

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

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.6155 OF 2023

**PRINCIPAL, RAJA NARENDRA LAL KHAN WOMEN'S COLLEGE AND
ANOTHER**

**-VERSUS-
STATE OF WEST BENGAL AND OTHERS.**

AND

W.P.A. No.6721 OF 2019

**RATAN PANDIT
-VERSUS-
THE STATE OF WEST BENGAL AND OTHERS.**

AND

W.P.A. No.23989 OF 2019

**SAMIR SAMANTA
-VERSUS-
THE STATE OF WEST BENGAL AND OTHERS.**

AND

W.P.A. No.24110 OF 2019

**JAMUNA SING
-VERSUS-
THE STATE OF WEST BENGAL AND OTHERS.**

AND

W.P.A. No.24112 OF 2019

**LAKSHMI DAS
-VERSUS-**

THE STATE OF WEST BENGAL AND OTHERS.

AND

W.P.A. No.24114 OF 2019

**KALPANA SINGH
-VERSUS-
THE STATE OF WEST BENGAL AND OTHERS.**

AND

W.P.A. No.6722 OF 2019

**ANUP KUMAR GOSWAMI
-VERSUS-
THE STATE OF WEST BENGAL AND OTHERS.**

AND

W.P.A. No.6723 OF 2019

**APADESH SINGHA
-VERSUS-
THE STATE OF WEST BENGAL AND OTHERS.**

AND

W.P.A. No.6724 OF 2019

**CHANDAN JANA
-VERSUS-
THE STATE OF WEST BENGAL AND OTHERS.**

AND

W.P.A. No.6726 OF 2019

**DEBASIS PATRA
-VERSUS-
THE STATE OF WEST BENGAL AND OTHERS.**

AND

W.P.A. No.6727 OF 2019

**TRISHNA KHATUA
-VERSUS-
THE STATE OF WEST BENGAL AND OTHERS.**

For the petitioners (W.P.A. No.6155 of 2023)	:Mrs. Usha Maiti, Adv., Ms. Anita Khatri, Adv., Mr. Sakya Maiti, Adv.
For respondent no.6 (W.P.A. No.6155 of 2023)	:Mr. Ujjal Ray, Adv., Mr. Arpa Chakraborty, Adv.
For the petitioners	:Mr. Ujjal Ray, Adv., Mr. Arpa Chakraborty, Adv.
For the College Authority	:Mrs. Usha Maiti, Adv., Ms. Anita Khatri, Adv., Mr. Sakya Maiti, Adv.
For Vidyasagar University	:Ms. Debjani Sengupta, Adv., Mr. Abhijit Chatterjee, Adv.
Hearing concluded on	: 17.08.2023
Judgment on	: 30.11.2023

Kausik Chanda, J.:-

Respondent no.6 in W.P.A. No.6155 of 2023 and the petitioners in the aforementioned other cases were appointed as Group-D Staff at Raja Narendra Lal Khan Women's College in different Group-D posts. It is their common case that they were appointed to the respective posts after participating in the selection process and their appointments were approved by the governing body of the said College. They have been rendering service as Group-D staff at the College for many years and they approached this Court on an earlier occasion claiming regularisation of their service and for equal pay as the regular staff of the College who are performing equal works. Those writ petitions were disposed of by a Coordinate Bench of this Court giving a direction upon the Director of Public Instruction, West Bengal to consider their representations and disposed of the same in a time-bound matter.

2. Consequently, the Director of Public Instruction by different reasoned orders rejected their case. In the case of Rati Kanta Das, respondent no.6 in W.P.A. No.6155 of 2023, the Director of Public Instruction, however, directed the College by an order dated March 21, 2018, to consider his case holding, inter alia, as follows:

“In such circumstances, considering all the probabilities in this regard, it is of the view that the College authority shall bear all the liabilities of the petitioner following the principle of “equal pay for equal work” from their own fund other than the fund provided by the Govt. authority. In any circumstances, the Govt. authority shall not bear

any cost of liabilities of the petitioner arising in the College, as the Govt. authority has no knowledge about such engagement.”

3. Appearing on behalf of the petitioners it has been submitted by Mr. Ujjal Ray, learned advocate, that the State cannot deny its liability of paying the petitioners for the service rendered by them. In the meeting of the governing body whereby the appointment of the petitioner was approved, a Government nominee was present. The principal of the College by his letter dated March 01, 2011, forwarded the names of the casual employees including the petitioners for their absorptions. In the said letter, the principal observed that the petitioners were, in fact, indispensable for the College, and with all sincerity, they had been serving to ensure the smooth running of the College. Therefore, State cannot ignore the service rendered by the petitioners so as to deny the petitioners’ claim for equal pay with regular employees of the College discharging similar duties. In support of his submission, Mr. Ray has relied upon paragraph 57 of the judgment of the Supreme Court reported at **(2017) 1 SCC 148 (State of Punjab v. Jagjit Singh)**.

