

02.08.2023
Item No. 185
Ct. No. 238
AKG

WPA 9701 of 2019
With
I.A. No. CAN 1/2020 (Old No. CAN 4031/2020) &
CAN 2/2020 (Old No. CAN 4032/2020)

Dr. Jayanta Sinha
Vs.
State of West Bengal & Ors.

Mr. Kallol Basu,
Mr. Nilanjan Pal,
Mr. Suman Banerjee,
Mr. Dip Jyoti Chakraborty

...for the Petitioner

Mr. Nilotpall Chatterjee,
Mr. Sourabh Sengupta,
Mr. Saquib Siddiqui

...for the Calcutta University

The petitioner was appointed as the Controller of Examination at Calcutta University by a letter dated September 1, 2017, issued by the Registrar.

The said letter of appointment stipulated that the petitioner would be placed on probation for a period of one year from the date of his joining and during the period of probation, his service might be terminated with one month's notice.

The parties before this Court do not dispute that the period of probation of the petitioner is governed by the Calcutta University Act, 1979. Section 33 (2) of the said Act reads:

“(2) A teacher or an officer or an employee appointed against a permanent vacancy shall be on probation ordinarily for a period of one year from the date of such

appointment and such period of probation may, at the discretion of the appropriate authority of the University, be extended for a further period not exceeding one year.”

Following the said letter of appointment, the petitioner joined his service on September 8, 2017. It appears that on July 27, 2018, the petitioner was served with a charge sheet by the university alleging that the examination for Journalism and Mass Communication, Paper-2 for the 2nd Year (General Students) scheduled to be held on 15th June, 2018 had gross anomalies. Though in the question paper, it was mentioned as the second paper, the questions were of the 3rd paper.

The petitioner challenged the said charge sheet by filing a writ petition, WP 13335 (w) of 2018 and a Co-ordinate Bench of this Court by an order dated August 17, 2018, set aside the charge sheet with the liberty to start the disciplinary proceedings afresh.

After completion of one-year service, the service of the petitioner was extended for a further period of six months by a letter dated October 9, 2019 with effect from September 8, 2018.

The petitioner's six months extended period was due to expire on 7th March, 2019. The university, however, by a letter dated 6th March, 2019 decided not

to extend the probation period any further. The said letter dated 6th March, 2019 is quoted below :-

Dr. Jayanta Sinha **Date : 6th March, 2019**
15, Rupchand Mukherjee Lane,
Flat No. 3B,
Kolkata – 700025.

Sir,

Re. : Probation

“You are aware that you have been appointed on probation in the post of Controller of Examinations, University of Calcutta on and from 1st September, 2017, which probation comes to an end on 7th March, 2019.

However, serious anomalies in your service have been detected. It has come to light that the examination pertaining to Journalism and Mass Communication, Paper-2 for the 2nd Year (General Students) scheduled to be held on 15th June 2018 had gross anomalies where though in the Question Paper it was mentioned as the 2nd Paper, the questions were of the 3rd Paper. Moreover it was discovered that you had unilaterally changed the dates of submission of marks for B.A./B.Sc./B.com. Part-II (General) Examination-2018 without seeking any prior permission or even informing the Pro VC (Academic Affairs).

In view of such anomalies, you were issued two show cause notices dated 10th September, 2018 and 12th February, 2019 to which you had replied.

The replies to the show cause notices have now been duly considered by the Syndicate of the University and it has been unanimously resolved at the meeting of the Syndicate held on 27th February, 2019 that your probation, which is due to expire on 7th March 2019, would not be extended any further, as your service could not meet the high standards of the office of Controller of Examinations. A copy of the Resolution of the Syndicate dated 27th February, 2019 is attached herewith.”

Yours faithfully,
Sd/-
Registrar (Acting)
University of Calcutta

In this writ petition, the petitioner has impugned the aforesaid letter dated 6th March, 2019.

It has been submitted on behalf of the petitioner that the order of termination on its face is stigmatic. The university decided not to proceed further with the disciplinary proceeding against the petitioner, but it terminated the service of the petitioner levelling various stigmatic allegations.

The university, on the other hand, sought to contend that the petitioner's service was not satisfactory and in that view of the matter, the university decided not to enquire into the allegations any further and opted not to extend the period of probation on the ground of unsatisfactory performance of the petitioner.

The university further suggests that in view of Section 33 of The Calcutta University Act, 1979, a probationer cannot have an unfettered right to continue his service and his service is liable to be terminated during the period of probation at the discretion of the university.

