selection committee and interview has been found. The appointment of

the employees under reference was given by the Director, DDE keeping aside all the normal procedures for recruitment and also appears that the normal convention of issuing appointment letter by the Registrar has been violated. Moreover the matter of promotion of some employees named M. Khatua, Gouri Prasad Sinha and Jiban Kr. Roy appears to be totally out of rules because no documentary evidences were available supporting the fact that rules for promotion /appointment had been observed. The basis of appointment of two employees on die in harness also appears to be out of laws. These all depict the practice of social injustice where other persons of the society have been deprived of availing the right to present themselves for the posts under reference. It is not advisable to repeat or continue the illegalities. In the centers of DDE in the state aided Universities the usual practice of appointment of the employees is 'on contract basis'."

7. On the basis of the said report of the Enquiry Committee, the Executive Council of the university in its meeting dated February 15, 2016, resolved to accept the report of the enquiry committee.

8. It appears that following the said resolution of the Executive Council, an office order was issued by the university on February 16, 2016. The said office order is quoted below:

"Office Order

The Seventh Executive Council of Vidyasagar University in its meeting dated 15/02/2016 considered the report along with the recommendation of the Enquiry Committee, constituted regarding the retirement benefit of the staff of DDE who have already retired from his service and who are going to retire from their services at DDE duly recommended by the

Advisory Committee of DDE in its meeting dated 09/02/2016 and has allowed all employees of the Directorate of Distance Education (DDE) of this University except contractual and other seven numbers of employees, whose names are listed in the resolution of the 7th meeting of the Advisory Committee dated 12.03.1996 and subsequently approved by the Higher Education Department, Government of West Bengal without any financial liability in its letter dated 10th March, 2000 bearing No.320-Edn(U)/1U(Vid)-15/99 to continue in their respective posts with the following terms and conditions or clauses with effect from 01/03/2016.

Terms & Conditions:

- i) The Basic pay and other allowances would freeze (except incentive) and hereafter no increments would be allowed and will be given consolidated fixed pay based on current salary.
- ii) They will be considered as temporary / or quasi-permanent / or unconfirmed employees of the University.
- iii) They will be allowed retirement benefits like gratuity, leave encashment and the deposits in Provident Fund with reasonable interest without any pension / family pension. In addition, at the time of retirement they will be entitled to a one-time cessation grant of Rs. 1.00 Lakh only (as per Government of West Bengal, Finance Department Memorandum No. 2966-F(P) dated 23rd April, 2010, item No. 3).
- iv) All employees will be required to submit an undertaking in a prescribed proforma at the earliest.

- v) Status quo be maintained regarding the family pensions already granted and the pension amount will be freezed and no additional allowances would be permissible in future.

The Group C & D employees will be entitled, on satisfactory performance, to an annual incentive of Rs. 300.00 & Rs. 200.00 respectively (to be paid monthly) w.e.f. 1st July, 2016.

The seventh Executive Council of Vidyasagar University in its aforesaid meeting has also allowed the Seven number of employees (Shri Ratan Mahato, Shri Dharamdeo Singh, Shri Dulal Bera, Shri Gouri Prasad Sinha, Shri Krishnakali Samanta, Shri Bhagaban Prasad and Shri Jiban Roy), whose names are listed in the resolution of the 7th meeting of the Advisory Committee dated 12.03.1996 and subsequently approved by the Higher Education Department, Government of West Bengal without any financial liability in its letter dated 10th March, 2000 bearing No. 320-Edn(U)/IU(Vid)-15/99, to continue in their respective posts on the present terms and conditions with retirement benefits (without pension / family pension) as specified in Clause No. (iii) above. The clause No. (iii) will also be applicable pertaining to the retirement benefits of Shri Meghnad Das, who retired in November 2015 and late Shri Ashrujit Sarkar, who passed away in December 2015.

The concerned incumbents are being informed accordingly. This order is being issued as per the direction of the Executive Council of Vidyasagar University and shall come into force with effect from 1st March, 2016.

