

WPA 14179 of 2017
Dr. Anupam Hazra
Vs.
Union of India & Ors.

Mr. Pramit Kumar Ray,
 Mr. Biswarup Mukherjee,
 Mr. Vinayak Chaubey,
 Mr. Indranil Munshi,
 Ms. Nabanita Mallick,
 Mr. Soumajit Chowdhury,
 Ms. A. Mandal

...for the Petitioner

Mr. Soumya Majumdar,
 Mr. Victor Chatterjee

...for Viswa-Bharati

Mr. Anil Kr. Gupta

...for UGC

The petitioner was appointed as an Assistant Professor of “Social Work PSV” at Viswa-Bharati by a letter dated September 18, 2013.

The relevant excerpt of the said appointment letter is quoted below :-

“The undersigned is directed to offer you the appointment to the post of Assistant Professor of Social Work, PSV, Visva-Bharati, with effect from the date you join the post, in the Pay Band-3 of Rs. 15,600-39,100/- with AGP of Rs. 6,000/- plus usual allowances as admissible under the rules of the University.

You will be on probation for a period of one year which may be extended if the authority so desires. Eligibility for confirmation to the post will rest on your satisfactory performance during the probation period”.

Following the letter of appointment, the petitioner

joined the post on December 5, 2013. Subsequent to his joining, the petitioner, by a letter dated May 31, 2014, requested the university to grant a one-year extraordinary leave. The relevant part of the said letter is quoted below :-

“You are aware that I have been elected as a Member of Parliament (declared on May 16, 2014) of the 16th Lok Sabha from the 41 Bolpur Lok Sabha Constituency for five years. As I Joined the Department of Social Work, Visva-Bharati as an Assistant Professor on December 5, 2013 and I have not completed one year as on date and as presently I am holding lien from the Department of Social Work, Assam University, Silchar, where I was appointed as the Assistant Professor on November 10, 2008 I am willing to avail one year Extra Ordinary Leave (EOL). My intention is to leave the Assam University’s job and to join Visva-Bharatai service permanently as soon as I get the confirmation of my service from this University. I shall ask for lien after terminating my previous assignment at Assam and confirmation of my present post at Visva-Bharati.

I shall be highly obliged if you kindly grant me one year Extra Ordinary Leave at present with effect from June 2, 2014 (FN) which may be extended further for the interest of the people of my constituency i.e. Bolpur Lok Sabha.”

The university, accordingly, granted a one-year leave from June 2, 2014 to June 1, 2015 by an office order dated June 7, 2014. The relevant part of the said order is quoted below :-

“The undersigned is directed to convey that the competent authority subject ratification by the Karma-Samity (Executive Council), has been pleased to grant extra ordinary Leave (Without pay) to Dr. Anupam Hazra, Assistant Professor, Department of Social Work, P.S.V., Sriniketan for a period of one year from 02.06.2014 to 01.06.2015.”

Significantly, on February 16, 2015, Visva-Bharati issued a notification requesting the Head, Department of Social Work “not to entertain Dr. Anupam Hazra in the Department and Assign any teaching load to him during his Lok Sabha Membership”.

The excerpt of the said notification dated February 16, 2015 is also quoted hereunder :

- 1. “Dr. Anupam Hazra was appointed by the University as Assistant Professor in the Department of Social Work on 05.12.2013 against advertisement No. 9/2012. Dr. Anupa Hazra came from Assa University, Silchar to Visva-Bharati retaining his lien against his substantive post, Assistant professor in his parent organization.**
- 1. Dr. Hazra Contested in Lok Sabha Election from Bolpur constituency and got elected to the 16th Lok Shbba.**
- 2. Dr. Hazra was granted Eol for 45 days w.e.f. 04.04.2014 during his probation. He was again granted EoL, for one year from 02.06.2014 to 01.06.2015 with the approval of the executive council as a special case.**
- 3. Dr. Anupam Hazra started sending letters that he has joined the university canceling his leave Dr. Hazra has not taken approval from the competent authority for his**

joining the University. His confirmation can be taken up only after successful completion or probation i.e. working as Assistant Professor on full time basis.

