

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(PUBLIC INTEREST LITIGATION)
APPELLATE SIDE

RESERVED ON: 27.06.2023
DELIVERED ON: 17.07.2023

CORAM:

THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE AJAY KUMAR GUPTA

WPA (P)/302/2023

SMT. SHANTA PAUL

VERSUS

THE STATE OF WEST BENGAL AND OTHERS

Appearance:-

Mr. Arunangshu Chakraborty, Adv.

Mr. Arijit Kumar Bera, Adv.

Ms. Geniya Mukherjee, Adv.

Ms. Zeba Rashid, Adv.

Ms. Shrabani Banerjee, Adv.

Ms. Shaika Amrin, Adv.

.....For the Petitioner.

Mr. S.N. Mookherjee Ld. Advocate General.

Mr. Samrat Sen, Ld. A.A.A.G Adv.

Mr. Sk. Md. Galib, Adv.

Ms. Amrita Panja Moulik, Adv.

.....For the State.

Mr. Jaydip Kar, Ld. Sr. Adv.

Mr. Pijush Biswas, Adv.

....For the Respondent Nos. 2 & 5.

Mr. Puspasish Gupta, Adv.
Mr. Abhishek Baran Das, Adv.
Mrs. Srijoni Chongdar, Adv.

....For the Respondent Nos. 3 & 6

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. This writ petition filed as a public interest litigation seeks for a declaration to declare the appointment of the 6th respondent, the Registrar of Kazi Nazrul University as non-est/nullity, as it is based on erroneous advertisement which is not in conformity with the University Grants Commission Regulations, 2018 in short (UGC Regulations). The petitioner also prays for issuance of a writ of quo warranto to call upon the 6th respondent to show cause as to why he should not be ousted from the public office on declaring his appointment dated 01.02.2023 as Registrar of the said university being illegal.
2. Mr. Chakraborty, learned Advocate appearing for the petitioner submitted that the appointment of the 6th respondent as the Registrar of the University is illegal as it is based on false details of employment experience furnished by the 6th respondent; the employment advertisement issued by the university is not in conformity with the UGC Regulations; and erroneous advertisement would not create a right in favour of an applicant who acts on such representation; the AICTE Regulations, 2010 and the earlier clarification issued in 2003 is binding upon private institutions run with the approval of the AICTE and the UGC Regulations and the AICTE notification which prescribed minimum essential qualification and length of service for promotion to higher post has a

force of a statute. It is submitted that as per the notification dated 02.11.2017 (adopted in 2018 by UGC) a candidate is eligible to apply for the post of Registrar who has at least 15 years of experience as Assistant Professor in academic Level 11 and above or with the 8 years of service in academic Level 12 and the above and including Associate Professor along with experience in educational administration or comparable experience in research establishment and/or other institutions of higher education or 15 years of administrative experience of which 8 years shall be as Deputy Registrar or an equivalent post. It is further submitted that the 6th respondent furnished false details of employment as he neither reached academic Level 11 with rationalized entry pay of Rs. 68,900/- nor did he reach academic Level 12 with rationalized entry pay of Rs. 78,800/- as per the notification for Scheme of Revisions of Pay of Teachers and Equivalent Cadre in Universities and Colleges dated 02.11.2017. It is further submitted that the advertisement issued by the respondent university for appointment to the post of Registrar is not in conformity with the notification issued by the Government of India dated 02.11.2017 adopted by the UGC vide notification dated 18.06.2018 and the appointment of the 6th respondent arising out of an erroneous advertisement is unsustainable. It is further submitted that the length of service required for promotion to the post of Lecturer (Senior Scale) from the post of Lecturer and from Senior Lecturer to the post of Assistant Professor and from Assistant Professor to the post of Professor as per the AICTE Notification 2003 and 2010 and UGC Regulations is mandatory and no private institution or college or

university can promote any appointee to the higher post in violation of the AICTE notification and UGC Regulation. It is further submitted that an earlier writ petition was filed in WPA (P) 223 of 2023 challenging the appointment of the 6th respondent as the Registrar of the University. However, the said writ petition was dismissed in which the effect of the AICTE notification and UGC Regulations were not considered and therefore the petitioner is entitled to canvass such grounds in this writ petition. It is further submitted that the 6th respondent is not qualified to apply for the post of Registrar as he has made a wrong claim with regard to the details of employment experience as mentioned in his e-application. It is further submitted that as could be seen from the said application, the 6th respondent did not serve 15 years as Assistant Professor in academic Level 11 and above or with 8 years of service in academic Level 12 and above.