Sd/-
Registrar. "

9. Thereafter, the said office order dated February 16, 2016, was corrected by a subsequent office order dated March 30, 2016, by mentioning the words “Employees Provident Fund” in place of “Provident Fund” and by adding a serial number against the last condition as contained in the said order.

10. Petitioner no. 2 accepted the terms and conditions of the office order dated February 16, 2016, by a letter of acceptance dated February 26, 2016. Additionally, it further appears that both petitioner nos.1 and 2 accepted the office order dated March 30, 2016, on the same date as apparent from page 6 of the supplementary affidavit affirmed by the university on September 9, 2021.

11. Thereafter the petitioners filed this writ petition before this Court challenging the resolution of the Executive Council dated February 15, 2016, and the office orders dated February 16, 2016, and March 30, 2016.

12. Mr. Ujjal Ray, learned advocate appearing on behalf of the petitioners submits that both the petitioners were promoted to the post of senior peon in terms of the Government Order No. 342 - Edn (u) dated May 3, 1999 by the DDE and their pay-scale was revised from time to time. The petitioners were made permanent by way of regularisation pursuant to the meeting of the advisory committee of DDE held on March 12, 1996. The said resolution clearly indicated that the petitioners would enjoy the normal benefits of the university employees and their appointment letters also

provided that they were entitled to the normal allowances as admissible to the regular employees of the University. The petitioners were treated as regular university employees and entitled to all service benefits including pension like other regular employees of the university. Mr. Ray submits that since Government Order No. 342 - Edn (u) dated May 3, 1999, issued by the DDE was made applicable to the petitioners, it has to be acknowledged that the petitioners are accepted as regular employees and entitled to the service benefits including pension. Mr. Ray also submits that after about twenty years from the confirmation of service, the university cannot change the service condition abruptly.

13. Mr. Ray further submits that by a resolution dated March 27, 1996, the advisory committee of the DDE decided to maintain a long-term fixed deposit of Rs. 50 lakh in a bank for meeting the expenses and salaries of ten employees. Mr. Ray emphasises that the Director-in-Charge of DDE intimated that such deposit would be utilised for the payment of retirement benefits like pension, gratuity etc. to the Special Officer of the State by a letter dated July 5, 2012.

14. According to Mr. Ray, the university agreed to bear all the financial liabilities for the petitioners including pensionary benefits. It was not open for the university to take a different stance taking away the petitioners' right to receive pension after twenty years of service as confirmed employees.

15. Mr. Ray suggests that the order impugned is based on the enquiry committee report and the Executive Council of the university in its resolution dated February 15, 2016, clarified that the enquiry report was to be applied to all the employees of the DDE except those, who were appointed following the meeting of the advisory committee dated March 12, 1996 (including the pensioners). Mr. Ray submits that of those five conditions as mentioned in the said meeting only condition no. 3 was applicable to the petitioners and not the other conditions. Therefore, the university has acted arbitrarily in freezing the salary of the petitioners and treating them as temporary employees. Mr. Ray argues that though the resolution never required the petitioners to give an undertaking, the university from time to time threatened the petitioners to submit the undertakings, compelling the petitioners to furnish the same. The university has illegally frozen the salary of the petitioners from 2016 and they are not given the benefit of any revised pay.

16. Mr. Ray submits that the petitioners gave the undertakings only after the liberty granted by this Court in the order dated May 17, 2016, passed in the present writ petition without prejudice to their rights and contentions. Mr. Ray further submits that petitioner no. 2 gave his undertaking with regard to the office order dated February 16, 2016, which was subsequently withdrawn. Therefore, such an undertaking has no force in the eye of law. It has been further submitted by Mr. Ray that both the

petitioners have never given any undertaking following the order dated March 30, 2016, issued by the university.

17. Mr. Ray submits that there should be a direction upon the university to withdraw the office orders dated February 16, 2016, and March 30, 2016, and grant all benefits including pension to the petitioners.

