

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

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.11447 of 2019

RANJIT SARKAR AND OTHERS

-VERSUS-

THE STATE OF WEST BENGAL AND OTHERS

For the petitioners : Mr. Biswaroop Bhattacharya, Adv.,
Ms. Surasri Baidya, Adv.

For the University : Mr. Amitava Chaudhuri, Adv.,
Mr. N. Roy, Adv.

For the State : Mr. Tapan Kumar Mukherjee, Adv.,
Mr. Tulshidas Ray, Adv.

Hearing concluded on : 03.04.2023

Judgment on : 12.09.2023

Kausik Chanda, J.:-

In this writ petition, the petitioners have challenged an order dated April 16, 2019, issued by the Additional Chief Secretary, Department of Higher Education, West Bengal, whereby the prayer of the writ petitioners for regularisation of their service at the establishment of Kalyani University has been rejected.

2. The petitioners are currently employed on a temporary basis at different hostels and halls maintained by Kalyani University, as Cooks and Helpers.

3. On an earlier occasion, the writ petitioners approached this Court by filing a writ petition, W.P. No.1577(W) of 2016, claiming, *inter alia*, regularisation of their service. The said writ petition was disposed of by a Coordinate Bench of this Court by an order dated March 14, 2016, with a direction upon the university to take a decision in accordance with law after giving an opportunity of hearing to all concerned.

4. In compliance with the said order dated March 14, 2016, the Vice-Chancellor of the university by an order dated May 17, 2016, rejected the case of the petitioners citing a Government memo dated October 28, 2014, issued by the Principal Secretary, Higher Education Department.

5. Challenging the said order, the writ petitioners filed another writ petition, W.P. No.12392(W) of 2016 which was disposed of by a Coordinate Bench, setting aside the reasoned order dated May 17, 2016, with an

observation that the petitioners should be entitled to a fresh consideration in the light of the observations made in the said order.

6. The State as well as the university preferred separate appeals against the said order before a Division Bench of this Court. The Division Bench disposed of both the appeals by a common judgment and order dated July 13, 2018, with a direction upon the State to consider and dispose of the grievance expressed in the writ petition without being influenced either by the observations in the judgment dated May 17, 2017 or being influenced by any observation made by the said Division Bench in the order dated July 13, 2018.

7. In compliance with the said order, the Additional Chief Secretary, Department of Higher Education, West Bengal, by the order impugned dated April 16, 2019, rejected the case of the petitioners with the following observations:

“Considering the facts and circumstances of the case, it can be summed up as follows:

(i) There are no existing vacant posts against which any recruitment/contractual appointment can be made after the issuance of the G.O. No. 874-Edn (CS)/1C/63L/12 dated 28.10.2014.

(ii) The order also clearly implies that even the positions held by the current incumbents including twelve persons whose employment was regularized by the virtue of the reasoned order given by this Department vide 07/ILC/R.O/1c-89-L/13, will also lapse on retirement/death of the current incumbents and no appointments can be made in future against such posts, which have

been declared as a 'dying cadre' by the State Government.

Therefore, the prayer of the writ petitioners cannot be accepted.”

8. Mr. Biswaroop Bhattacharya, learned advocate appearing on behalf of the writ petitioners has submitted that in the judgment and order rendered by the Division Bench on July 13, 2018, the State Government was directed to clarify the meaning of "dying cadre." The order of April 16, 2019, regrettably omits any discernible interpretation of the term.

9. Mr. Bhattacharya has further submitted that the Government Memorandum dated October 28, 2014, seeks parity between hostel/mess employees and non-teaching staff in institutions covered by the said Government Order. Paragraph 8, in its present form, contradicts the overarching intent of the directive. Given the incongruence, the petitioners are entitled to a declaration that paragraph 8 of the said notification is ultra vires.

10. Mr. Bhattacharya has emphasised that despite the temporary nature of their posts, it is imperative to underscore that the writ petitioners' remuneration is consistently drawn from the financial resources of the university.

11. Mr. Bhattacharya has submitted that "dying cadre" does not imply immediate abolition of the concerned position. Rather, it designates an inherent connection with the incumbent. The posts of "mess employees"

will not be abolished until the petitioners reach the age of superannuation. Importantly, these appointments were made against the vacancies arising from the retirement of regular staff, a fact acknowledged by the university in its affidavit-in-reply.