3. The learned Advocate for the petitioner referred to the notification dated 02.11.2017 wherein the minimum qualification for the post of Registrar has been mentioned. It is further submitted that the 6th respondent belongs to Level 10 in 2017 and he will not come under academic Level 11 or academic Level 12 as per the said notification unless he fulfills the conditions for promotion prescribed in the AICTE Regulations issued during 1999 and 2003. It is further submitted that the private institutions cannot make any rules of its own concerning appointment of teachers, scale of pay and length of service in specific pay band and if there is any violation, the AICTE is entitled to withhold or discontinue grants in respect of courses, or programmes to such technical

institutions which fails to comply with the directions of AICTE within the stipulated period of time and take such other steps as may be necessary for ensuring the compliance of the direction of the Council. Therefore it is submitted that an erroneous advertisement issued by the University will not survive or create any right in favour of the applicant and that in terms of the UGC Regulations, 2017, the 6th respondent is not eligible to hold the post of Registrar as he has no experience of 15 years as Assistant Professor in academic Level 11 and above or with 8 years of service in academic Level 12 and above including as Associate Professor along with the experience in educational administration. Therefore it is submitted that the respondent university or the state can enhance the qualifications, more than what is prescribed by the AICTE or UGC but cannot dilute the conditions stipulated by the AICTE/UGC.

4. The learned Advocate for the petitioner has elaborately take us through the notification issued by the UGC dated 02.11.2017 with particular reference to the regulations concerning the appointment of Registrar of an University. The learned Advocate has also referred to the application form submitted by the 6th respondent while seeking for consideration to be appointed as Registrar of the University to demonstrate that the 6th respondent did not possess the requisite qualification for being consider for the appointment to the post of Registrar. Further it is submitted that the 6th respondent has made fraudulent statement in the application and in the light of the declaration given by him in the application, his appointment is liable to be summarily terminated.

5. With regard to the scope of judicial review, the learned Advocate placed reliance on the decision of the Hon'ble Supreme Court in ***N. Kannadasan Versus Ajoy Khose and Others***¹. For the proposition that any benefit obtained by way of fraud is a nullity and no right accrues out of the same reliance was placed on the decision of the Hon'ble Supreme Court in ***Union of India Versus Ramesh Gandhi***². To support the contention, that the regulations issued by the AICTE has a force of law and that the respondent university cannot dilute the standard prescribed by the AICTE, reliance was placed on the decision in ***Gelus Ram Sahu and Others Versus Dr. Surendra Kumar Singh***³. For the same proposition that the respondent University is not entitled to dilute the norms and standard prescribed by the AICTE, reliance was placed on the decision in ***A.P.J. Abdul Kalam Technological University and Another Versus Jai Bharath College of Management and Engineering Technology and Others***⁴. With regard to the plea of res judicata, on account of the dismissal of an earlier writ petition challenging the appointment of 6th respondent, the learned Advocate for the petitioner by placing reliance on the decision in the case of ***National Confederation of Officers Association of Central Public Sector Enterprises and Others Versus Union of India and Others***⁵ contended that when important issues of public interest are brought before the court, the same should be adjudicated on merits and should not be

¹ (2009) 7 SCC 1

² (2012) 1 SCC 476

³ (2020) 4 SCC 484

⁴ (2021) 2 SCC 564

⁵ (2022) 4 SCC 764

rejected merely because the writ petition which was earlier filed was dismissed. For the proposition that when there is any inconsistency or conflict between a statutory provision and executive instructions, the former must be given effect, reliance was placed on the decision in ***Employees' State Insurance Corporation Versus Union of India and Others***⁶. On the above grounds, the learned Advocates for the petitioner seeks for declaring the appointment of the 6th respondent as Registrar of the University as null and void and to issue a writ of quo warranto against the 6th respondent.