During the course of submission, it has been submitted by the parties that another teaching staff of the university, who held the post of Deputy Controller of Examination as probationer, was also served with a similar charge sheet with the similar allegations. His service was also terminated by the university without

extending his probation period any further. Subsequently, he filed a writ petition before this Court which was allowed by a Single Bench of this Court with the following order :

“For the aforesaid reasons, the impugned resolution dated 20th March, 2019 passed by the Syndicate of the University is set aside and quashed. The petitioner is declared to be confirmed in the post of Deputy Controller of Examinations and he will also be entitled to receive full back wages for the period he was not paid the salaries in view of issuance of the impugned resolution dated 20th March, 2019, which has been quashed. The university authorities are, accordingly, directed to allow the petitioner to join the post of Deputy Controller of Examinations and to calculate the back wages payable in terms of this order and to disburse the same within a period of four weeks from the date of communication of this order.”

In an appeal preferred at the instance of the university, the said order dated June 19, 2020, was modified by a Division Bench of this Court. The relevant part of the said order is quoted below :

“The discretion to extend the time beyond one year is limited for a further period not exceeding one year, and it appears that the learned Single Judge has overlooked the adverb 'not' in arriving at a finding that the service of the writ petitioner could not have been extended for a period six months only. We also find substance in the argument of the learned Advocate General with regard to the reinstatement of the petitioner and payment of full back wages for the period he was not paid the

salaries in view of issuance of the impugned resolution dated 20th March, 2019. There cannot be any dispute that the petitioner was out of employment from 13th March, 2019 till 20th August, 2019. The writ petitioner would be certainly entitled to payment of full back wages for the aforesaid period and not beyond that period in view of his employment on probation in the University of Gour Banga on and from 20th August, 2019. We cannot also ignore that under Section 33(3) of the Act of 1979 read with the letter of appointment of the petitioner, it can be seen that if, at any time during the period of probation, the work of the probationer is found unsatisfactory, the probationer can be discharged by the authority. However, in terms of Section 33(4) read with the letter of appointment he would be entitled for confirmation with effect from the date of his appointment on probation of satisfactory completion of the period of probation. This shall be of the University and to that extent we feel that on completion of period of probation the University has the right to review his performance for his confirmation to the substantive post. Accordingly, we modify the impugned order of the learned Single Judge by directing the University of Calcutta to make payment of salary from 13th March, 2019 till 19th August, 2019 and to consider the petitioner's case for confirmation, if the petitioner is willing to join the said post of Deputy Controller of Examinations, on assessment of his performance during the period of probation, without taking into consideration the charges forming the basis and foundation of the charge-sheet, the impugned letter dated 20th March, 2019 and the resolution of the Syndicate dated 20th March, 2019 respectively. The writ petitioner must convey his willingness for the said post within ten days from date and the appellant University shall take a decision

within two weeks thereafter and shall communicate its decision to the writ petitioner within one week from the date of the decision. The University shall not fill up the vacancy till a final decision is taken in terms of this order. However, in the event, the writ petitioner fails to communicate his willingness within ten days from date the University may proceed to fill up the vacancy in accordance with law.”

The facts of both the case are identical except the fact that after the order of termination was served, the petitioner of this case himself prayed for his release and accordingly, he returned back to his original position as Associate Professor of Zoology at Vivekananda College, South 24 Parganas.

The judicial orders should be consistent; therefore, the petitioner should also be treated similarly in terms of the aforesaid order of the Division Bench.

However, having regard to the facts of this case, I am not inclined to grant any back wages to the petitioner since he was gainfully employed after the termination order in question.

Accordingly, this writ petition is disposed of with the following directions :

- a) The impugned order dated 6th March, 2019 issued by the Registrar (Acting) of the University as appearing at page 99 of the writ petition and the resolution of the Syndicate

of the University dated 27th February, 2019 appearing at page 100 of the writ petition are set aside.

- b) The university shall assess the petitioner's performance during his period of probation without taking into consideration the charges forming the basis and foundation of the charge-sheet within 6th March, 2019, and the resolution of the Syndicate dated 27th February, 2019. Thereafter the university shall take a decision with regard to the confirmation of service of the petitioner. Such decision shall be taken by the university within two weeks from the date of communication of this order and the same shall be communicated to the petitioner within one-week thereafter. The university shall not fill up the post of Controller of Examinations till a decision is taken in terms of this order.

Accordingly, **WPA 9701 of 2019** is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Kausik Chanda, J.)