12. Mr. Bhattacharya points out that there were 59 sanctioned posts as per the reasoned order of July 10, 2013, passed by the Secretary, Higher Education Department. Contrary to this, the impugned order of April 16, 2019, relies on a communication from respondent no. 6, which suggests that a total number of 50 persons had been working in the university as “mess employees” leaving 16 vacant pots. The document at page 135 of the writ petition suggests that as on September 30, 2017, the total number of mess workers was 66 out of which 23 were lying vacant. The notification dated October 28, 2014, has never been implemented by the university while the impugned order rejects the claim of the petitioners treating the posts as “dying cadre.”

13. Mr. Bhattacharya further argues for the principle of "Equal pay for Equal Work." He submits that the petitioners perform equal duties with their regular counterparts, yet their compensation is as low as Rs.450/- and Rs.420/- per day for 22 days in a month. Their contribution to the university's hostels and halls is indisputable. The petitioners should at least receive commensurate remuneration at the lowest grade in the regular pay scale.

14. He submits that "dying cadre" is immaterial to considerations of equitable remuneration. Furthermore, financial constraints cannot justify the violation of fundamental rights. To buttress his argument on the principle of "equal pay for equal work", Mr. Bhattacharya has relied upon the following judgments of the Supreme Court: **(2006) 4 SCC 1 (*Secretary, State of Karnataka v. Umadevi (3)*), (2019) 12 SCC 297 (*Sabha Shanker Dube v. Divisional Forest Officer*), (2019) SCC OnLine Cal 1006 (*Anirban Ghosh v. State of West Bengal*), (2017) 1 SCC 148 (*State of Punjab v. Jagjit Singh*) and (1990) Supp SCC 229 (*M.P. Junior Engineers' Association and Sangarsh Samiti v. State of Madhya Pradesh*).**

15. Mr. Amitava Chaudhuri, learned advocate appearing on behalf of the university, counters that all the petitioners were engaged purely on contractual basis for a limited period to meet the immediate needs of the university. They were not engaged against any sanctioned vacant posts. The petitioners' engagements were purely temporary in nature and based on a no work no pay arrangement. No regular attendance register was maintained for them and, they were engaged by some private entrepreneurs as per the needs of the university without any regular recruitment mode.

16. Mr. Chaudhuri has submitted that given the aforesaid facts, the claim of parity of wage with other regular employees of the university does not arise.

17. Mr. Chaudhuri further contends that the Division Bench, by the order dated July 13, 2018, directed the Higher Education Department to consider and address the grievance of the writ petitioners regarding regularisation in the permanent establishment of the university. The petitioners made a representation before the Higher Education Department, Government of West Bengal in terms of the said order of the Division Bench, praying only for regularisation of their service. The present writ petition excludes any plea for equal pay for equal work as evident from the prayers made in the writ petition. Consequently, the petitioners' claim for equal pay for equal work lacks standing due to their acceptance of the order of the Division Bench and omission of this plea in their representation.

18. Mr. Chaudhuri has submitted that the principle of "equal pay for equal work" as invoked by the petitioners is not applicable in the present case. The judgment reported at **(2017) 1 SCC 148 (State of Punjab v. Jagjit Singh)** does not align with the factual context of this case, especially considering the absence of sanctioned posts.

19. Mr. Chaudhuri has submitted that the autonomy of the university is circumscribed by the provision of Section 3 of the West Bengal Universities (Control of Expenditure) Act, 1976, necessitating the approval of the State for creation of posts or making appointments.

20. Mr. Chaudhuri has further submitted that the memorandum dated October 28, 2014, designates the relevant posts as a "dying cadre." Clause

11 of the said memorandum vests interpretative authority with the State Government rendering its direction binding. The nature of the petitioners' engagement distinguishes them from the regular employees of West Bengal, negating the claim for wage parity.

21. In support of his submission, Mr. Chaudhuri has relied upon a judgment of the Supreme Court reported at **(2006) 4 SCC 1 (Secretary, State of Karnataka v. Umadevi (3))** to argue that temporary employees cannot claim wage parity with the regular employees.

22. He contends that the university is obliged to comply with the orders and notifications issued by the State including the Government order dated October 28, 2014, issued by the State. No casual worker can be regularized against a permanent vacancy without due process of law and the university has no power to create any post without prior approval of the State.