6. Mr. Jaydip Kar, the learned Senior Advocates appearing for the respondent 3, 5 and 6 referred to the advertisement issued by the respondent university dated 07.12.2022 and submitted that the 6th respondent satisfies the essential qualification prescribed in para 1(a)(ii) of the advertisement dated 07.12.2022. It is further submitted that pursuant to AICTE Regulation, 2010 as on the said date, the post of Lecturer was re-designated as Assistant Professor and the 6th respondent who was holding the post of Senior Lecturer at the relevant time, automatically stood re-designated as Assistant Professor. In this regard, the learned Senior Advocate referred to the notification issued by the AICTE dated January 22, 2010 and submitted that in terms of the said notification persons entering teaching profession in technical institutions shall be designated as Assistant Professor and shall be placed in the pay band of Rs. 15,600-39100 with AGP of Rs. 6000/-. Lecturers already in service in the pre-revised-scale of Rs. 8000-13500 shall be re-designated as Assistant Professors

⁶ (2022) 11 SCC 392

with the AGP of Rs. 6000/-. It is submitted that the grounds canvassed by the learned Advocate for the petitioner are all touching upon the 6th respondent previous appointment and in this writ petition nothing has been stated with regard to the appointment of the 6th respondent as the Registrar which is admittedly a non-teaching post. Further it is submitted that the advertisement issued by the University dated 07.12.2022 is in accordance with the UGC Regulations dated 02.11.2017 and the only difference is that instead of the academic Level as mentioned in the notification, the pay scale has been mentioned and therefore there is no error in the advertisement dated 07.12.2022. To draw a comparison, the learned Senior Advocate placed reliance on the notification issued by the Bankura University dated 06.02.2023 and referred to the essential qualifications prescribed for the post of Registrar and submitted that the qualification mentioned therein is identical to the advertisement issued by the respondent University dated 07.12.2022 which is in accordance with the UGC Regulations. Further it is submitted that the present writ petition is not maintainable in the light of the dismissal of the earlier writ petition in WPA (P) 223 of 2023 wherein a writ of quo warranto was sought for against the 6th respondent which was dismissed on merits and the said writ petition being a public interest litigation, the decision is a judgment in rem and the present writ petition is hit by the principles of res judicata. In support of such contention, reliance was placed on the decision of the Hon'ble Supreme Court in ***State of Karnataka and Another Versus All India***

Manufacturers Organisation and Others ⁷. Further it is submitted that though during the course of arguments, the learned Advocate for the petitioner had submitted that the 6th respondent has committed fraud there is absolutely no pleading to the said effect in the writ petition and merely stating that fraud has been committed would not be sufficient. With regard to the judgment in the case of **National Confederation of Officers Association of Central Public Sector Enterprises and Others** relied on by the learned Advocate for the petitioner, it is submitted in the said case that an earlier petition filed under Article 32 of the Constitution was summarily dismissed. In the case on hand, the earlier public interest writ petition was adjudicated on merits and dismissed and hence the present writ petition is barred by the principles of res judicata. With the above submissions, learned senior Advocate prayed for dismissal of the writ petition.

7. The learned Advocate appearing for the petitioner in reply reiterated the submissions made earlier and once again referred to the application form submitted by the 6th respondent and the declaration which was signed by the 6th respondent. Further it is submitted that the post of the Registrar of University is a very vital post and on account of the mis-representations, the 6th respondent has secured appointment and the same should be set aside.
8. We have elaborately heard the learned Advocates for the parties and carefully perused the materials placed on record.

⁷ (2006) 4 SCC 683

9. The respondent University issued an advertisement dated 07.12.2022 inviting online applications from eligible Indian Nationals for recruitment to various posts on direct recruitment basis. In this writ petition, we are concerned about the post of Registrar of the respondent University. The advertisement mentions the essential qualification for the said post which is as hereunder:-

a. Essential Qualification

(i) Uniformly good academic record with a Master's Degree with minimum 55% marks or its equivalent grade in the point scale wherever a grading system is followed.