4. Mr. Ray has placed further reliance upon the judgment reported at **(1992) 2 SCC 29 (Karnataka State Private College Stop-Gap Lecturers Association v. State of Karnataka)** to argue that in a similar circumstance, the Hon’ble Supreme Court directed to pay salary as was admissible to the teachers appointed against permanent posts. It

has been, further, submitted by Mr. Ray that as per Regulation 3 (3.9) of the University Grants Commission (Conferment of Autonomous Status upon Colleges and Measures for Maintenance of Standards in Autonomous Colleges) Regulations, 2018, the relevant College has been granted autonomy from October 11, 2018. Therefore, the said College is under the obligation to pay equally to the petitioner with regular employees of the College discharging similar duties.

5. Mr. Ray submits that Regulation 8 of the aforesaid Regulations of 2018, provides for the criteria for granting autonomy to a College, and Sub-Rule 4 provides for adequacy of infrastructure in terms of laboratories which are essential for obtaining autonomy. Mr. Ray contends that in the prescribed form for the proposal for granting autonomous status, the College mentioned the name of the petitioners as non-teaching staff along with other regular non-teaching staff. Therefore, it cannot be denied that the College has treated the petitioners at par with the other regular non-teaching staff of the College. It has been, further, submitted by Mr. Ray that the State by a notification no.2966-F(P) dated April 23, 2010, directed that the casual/daily rated workers who are remaining attached to various establishments of the Government Departments/Directorates/Regional Offices for not less than 10 years as on April 01, 2010, and have rendered service for at least 240 days each year would be allowed certain financial benefits. Subsequently, by a further notification no.9008-F(P) dated September

16, 2011, directed that casual/daily rated/contractual workers attached to various establishments of the Government Departments/Directorates /Regional Offices/other Organizations for not less than 10 years continuously as on August 01, 2011, and have rendered service at least 240 days each year granted certain revised financial benefits.

6. Mr. Ray submits that by operation of Clause 12 of the said order, the benefit of the said office order was made applicable *mutatis mutandis* to the Panchayat Bodies/ULBs/Statutory Bodies. According to Mr. Ray, the relevant College being a State-aided College and being controlled and managed by the State, is a statutory body and therefore, covered by the aforesaid notification dated September 16, 2011. It has been, further, argued by Mr. Ray that benefits of the aforesaid notifications were extended to the casual employees of West Bengal Electronics Industry Development Corporation Limited by a notification of the Higher Education Department of the State dated August 11, 2021. Therefore, the petitioners, serving at an aided College, should also get the benefit of the said circular.

7. Mrs. Usha Maity, learned advocate appearing for the College, on the other hand, submits that the petitioners were not appointed against any sanctioned posts. They were appointed temporarily on contractual basis. The College does not receive any grant-in-aid for payment of remuneration to the petitioners. The College from its own fund pays the monthly remuneration of the petitioners. According to Mrs. Maity, the

College was granted autonomy in the year 2018, only for academic purposes. The grant received as an autonomous College cannot be used for the payment of salary to any of the College staff. By placing reliance upon the judgments reported at **(1989) 2 SCC 235 (Mewa Ram Kanojia v. All India Institute of Medical Sciences)**, **(2006) 4 SCC 1 (Secretary, State of Karnataka v. Umadevi (3))** and **(1989) 4 SCC 459 (Harbans Lal v. State of Himachal Pradesh)**, Mrs. Maity submits that casual and daily rated employees have no right to regular or permanent public employment. The petitioners accepted their appointment knowing the nature of their employment and, therefore, the principle of legitimate expectation cannot be resorted to for claiming absorption. Mrs. Maity submits that doctrine of “Equal Pay for Equal Work” is applicable when employees holding the same rank, performing similar functions, and discharging similar duties and responsibilities have been denied equality in matters relating to scale of pay. In such cases, the Court could grant relief. It is not in dispute that the petitioners were not appointed through a regular recruitment process with the approval of the State against the sanctioned posts. The nature of appointment of the petitioners clearly suggests that the petitioners were appointed as casual employees purely on a temporary basis.

8. I am of the view that though the petitioners may discharge similar duties, they cannot claim equal pay with regular employees of the College

who were appointed against a sanctioned post with the approval of the State following a regular recruitment rule.

9. It must be acknowledged that in a State-aided College, the College is the employer. The State only provides grants for the salary. In the appointment of the petitioners, the State had no role to play. Merely because a representative of the State was present in the meeting of the governing body where the appointment of the petitioners was approved, it cannot be said that the State and the petitioner shared an employer-employee relationship. The petitioners, therefore, cannot claim the benefits of the notification no.2966-F(P) dated April 23, 2010, or the notification no.9008-F(P) dated September 16, 2011, which are applicable to the casual employees attached to various establishments of the State. I am also of the view that a State-aided College does not come within the purview of the statutory bodies as mentioned in Clause 12 of the notification dated September 16, 2011. The petitioners, as a matter of right, cannot claim parity in pay at the cost of the State exchequer, when the State has neither sanctioned the posts nor approved their appointment.