5. Dr. Anupam Hazra is requested to submit a clearance from the Lok Sabha Secretariate to the effect that he can simultaneously function as Hon'ble Member of Parliament and Assistant Professor, Department of Social Work, Visva-Bharati.

In view of the above, Head Department of Social Work, Principal, Palli Samgathana Vibhaga, Provost, Studies, Exeducational Innovations & Rural Reconstruction are requested not to entertain Dr. Anupam Hazra in the Department and Assign any teaching load to him during his lok Sabha Membership”

Thereafter, on May 12, 2015, again, Visva-Bharati issued another notification to the following effect:

“The undersigned is directed to convey that the Extraordinary Leave granted to Dr. Anupam Hazra, Assistant Professor, Department of Social Work (I.D. 2013058) is going to expire on 1st June 2015. Dr. Hazra is expected to get a clearance from Lok Sabha Secretariat and upon getting such clearance he is expected to rejoin duty on or before 1st June 2015 failing which Dr. Hazra will be deemed to have reverted back to his parent organization Assam University Silchar”.

It appears that the petitioner expressed his intention to resume his duties before the expiry of one-year leave period. In fact, he wrote a letter dated May 26, 2015, addressed to the Registrar of the Visva-Bharati, explicitly stating his intention to resume his duties on

June 25, 2014 after availing 358 days starting from June 2, 2014. In the same letter, the petitioner requested the university to take steps for necessary clearance from the relevant authority. The letter dated May 26, 2015 was received by the Vice-chancellor's office on the same date. The said letter reads :-

**“Dear Sir,
In pursuance of office order under reference I join the Department and resume duty today 26.05.2015 forenoon, after availing 358 days’ EOL out of one year from 02.06.14.
In this context, with reference to memo no. MPBLP-151/15 dated 18.05.15, once again I am to request for step from your end, for the clearance, sought for from the concerned authority.
Yours sincerely,”**

By a letter dated May 28, 2015, the Head, Department of Social Work in response to his application dated May 26, 2015 declined to allow the petitioner to join his post. The said letter also deserves to be quoted.

**“Dr. Anupam Hazra
The Department of Social Work has received your application dt. 16.05.15.
In accordance with the above mentioned Orders the application does not satisfy the required conditions. The Department does not take cognizance of your application and cannot permit you to resume duties.
This is for your information.**

**Sd/-
Professor Kumkum Bhattacharya
Head, Department of Social Work
(OFFG)”**

Finally, on June 2, 2015, the Registrar of Visva-

Bharati published an office order to the following effect:

“In pursuance to Office Order Ref No. –Est/E-II/ACE-1618, dated 7th June, 2014, Dr Anupam Hazra, Assistant Professor, Department of Social Work (I.D. 2013058), was to rejoin duty on 2nd June 2015.

However, Dr Anupam Hazra, has failed to join his duties in the Department of Social Work till 2nd June, 2015 after expiry of Extra Ordinary Level (EOL).

In view of the above, undersigned is directed to convey that :

1. Dr Anupam Hazra, Assistant Professor, Department of Social Work, who is on lien from Assam University, Silchar is presumed to have reverted himself back to his parent organisation.

2. Name of Dr Anupam Hazra, Assistant Professor, Department of Social Work will cease to be borne on the roll of Establishment of Visva-Bharati with immediate effect.

3.

This is issued with the approval of the Competent Authority.

**Sd/-
Registrar (Officiating)
Visva-Bharati”**

The writ petitioner was aggrieved and he filed this writ petition before this Court challenging the aforesaid office order dated June 2, 2015.

This writ petition was disposed of by a learned Single Judge of this Court on June 25, 2018. The learned Judge in disposing of this writ petition, observed, inter alia, as follows:

“Based on materials recorded in the order dated 11th June, 2018 I am of the view petitioner cannot be prevented from resuming his service,

as probationer, if that is his position. At the time he was resisted from resuming work in Visva Bharati, his probationary service, as contended by the University, appears to have been subsisting. This, in spite of submissions made on behalf of Visva Bharati that no extension was granted. Whether petitioner is to be granted extension of alleged probation, to carry out remainder of the year of alleged probationary service is for the University to decide but at this time it cannot prevent him from resuming his service. There will be direction accordingly.