23. On behalf of the State, it has been submitted that Kalyani University is governed under the Kalyani University Act, 1981, the West Bengal Universities and Colleges (Administration and Regulation) Act, 2017, and the West Bengal Universities (Control of Expenditure) Act, 1976.

24. No one can be appointed in the regular establishment of the university without previous sanction/approval of the State Government. The petitioners were engaged by the Mess Committee on a contractual basis in violation of Sections 3, 13(3)(4) and (5) of the said Act of 2017. The State suggests that equal pay for equal work is not a fundamental right.

The relevant posts have been declared as “dying cadre” making the regularisation of the petitioners impermissible.

25. I do not see any reason to interfere with the order dated April 16, 2019, whereby the Additional Chief Secretary rejected the claim of the petitioners.

26. A perusal of the said order dated April 16, 2019, negates the contention of the petitioners that the Additional Secretary, Higher Education Department, rejected the claim of the petitioners without interpreting the term “dying cadre” as mentioned in the order dated October 28, 2014.

27. The relevant part of the said order dated October 28, 2014, is quoted below:

“8. All existing posts of Hostel/Mess employees in all State-aided Universities, Government-aided Colleges and Government Colleges shall be considered to be a “dying cadre” and all such post shall be treated as personal to the present incumbent. No further recruitment, either contractual or permanent, including appointment on compassionate ground shall be allowed in such post with effect from the date of issue of this Order. The Hostel and Messes of all such Universities and Colleges shall be maintained by outsourcing through private entrepreneurs for which the State Government may grant annual ad-hoc grants. The detailed procedure in this regard will be laid down in due course.”

28. The impugned order dated April 16, 2019, cites the key reason that there are no existing vacant posts against which the recruitment/

contractual appointment can be made after the issuance of Government order dated October 28, 2014.

29. Clause 11 of the said memorandum dated October 28, 2014, reads:

“11. Any dispute in relation to interpretation or clarification of this Memorandum shall be referred to the State Government and the decision of the State Government shall be final.”

30. When the State has retained its authority to interpret the memorandum dated October 28, 2014, the interpretation given by the State should be ordinarily accepted unless the same has been demonstrated to be arbitrary, unjust or inherently illegal. In the present case, the interpretation given by the Additional Chief Secretary, State of West Bengal, cannot be deemed to be erroneous, and I am not inclined to interfere with the same on the ground that Clause 8 of the said office order may be interpreted differently.

31. Transitioning to the issue of equal pay for equal work, I do not accept the stand of the university that the petitioners were precluded to invoke the principle of equal pay for equal work since in their representation before the authority following the order of the Division Bench dated July 13, 2019, they only prayed for their regularisation of service.

32. The prayer for equal pay for equal work is implicit in the plea for regularisation. It cannot be said that when the petitioners have claimed for regularisation of their service only, they cannot make any prayer for invoking the principle of equal pay for equal work.

33. Having said so, I am constrained to notice the admitted position that in the appointment of the petitioners, the State had no role to play. A regular employee of the university is appointed in terms of the Kalyani University Act, 1981, following the applicable recruitment rules with the approval of the State. The appointments of regular employees of the university are made against the post sanctioned by the State. All the petitioners were appointed on a contractual basis and not against any sanctioned posts. Their appointments were not made following the regular recruitment with the approval of the State.

34. A regular employee of the university is under the dual employment of the State and the university. In contrast, it must be accepted that the petitioners have been exclusively employed by the university. The petitioners do not dispute that they are paid from the fund of the university only while the regular employees of the university, appointed with the approval of the State, draw their salary from the State fund.

35. The principle of pay parity cannot be applied where the employers are different or where the funding sources are different.

36. In the case reported at **(2008) 10 SCC 1 (*Official Liquidator v. Dayanand*)**, the Supreme Court dealt with the question whether the persons appointed by the Official Liquidator/Court Liquidator under the orders of respective High Courts under Rules 308/309 of the Companies (Court) Rules, 1959 are entitled to equal pay and regularisation as the

employees appointed by the Central Government in the Office of the Official Liquidator.

