

26 30.8.2023

Ct-08

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**FMA 962 of 2022**

**with**

**I.A No. CAN 1 of 2022**

**Nur Afsar Mandal**

**Vs.**

**Visva Bharati & Ors.**

Mr. Gazi Faruque Hossain

Ms. Varsha Roy

... For the Appellant

Mr. Victor Chatterjee

... For the Respondents

1. We have heard the learned counsel appearing for the parties.

2. The writ petitioner is the appellant.

3. Learned counsel appearing for the appellant submits that by filing a writ petition, although the impugned order dated 13<sup>th</sup> August, 2019 passed by the Registrar (Acting), Visva-Bharati University, by which impugned order dated 13.8.2019 and the order of suspension are set aside but he was not reinstated.

4. It is submitted that the learned Single Judge under the facts and circumstances ought to have allowed prayer b(ii) as it is consequential to prayer b(i).

5. Learned Single Judge allowed the writ petition after having noticed that there is violation of principle of natural justice. In paragraph 15 of the judgment it is observed as

follows:-

*“15. The facts in the present case do not justify the impugned action. It is vigilante-justice without the factual bulwark to support it. This Court, being equally in the dark (as the petitioner) on the material forming the basis of the charge and the perceived exigency, is therefore unable to accept that the University had good grounds to summarily discontinue the services of the petitioner.”*

6. In view of the said order, the writ petitioner has a legitimate right to claim restoration of relationship that was existing on the date when his service was discontinued. In a normal situation the effect of the order of revocation of disengagement would result in status quo ante. However, the petitioner was engaged as a casual labourer working as a temporary staff from May 20, 2000 and continued till the order of disengagement.

7. The petitioner was working from May 20, 2000 till August 2017. Since the order of disengagement is set aside the petitioner must be reinstated in a suitable department from the date of communication of this order in the category of casual labourer with temporary status.

8. The University shall act on the basis of the Office Order being Annexure-P1 of CAN 1 of

2022 and give appointment. In the event of any decision being taken to absorb the casual labourer and in deciding it the length of service is considered, the period of disengagement shall not stand in the way and the entire period should be considered as continuity in service for the aforesaid purpose. In other words he should be deemed to be in service only for the aforesaid purpose.

9. On such consideration, the appeal being FMA 962 of 2022 is allowed and stands disposed of.

10. In view of disposal of the appeal nothing remains to be decided in CAN 1 of 2022 and the same is accordingly disposed of.

11. However, there shall be no order as to costs.

12. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

**(Uday Kumar, J.)**

**(Soumen Sen, J.)**