18. In support of his submission, Mr. Ray has relied upon a judgment passed by a Division Bench of this Court in WPCT 112/2012 to argue that an error is required to be rectified within a reasonable time where the error was not made for any fault on the part of the petitioners. When a casual employee is regularised and the regularisation is not induced by any fraud or misrepresentation on the part of the employee concerned, a right to the post accrues in favour of an employee. The employee cannot be deprived of such right irrespective of lapse of time.

19. Mr. Ray has further relied upon a judgment of the Hon'ble Supreme Court, reported at **(2021) 10 SCC 116 (Somesh Thapliyal v. Vice Chancellor, H.N.B.Garhwal University)**.

20. By placing reliance on paragraph 42 of the said judgment, Mr. Ray argues that an employer is always in the taking position. It is open to the employer to dictate the terms of employment. The employee, who is at the receiving end, can hardly complain arbitrariness in the terms and conditions of the employment. Therefore, it is open for the employees to

challenge the condition, if it is not in conformity with the statutory requirements under the law.

21. On the other hand, Ms. Debjani Sengupta, learned advocate, being led by Mr. Joydip Kar, learned senior advocate, appearing on behalf of the university, submits that the post of junior peon, to which the petitioners were appointed, is classified as lower subordinate staff according to Clause 88 of the Vidyasagar University First Ordinances, 1985.

22. According to Clause 10 of the said Ordinances, appointment shall be made to the posts of Junior Assistant and permanent posts of lower subordinate staff of any category by the Establishment Committee, subject to delegation of such powers by the Executive Council, and such appointment be reported to the Executive Council for record. The petitioners were casual employees and they were regularised in the DDE against no sanctioned post. It is the Executive Council that has the power to create with the approval of officers, teachers, and other employees of the university in terms of Section 21, Sub-Clause 8 of the Vidyasagar University Act, 1981. The petitioners were appointed without there being any post created by the Executive Council and there was no proposal for approval of the post. The request of the staff of the petitioners was done illegally as there was no sanctioned post in the permanent cadre.

23. Ms. Sengupta submits that it is the Executive Council which is the appointing authority for all employees of the university, but the petitioners

were appointed by the DDE, which is not appointing authority as per the Vidyasagar University Act, 1981 or the Statutes or Ordinances framed thereunder. The petitioners' promotion to the post of senior peon was made without any vacant sanctioned posts, which were created by the Executive Council and approved by the State Government.

24. Ms. Sengupta submits that the Executive Council in its meeting dated February 15, 2016, resolved that seven employees be allowed to continue in their respective posts on the present terms and conditions with retirement benefits but without pension and family pension. The petitioners having accepted the decision of the Executive Council as circulated by office order dated March 30, 2016, cannot turn around and challenge the office order dated February 16, 2016, or March 30, 2016. It has further been submitted by Ms. Sengupta that the petitioners deliberately suppressed in this writ petition about their unconditional acceptance of the office order dated March 30, 2016.

25. Ms. Sengupta argues that pension is payable by the State to the employees who are appointed against the sanctioned vacant posts with the approval of the Government. The petitioners knew it very well that, the post against which they were appointed, had been subsequently sanctioned by the State Government with the condition that the State Government would not bear any financial liability connected to the creation of those posts neither in the present nor in the future. The petitioners chose not to

challenge the decision of the State to get equal status with respect to those employees, who were appointed against sanctioned vacant posts with the approval of the State Government. It has further been argued by Ms. Sengupta that the resolution of DDE dated March 27, 1996, mentioned the salary and not the pension. She points out that the petitioners are getting monthly salary, basic pay, dearness allowance, house rent allowance, and medical allowance. They are getting leave, casual leave of 14 days and earned leave of thirty days and other benefits as applicable to the regular employee of the university. She points out that the petitioners will receive the retirement benefits which include gratuity, leave encashment, one-time cessation grant of Rs. 1 lakh (as per Government of West Bengal, Finance Department Memorandum No. 2966-F (P) dated 23rd April, 2010 and the deposits in Employees Provident Fund.