37. The said issue was answered by the Supreme Court in the following words:

“**100.** As mentioned earlier, the respondents were employed/engaged by the Official Liquidators pursuant to the sanction accorded by the Court under Rule 308 of the 1959 Rules and they are paid salaries and allowances from the company fund. They were neither appointed against sanctioned posts nor were they paid out from the Consolidated Fund of India. Therefore, the mere fact that they were doing work similar to the regular employees of the Offices of the Official Liquidators cannot be treated as sufficient for applying the principle of equal pay for equal work. Any such direction will compel the Government to sanction additional posts in the Offices of the Official Liquidators so as to facilitate payment of salaries and allowances to the company-paid staff in the regular pay scale from the Consolidated Fund of India and in view of our finding that the policy decision taken by the Government of India to reduce the number of posts meant for direct recruitment does not suffer from any legal or constitutional infirmity, it is not possible to entertain the plea of the respondents for payment of salaries and allowances in the regular pay scales and other monetary benefits on a par with regular employees by applying the principle of equal pay for equal work.”

38. The said **Official Liquidator** case was subsequently followed in **Jagjit Singh** case. Paragraph 42.10 of the judgment in **Jagjit Singh** case reads:

“**42.10.** A comparison between the subject post and the reference post under the principle of “equal pay for equal work” cannot be made where

the subject post and the reference post are in different establishments, having a different management. Or even, where the establishments are in different geographical locations, though owned by the same master (see Harbans Lal case). Persons engaged differently, and being paid out of different funds, would not be entitled to pay parity (see Official Liquidator v. Dayanand).”
(emphasis supplied)

39. Therefore, it must be held that the principle of “equal pay for equal work” cannot be applied to the petitioners.

40. It is, however, of utmost importance to note that on February 7, 2023, this Court directed the university to file an affidavit disclosing the current remuneration being paid to the petitioners. In compliance with the said order, the university filed an affidavit before this Court on March 13, 2023. From a perusal of the said affidavit, it appears that the Executive Council of the university in its meeting held on February 18, 2022, resolved to enhance the remuneration of all existing casual/daily paid employees including the petitioners. Accordingly, the petitioners, who work for about 22 days a month, receive the following remuneration:

“

Sl. No.	Names	Consolidated Monthly Pay
1.	Gopal Das	Rs.19,500/-
2.	Imdadul Mondal	Rs.17,000/-
3.	Moni Mandal	Rs.17,850/-
4.	Ranjit Sarkar	Rs.19,500/-

5.	Santosh Pal	Rs.19,500/-
6.	Gopal Pal	Rs.19,200/-
7.	Gobinda Majumder	Rs.19,500/-
8.	Swapan Sarkar	Rs.19,500/-
9.	Ashim Rajib	Rs.19,500/-
10.	Gopal Barai	Rs.17,700/-
11.	Sandhya Rani Sarkar	Rs.17,850/-
12.	Anjali Mondal	Rs.15,500/-
13.	Mina Barai	Rs.15,350/-
14.	Puspa Das	Rs.15,350/-
15.	Niva Mistri	Rs.15,350/-
16.	Parul Bala Biswas	Rs.18,000/-
17.	Anjana Sarkar	Rs.16,850/-
18.	Bacchu Sil	Rs.17,850/-
19.	Silpi Roy	Rs.15,350/-

”

41. In addition to that, the petitioners have been permitted to work till 60 years of age, and on attaining this age, they are entitled to one-time terminal benefit of Rs.2,00,000/- (two lakh).

42. The affidavit of the university suggests that all the writ petitioners have accepted the enhanced remuneration without raising any protest.

43. It appears that this enhancement has been granted in the light of memorandum no.3998-F(P2) dated July 15, 2019, whereby the State has provided consolidated monthly remuneration for the contractual/casual/

daily rated workers in the authorities, wholly or partially owned or controlled and funded by the State, based on their period of engagements.

44. The university in fact has implemented the principle of equal pay for equal work by providing the petitioners remunerations, at par with the temporary/casual/contractual Group-D staff of the State.

45. It is expected that the university will continue to revise the remuneration of the writ petitioners consistent with the revised remuneration of the temporary employees of the State.

46. In view of the above discussion, I am not inclined to separately deal with the judgment cited by Mr. Bhattacharya since the facts involved in this case are entirely different from the aforesaid cases.

47. With the aforesaid observations, W.P.A. No.11447 of 2019, is disposed of.

48. 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.)