(ii) At least 15 years' of experience as Sr. Lecturer/Reader/ Assistant Professor in the AGP of Rs. 7000/- and above or with 8 year's of service in the AGP of Rs 8000/- and above including as Associate Professor along with experience in educational administration in Academic Institutions like University, or in an institute of higher learning of which 5 (five) years must be in a University or in an Institute of Post Graduate Study

OR

Comparable experience in research establishments and other institutions of higher learning

OR

15 (Fifteen) years administrative experience, of which 8 years shall be as Deputy Registrar or equivalent post.

(iii) Age not less than 40 years. Relaxable in the case of exceptionally qualified candidate.

b. Desirable Qualification

(i) A Doctorate Degree or published research work of merit.

(ii) High Level of administration experience in a Government or Quasi Government organization or a good background in administration and management in senior position.

(iii) Conversant with information Communication Technology (ICT).

10. As could be seen from the above, an applicant is required to have a uniformly good academic record with a Master Degree with a minimum 55% marks or its equivalent rate in the point scale wherever the grading system is followed. Clause (ii) of para 1(a) stipulates that the applicant should have at least 15 years of experience as Senior Lecturer/Reader/Assistant Professor in the AGP of Rs. 7000/- and above or with 8 year service in the AGP of Rs. 8000/- and above including as Associate Professor along with experience in educational administration in academic institutions like university or in an institute of higher learning of which 5 years must be in an university or in an institute of Post Graduate study. The issue would be as to whether the said essential qualification prescribed in the advertisement dated 07.12.2022 is in consonance with the notification issued by the UGC. The Central Government by notification dated 02.11.2017 has communicated to the UGC stating that consequent to the Ministry's order dated 02.11.2017, the minimum qualification for direct recruitment of Registrar/Finance Officers/Controller of Examination shall be as follows:-

- a) Master's Degree with at least 55% of the marks or an equivalent grade in a point scale wherever grading system is followed*
- b) b) At least 15 years of experience as Assistant Professor in the Academic Level 11 and above or with 8 years of service in the Academic Level 12 and above including as*

Associate Professor along with experience in educational administration or

c) Comparable experience in research establishment and/or other Institutions of higher education, or

d) 15 years of administrative experience, of which 8 years shall be as Deputy Registrar or an equivalent post.

11. A comparison of the essential qualification prescribed in the advertisement dated 07.12.2022 with clause (b) of the qualification prescribed by the Government of India shows that the same are identical. Further as per the All India Counsel for Technical Educational (Pay Scales, Service Conditions and Qualifications for Teachers and other Academic Staff in Technical Institutions) Regulations, 2010 dated 22.01.2010, three designations in respect of teachers, universities and colleges were notified as Assistant Professor, Associate Professor and Professors. As per the revised pay scales, service conditions and any other advancement scheme for teachers and equivalent positions for Assistant Professor/Associate Professor/Professors in technical institution, it was stipulated that the persons entering teaching profession in technical institutions shall be designated as Assistant Professor and shall be placed in the pay band of Rs. 15600-39100 with AGP of Rs. 6000/-. Lecturers who are already in service in pre-revised-scale of Rs. 8000-13500, shall be re-designated as Assistant Professors with the said AGP of Rs. 6000/-. The details of employment experience as given by the 6th respondent in the application/recruitment form shows that the he was a Lecturer in the Bengal College of Engineering and Technology in the pay band/scale of Rs. 8000-275-13500 which was a

teaching post. Thereafter he was employed as a Senior Lecturer in Dr. B. C Roy Engineering College, Durgapur in the pay band/scale of Rs. 10000-325-15200. Subsequently as the Assistant Professor in Bengal Institute of Technology and Management in the pay band/scale of Rs. 12000-420-18300 and thereafter as Professor as the head of department in Dr. B.C. Roy Engineering College, Durgapur in the pay band/scale of pay of Rs. 37400-67000 with grade pay of Rs. 10000/-. Thus, it could be seen that the 6th respondent would fulfill the criteria as stipulated in the notification of the AICTE Regulations dated 22.01.2010. In any event, the present public interest writ petition cannot in any manner seeks to question the appointment of the 6th respondent as an Lecturer or the Assistant Professor as the writ petition concerns the appointment of the 6th respondent as the Registrar of the respondent University. We need to bear in mind this important fact.