10. In fact, paragraph no.11 of the judgment reported at **(1989) 4 SCC 459 (*Harbans Lal v. State of Himachal Pradesh*)** makes the legal position clear. It was held in the said judgment as follows:

“11. ... The discrimination complained of must be within the same establishment owned by the same management. A comparison cannot be made with

counterparts in other establishments with different management, or even in establishments in different geographical locations though owned by the same master. Unless it is shown that there is a discrimination amongst the same set of employees by the same master in the same establishment, the principle of “equal pay for equal work” cannot be enforced. This was also the view expressed in *Meva Ram Kanojia v. AIIMS*³ (SCC p. 245). In the instant case, the petitioners are employed by a company incorporated under the Companies Act. They cannot claim wages payable to their counterparts in government service.”

11. The mode of recruitment also plays an important role in the application of the principle of equal pay for equal work. In a recent judgment reported at **(2019) 18 SCC 301 (*State of Bihar v. Bihar Secondary Teachers Struggle Committee, Munger*)**, the Supreme Court, inter alia, held as follows:

“87. In order to consider the applicability of the doctrine of “equal pay for equal work”, one of the fundamental aspects to be considered is nature of duties. As was rightly submitted by Mr Kapil Sibal and Dr A.M. Singhvi, learned Senior Advocates, the nature of duties performed by Niyojit Teachers are certainly same or similar to those performed by the government teachers. As a matter of fact, both the sets of teachers are teaching in the same school and teaching same syllabus. The pointers placed by Dr Singhvi in his submission as well as the example given by him evidently show that there is no distinction or difference as regards nature of duties performed and responsibilities discharged by the Niyojit Teachers. Some of the Niyojit Teachers have also been acting as Headmasters. However, the Rules in question viz. the 2006 Rules clearly indicate that the method of recruitment of Niyojit Teachers was completely

different from the one under which government teachers were recruited. The Selection Committee contemplated under the provisions of the 2006 Rules comprised of officials at the Panchayat or Block levels. The selection was also at local levels and not through Bihar Public Service Commission or Schools Selection Board. The distinction brought out in that behalf by the State in Para 13 of its supplementary counter-affidavit filed in the High Court clearly shows the difference in mode of recruitment. It is thus clear that the mode of recruitment and the standards of selection were different but the nature of duties performed by the Niyojit Teachers have been absolutely identical. Could there be a distinction between these two streams of teachers. We may, therefore, at this stage see the development of the doctrine of “equal pay for equal work” and whether it admits of any qualifications or exceptions.”

12. It has been held in the judgment reported at **(2006) 4 SCC 1** (**Secretary, State of Karnataka v. Umadevi (3)**) as follows:

“48. It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the department concerned on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming

that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.”

13. The opening paragraph of the judgment reported at **(1992) 2 SCC 29 (Karnataka State Private College Stop-Gap Lecturers Association v. State of Karnataka)** makes it clear that the Supreme Court was dealing with a case of teachers appointed temporarily for three months or less, by privately managed degree Colleges receiving cent percent grants-in-aid, controlled administratively and financially by the Education Department of the State of Karnataka. Paragraph 3 of the said judgment clarifies that those teachers were appointed for a period of three months or less with the approval of the Directorate within one month from the date of appointment by management of the College in terms of an order issued by Education and Youth Services Department of

the State of Karnataka on October 3, 1981. Clause 5 of the said order is reproduced below:

“ ... “5. Any appointment for a period of three months or less in a College shall be made, subject to approval of the Director within one month from the date of appointment by the Management or such authority as the Management by order, may specify in that behalf. Such temporary appointments may, however, be continued for a further period of not more than three months, with one day's break when selection through the Selection Committee is likely to take time. The Director may, for reasons to be recorded in writing refuse approval for the said appointment and the services of the person so appointed shall be terminated forthwith.”

14. The case of the petitioners here stands on a different footing since the petitioners were neither appointed in terms of any Government order nor against any posts sanctioned by the State or with the approval of the State. Therefore, the judgments relied upon by the petitioners cannot render any assistance in their favour. The State cannot be compelled to make payment towards the salary of an employee who has been appointed without its approval or against any sanctioned post.

15. In view of the aforesaid discussion, I find no merit in the claim of the writ petitioners. The College, however, should consider taking necessary steps to improve the service condition of the petitioners by providing security of tenure, proper emoluments and terminal benefits in the light of the circular no.3998-F(P2) dated 15.07.2019 issued by the Finance Department of the State.

16. Accordingly, W.P.A. No.6155 of 2023, W.P.A. No.6721 of 2019, W.P.A. No.23989 of 2019, W.P.A. No.24110 of 2019, W.P.A. No.24112 of 2019, W.P.A. No.24114 of 2019, W.P.A. No.6722 of 2019, W.P.A. No.6723 of 2019, W.P.A. No.6724 of 2019, W.P.A. No.6726 of 2019 and W.P.A. No.6727 of 2019 are disposed of.

17. 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.)