26. Ms. Sengupta further clarifies that the petitioners are not entitled to any pension or family pension. Ms. Sengupta suggests that after the last visit of the National Assessment and Accreditation Council in September 2021, the accreditation status of Vidyasagar University was graded as B++ and since thereafter, the Centre for Distance and Online Education only run the old courses/old continuing academic sessions. It does not allow the students to take fresh admission since 2021. No fund is generated by the DDE and the Centre for Distance Education or Online Education is

overburdened with huge amounts towards the service and retirement benefits of its staff.

27. Ms. Sengupta submits that the university has ensured to protect the interest of the petitioners despite the fact that the petitioners were not appointed through a regular recruitment process and their appointment is not valid in the eye of law. In support of her submission, Ms. Sengupta has relied on the following decisions reported at **AIR 1964 SC 521 (*State of Punjab v. Jagdip Singh*)**, **(2010) 5 SCC 475 (*Mohd. Ashif v. State of Bihar*)**, **(1997) 2 SCC 1 (*Ashwani Kumar v. State of Bihar*)**, **(2001) 1 SCC 37 (*Subedar Singh v. Distt. Judge, Mirzapur*)** and **2023 SCC OnLine SC 114 (*Vibhuti Shankar Pandey v. State of Madhya Pradesh*)**.

28. In my view, the aforesaid office order dated February 16, 2016, clarifies that the petitioners have been allowed to continue with their service on the existing terms and conditions with retirement benefits (without pension/family pension) as specified in clause (iii). Other conditions, as indicated in clauses (i),(ii),(iv), and (v), are not applicable to them.

29. In other words, the petitioners' existing conditions of service have not been altered. Only it has been clarified that they will not be given pension or family pension. There cannot be any dispute that a retired regular employee of the university receives pension from the State fund under the applicable pension scheme framed by the State.

30. The facts remain that in the petitioners' case, the State sanctioned the relevant ten posts by the order dated March 30, 2000, without taking any financial liability, whatsoever on its shoulder. Though the petitioners dispute that they accepted the altered conditions of service as provided in the resolution of the Executive Council of the University dated February 15, 2016, they possibly cannot dispute that they continued with their service knowing fully well that their service had been approved on the conditions that the State will not bear any financial liability towards their salary or retiral benefits. The petitioners never challenged the said order dated March 30, 2000, issued by the State. In the absence of any challenge against the order dated March 30, 2000, issued by the State, the petitioners cannot claim any pensionary benefits against the State.

31. This Court is of the opinion that when the university opted to appoint the petitioners, endowing them with all the entitlements of regular university employees, and was cognizant that the financial responsibility for their employment would not be borne by the State, a stance alteration by the university, subsequent to availing the petitioners' services for an extended duration, is untenable.

32. The petitioners were induced to persist in their services with the expectation that they would receive pensionary benefits akin to those accorded to regular university employees. The resolution dated March 27, 1996, expressly stipulates that a fixed deposit of Rs.50 lakhs was

specifically established for the ten employees in question, appointed without the requisite sanction from the State. A subsequent letter dated July 5, 2012, issued by the Registrar of DDE to the Special Secretary of the relevant department of the State, explicitly acknowledges the DDE's intent to allocate pension to the aforementioned ten employees from the designated fixed deposit and its accrued interest.

33. In the above circumstances, while the petitioners may not assert pensionary benefits identical to those of regular university employees, they are deserving of pensionary benefits that can be arranged from the limited resource of the Rs.50 lakhs fixed deposit, along with the interest accrued thereon.

34. Consequently, the university is directed to formulate a pension scheme for the petitioners, funded from the aforementioned fixed deposit of Rs.50 lakhs and its accrued interest, within a three-month period from the date of communication of this order.

35. In view of the aforesaid, it is not necessary to go into the other aspects of the matters as argued by the appearing counsel for the petitioners and the university.

36. Accordingly, writ petitions **W.P.A. No.8798 of 2016** and **W.P.A. No.1776 of 2022 are disposed of** with the directions as aforesaid.

In Re: W.P.A. No.1776 of 2022

37. In view of the similar facts involved, the judgment delivered today in W.P.A. No.8798 of 2016 shall govern this case also.

38. Accordingly, **W.P.A. No.1776 of 2022 is disposed of.**

39. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)