12. At this juncture, it is relevant to mention that in the earlier public interest litigation in WPA (P) 223 of 2023, the petitioner therein sought for issuance of writ of quo warranto questioning the selection of the 6th respondent as Registrar of the University. The case of the said writ petitioner was based upon the stipulation in the AICTE Regulation dated 22.01.2010. It was contended that a person entering the teaching profession in Universities and Colleges shall be designated as Assistant Professors and shall be placed in the pay of the Rs. 15600-39100 with AGP of Rs. 6000/-. Referring to the credentials of the 6th respondent it was contended that he had entered the service as lecturer in the Bengal College of Engineering and Technology in the

pay band of Rs. 8000-275-13500 and in terms of the AICTE Regulations dated 22.01.2010 the 6th respondent could not have drawn the AGP of Rs. 6000/- as stipulated in the clause (a) of the notification issued by the AICTE dated 22.01.2010. The court considered the submission and rejected the same as it was a wrong interpretation of the condition imposed in the AICTE Regulation, 2010. After taking note of the submission, the court held as follows:-

3. In our considered view, the case of the writ petitioner is a wrong interpretation of the said condition imposed in the Regulation 2010. For better appreciation, the said regulation is quoted hereinbelow.

"(a) Assistant Professors/Professors Professor/Associate in Technical institutions:-

(i) Persons entering the teaching profession in Technical Institutions shall be designated as Assistant Professors and shall be placed in the Pay Band of Rs. 15600-39100 with AGP of Rs.6000. Lecturers already in service in the pre-revised scale of Rs.8000-13500, shall be re-designated as Assistant Professors with the said AGP of Rs.6000."

4) In terms of the above condition it is seen that lecturers already in service in the pre-revised scale of Rs.8000-Rs.13500 shall be re-designated as Assistant Professors with the said AGP of Rs.6000. Thus, the case of the writ petitioner is that the private respondent could not have drawn the pay in the Pay Band of Rs.8000-Rs.275-Rs. 13500 and such plea is outrightly rejected. In any event, 2010 Regulation clearly protects the existing employment, namely, the existing lecturers and their post was re- designated as Assistant Professors. It also recognizes the pay scale of Rs.8000- Rs.13500, pre revised in the post of lecturers. Thus, we find that the private respondent is fully eligible to hold the post of Registrar of the said

university and the petitioner has not made out any case for interference.

5) It is submitted by the learned Advocate appearing for the fourth respondent that in the cause title the executive council of the University has been shown to be represented by the Deputy Registrar which is incorrect.

6) Since we are satisfied that the petitioner has not made out any case for interference, we decline to entertain the writ petition. Accordingly, the writ petition fails and is dismissed.

13. The substantial part of the arguments as advanced by the learned Advocates for the petitioner is identical and similar to the contention which was raised in the earlier writ petition. The question would be as to whether by way of second public interest litigation, the self-same issues can be re-agitated. Admittedly, the earlier writ petition was dismissed on merits.

14. The Hon'ble Supreme Court in the case of **All India Manufacturers Organisation** pointed out that the res judicata is the doctrine based on the larger public interest and is founded on two grounds: (i) one being the *maxim nemo debet bis vexari pro una et eadem causa* (no one ought to be twice vexed for one and the same cause) and second, public policy that there ought to be an end to the same litigation. It was further pointed out that the main purpose of the doctrine of res judicata is that once the matter has been determined in the former proceeding, it should not be open to the parties to reagitate the matter again and again.

15. The next question which arose was whether doctrine of res judicata, as a matter of principle can be applied to the public interest litigations. After

referring to Explanation (vi) in Section 11 CPC and after taking note of the decision in ***Forward Construction Company and Others Versus Prabhat Mandal, Andheri and Others***⁸. It was held that Section 11 CPC applies to public interest litigation as long as it is shown that the previous litigation was in public interest and not by way of private grievances. Further, the previous litigation has to be bonafide litigation in respect of a right which is common and is agitated in common with others. Further, it was pointed out that in a public interest litigation, the petitioner is not agitating his individual rights but represents the public at large as long as the litigation is bonafide, the judgment in a previous public interest litigation would be a judgment in rem. It binds the public at large and bars any member of the public from coming forward before the court and raising any connected issue or an issue which had been raised should have been raised on an earlier occasion by way of public interest litigation.