The University is directed to allow petitioner to resume his service since the only ground of resistance being whether he could be both a Member of Parliament as well as serve in the University has been answered in the fourth report of Joint Committee on Offices of Profit which was presented to Lok Sabha on 13th August, 2015. Petitioner will obtain copy of this order and present himself for resuming his service within three weeks from date.

Writ petition is disposed of".

Challenging the said order dated June 25, 2018, the petitioner preferred an appeal which was registered as MAT No.901 of 2018. The university as well preferred another appeal registered as MAT No. 641 of 2018. Both appeals were taken up for hearing before a Division Bench of this Court and the said Division Bench by an order dated March 1, 2019 disposed of both appeals and remanded the matter back to the learned Single Judge for hearing afresh.

The relevant part of the said order dated March 1,

2019 is quoted below.

“...Since there is no positive finding of the learned Single Judge on any of the points canvassed by either of the parties or raised in connection with the dispute we have decided to send the matter back to the learned Single Judge for a fresh decision in the matter in terms of the observations made by this Court. The learned Single Judge shall specifically decide whether in the facts and circumstances of the case it can be said that the petitioner is still on probation or the University can be held to have confirmed his service. It is to be borne in mind that the right to extend the period of probation is the prerogative of the employer and not that of the Court. The Court cannot extend the period of probation of any employee and ask the University to treat him as a probationary. ...”

I am of the view that there is no scope to deviate from the view taken by the learned Single Judge in disposing of the writ petition on June 25, 2018. The facts preceding the impugned order dated June 25, 2018, have been recorded hereinabove. It is clear that the petitioner was granted extraordinary leave for one-year starting from June 2, 2014 to June 1, 2015. The petitioner wanted to join his post before the expiry period of the said leave period, but there was a clear and unwavering intention of the university to prevent the petitioner from resuming his duties.

On one hand, the university did not allow the petitioner to join his duty, and on the other hand, immediately on the very next date of the expiration of the leave period, the university sought to revert the petitioner

back to his original institution at Assam University, Silchar claiming that he had failed to join his duty after leave period had lapsed.

If an employee overstays after the leave period granted to him, the employer has the authority to take necessary disciplinary measures as it deem fit. In the present case, there was no overstay by the petitioner. The university deliberately prevented the petitioner from joining his duty before the expiration of the leave period without any just reason. The issue of serving at the university and simultaneously holding the position of an Assistant Professor has also been clearly answered in favour of the petitioner in the report of the Joint Committee on Office of Profit, presented to the Lok Sabha on August 19, 2015.

The order impugned, therefore, cannot be sustained as it was not issued in bona fide and the same is unhesitatingly set aside.

Moving on to the next question as to whether the petitioner should be allowed to join his duties as a confirmed teaching staff member of the university, I accept the argument put forth by Mr. Majumdar, learned advocate representing the university. It is a fact that the petitioner did not complete his period of probation. The petitioner was on probation at the university for roughly about four months. I accept the contention of Mr. Majumdar that the object behind keeping an employee

under probation is to examine his suitability for the relevant post. The appointment letter of the petitioner clearly suggests that he was liable to serve as a probationer at the university for one-year. Therefore, the petitioner should join his post to fulfill the remaining period of probation.

The judgment reported at **(1983) 2 SCC 217 (*Ajit Singh Vs. State of Punjab*)** relied upon by Mr. Majumdar elucidates that period of probation provides an opportunity for the employer to assess the work ability, efficiency, sincerity and competence of the employee and if he is found not suitable for the post, the employer retains the right to dispense with his service during the period of probation.

By taking the lien, the petitioner maintained his employer-employee relationship with regard to his earlier employment, but this does not oblige his present employer to accept him as a permanent employee without assessing his suitability for the post by keeping him under probation.

In view of the aforesaid findings, this writ petition is allowed. The university shall allow the petitioner to join his duty as a probationer within seven days from the date of communication of this order. The probation period of the petitioner shall be governed by his appointment letter dated September 18, 2013. After completion of one-year of service as a probationer, it will be open for the

university to confirm his service in accordance with the law.

WPA 14179 of 2017 is accordingly disposed of.

Urgent certified *website* copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)