16. The law laid down by the Hon'ble Supreme Court in the aforementioned decision applies with full force to the case on hand. There was no contention raised about the bonafide of the earlier litigation namely WPA (P) 223 of 2023. In the said writ petition, which was the public interest litigation, prayer was made to issue a writ of quo warranto against the 6th respondent and the challenge was to his qualification qua the AICTE Regulation/UGC Regulations. The matter was considered on merits and the writ petition was dismissed by order dated 05.06.2023. The said order has become final. Therefore, a second

⁸ (1986) 1 SCC 100

writ petition for the very same relief is not maintainable more so when the grounds raised in the present writ petition also touches upon the eligibility/qualification of the 6th respondent. The petitioner cannot be permitted to have a piece-meal challenge of the appointment of the 6th respondent on the ground that certain grounds ought to have been raised in the earlier writ petition. Therefore, the present writ petition is clearly barred by the principles of res judicata.

17. The learned Advocate for the appellant would strenuously contend that the 6th respondent has played fraud and that fraud vitiates every solemn act. Unfortunately, there was no specific pleading of fraud raised in the writ petition qua the qualifications for the post of Registrar.

18. In ***Lazarus Estates Limited Versus Beasley***⁹ it was held that fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved but once proved it vitiates judgments, contracts, transactions etc. This decision was referred to by Hon'ble Supreme Court in ***Ram Preeti Yadav Versus UP Board of High School***¹⁰

19. The argument that the advertisement issued by the respondent University dated 07.12.2022 is not in consonance with the notification of the UGC/AICTE is also incorrect which we have dealt with in the preceding paragraphs. Therefore we find that there is no dilution of the essential qualifications prescribed by the AICTE or by the UGC. As a matter of fact the

⁹ (1956) 1 All. E.R 341

¹⁰ (2003) Supp (3) SCR 352

Bankura University has also adopted the same qualification in its advertisement dated 06.02.2023 and consequently the decisions relied on by the learned Advocate for the petitioner that the AICTE Regulations has the force of a statute, which is a well settled principle, cannot in any manner assist the case of the writ petitioner as we have found that there is no inconsistency between the advertisement issued by the respondent University with that of the AICTE/Regulations.

20. As pointed out by the learned Senior Advocate appearing for the respondents 3, 5 and 6 the decision in the case of **National Confederation of Officers Association of Central Public Sector Enterprises and Others** is distinguishable on facts as in the said case show that the earlier writ petition which was filed as a public interest writ petition was summarily dismissed by the Hon'ble Supreme Court and a second writ petition was filed seeking for various reliefs. In the said decision, it was pointed out that the principles of res judicata and constructive res judicata, which Section 11 of CPC embodies have been applied to the exercise of writ jurisdiction, including public interest litigation. After taking note of the decision in the case of **Rural Litigation and Entitlement Kendra Versus State of Uttar Pradesh** ¹¹ and the decision in **Daryao Versus State of Uttar Pradesh** ¹² and the decision in the case of **All India Manufacturers Organisation**, the Hon'ble Supreme Court pointed out that while determining the applicability of the principles of res judicata under

¹¹ 1989 Supp (1) SCC 504

¹² AIR 1961 SC 1457

Section 11 of CPC, the court must be conscious that grave issues of public interest are not lost in the woods merely because a petition was initially filed and dismissed, without a substantial adjudication on merits. In the case on hand, the earlier public interest writ petition was wholly based on the qualification which the 6th respondent possess and the challenge to his appointment to the post of Registrar of University was based on his qualification in the teaching posts hold earlier, and the present writ petition has been founded on the very same set of facts except for vague allegations of fraud. To be noted that use of the expression “fraud” would not make an exercise fraudulent. The allegations of fraud being a serious allegation, the onus is on the person making the allegation to substantiate the same in the manner known to law. In the instant case, apart from lack of pleadings of fraud the allegation is absolutely vague and unsubstantiated.

21. For all the above reasons, we find no grounds to entertain the writ petition. Accordingly, the writ petition fails and is dismissed. No costs.

(T.S. SIVAGNANAM, C.J.)

I Agree.

(AJAY KUMAR GUPTA, J.)

(P.A. SACHIN)