

148 08-08-2023
AKG
Ct. 238

WPA 14734 of 2018
Md. Kased Ali
Vs.
The State of West Bengal & Ors.

Mr. Himadri Barua,
Ms. Jharna Biswas

...For the Petitioner

Sk. Md. Galib,
Mr. Shamim ul Bari

...for the State

Mr. R. N. Chakraborty,
Ms. Amrita De

...for Aliah University

In this writ petition, the petitioner has prayed, inter alia, for the following relief :

“a writ in the nature of writ of Mandamus commanding the respondents, their men, agents and subordinates to look into the grievances of the petitioner and thereby put the petitioner under proper scale since the very appointment as Librarian and thereby re-fix the pay scale and after proper calculation pay the dues to the petitioner, retired Librarian of the Aliah University and also re-fix his pensionary benefits.”

It is the grievance of the petitioner that in the year 1990, he was appointed as a Librarian at Calcutta Madrasha, which subsequently attained the status of Aliah University in the year 2008. Though the petitioner continued with the post of Librarian after the upgradation of the said Madrasha as a university, the petitioner was not provided any benefit of pay-scale attached to the post of a Librarian under the University. It appears that the

petitioner, on earlier occasion, filed a writ petition before this Court, which was disposed of with the following order :

“I have considered the order of the Higher Education Department, Government of West Bengal dated 8th October, 2013. It is issued by Mr. K. K. Bhowmik, Joint Secretary of that department. The operative part of the order is in the following terms:

“Now, therefore, considering the peculiar and also considering the educational qualifications of Md. Kashed Ali, it is held that the Higher Education Department has no objection if the Aliah University considers him to be eligible to be appointed in the post of Librarian in the Aliah University w.e.f. 05.04.2008 (i.e. from the date of coming into operation of the Aliah University) and his financial benefit are extended as per the relevant ROPA rules applicable to State Govt. employees from time to time, accordingly.”

In that view of the matter, I direct the Vice Chancellor of Aliah University or its registrar to consider the case of the writ petitioner as mentioned in the writ petition and in the said order of the government and pass a reasoned order, after hearing the writ petitioner within eight weeks of communication of this order.”

Following the said order passed by this Court, the case of the petitioner was considered by the university and ultimately, by an order dated January 29, 2004, the Registrar of the University rejected the claim of the petitioner for granting him the status of the Librarian of the University. The Registrar in his order, however, observed as follows :

“Considering, therefore, the writ petition, the order of H.E. Department dated

08.09.2013 and other relevant documents submitted and relied on by the petitioner, it can reasonably be held that for want of Post as well as the above-noted requisite UGC qualifications and experience, the writ petitioner cannot be legally considered for absorption or direct appointment as Librarian of the University.

However, the facts remain on record are that since January 1990 he is consistently serving in the post of Asstt. Librarian i.e. for a period of 23 years without promotion to higher post and during this long period he has given only two career advance benefits—one on completion of 10 years of service on 04.01.2000 and the next on completion of 16 years of service on 04.01.2006.

Therefore, justice demands that the writ petitioner deserves to be afforded with another higher UGC scale benefit of Asstt. Librarian on completion of 20 years of service without promotion w.e.f. 04.01.2010 if he so desires in writing and the Govt. authority (MA & ME Department, Govt. of West Bengal) so approves on move. (Scale 15600-39100/- plus Academic Grade Pay Rs. 6000/-)."

In course of submission, the petitioner, however, sought to change his stance. Learned advocate appearing for the petitioner submits that the petitioner is no more seeking pay-scale attached to the post of the Librarian of the University. He is pressing this writ petition for granting him the proper scale of pay of Assistant Librarian.

Learned advocate for the petitioner also submits that during his service career, the petitioner was not given the pay scale of University Grant Commission attached to the post of Assistant Librarian. Therefore, the petitioner should be given the said benefit along with arrears.

Mr. R. N. Chakraborty, learned advocate appearing for the university, on the other hand, submits that the petitioner was initially appointed on January 4, 1990 at Calcutta Madrasha as Assistant Librarian though in his appointment letter, erroneously, it was mentioned that he was appointed to the post of the Librarian.

After the said Calcutta Madrasha was upgraded to Calcutta Madrasha Government College in the year 2006, the petitioner continued in the said upgraded Madrasha College for about another two years. Thereafter the said Madrasha Government College was upgraded to Aliah University in the year 2008. The petitioner continued as Assistant Librarian at the said university for about six years more and ultimately, he retired from service in the year 2015.

Mr. Chakraborty submits that the university had no sanctioned post of Librarian. The petitioner also had no requisite qualification for the said post. Mr. Chakraborty submits that to be appointed as a Librarian at a university, a candidate requires to possess a Master Degree in Library Science/Information Science/Documentation with at least 55% marks or its equivalent grade in the UGC seven point scale and consistently good academic record. He also requires to serve at least thirteen years as a Deputy Librarian in a university or eighteen years experience as a College Librarian.

In the present case, the petitioner had a Master Degree in Arabic Science though he subsequently, in the year 1994, obtained a Master Degree in Library Science from an open university. The petitioner had no required experience and as such, he was not considered for the post of Librarian.

It has further been submitted by Mr. Chakraborty that the petitioner, about three years after his retirement, challenged the order of the Registrar dated January 29, 2014. He did not also make a representation before the concerned authorities for giving him the benefit the said order.

Mr. Galib, learned advocate appearing for the State submits that the petitioner should not be allowed to change his stance at the time of final hearing without affording an opportunity to the State to deal with his changed stance. Nothing has been pleaded in this writ petition to suggest that the petitioner was not given proper pay scale of Assistant Librarian. He submits that the petitioner challenged the order of the Registrar by filing a contempt application. A Co-ordinate Bench on that application held that such a challenge could not be thrown by a contempt application. The petitioner was granted liberty by the learned Judge to file a fresh writ petition to challenge the said order of the Registrar. The petitioner chose not to file any writ petition to challenge that order.

Therefore, the petitioner cannot maintain his prayer before this Court.

It appears that the petitioner was appointed as a Librarian at Calcutta Madrasha in the year 1990. His confirmation letter also suggests that he was confirmed as a Librarian of the said college. It, however, appears from the order dated October 8, 2013 issued by the Higher Education Department that the petitioner was appointed against a sanctioned post of Assistant Librarian but his appointment letter erroneously mentioned the post as “Librarian.”

As on January 31, 2014 there was no sanctioned post of Librarian at Aliah University. This fact would appear from the said order dated January 29, 2014 passed by the Registrar. The petitioner retired in the year 2015.

The petitioner could not be appointed to the post of Librarian without following the eligibility criteria as laid down by University Grant Commission since he was never appointed to the post of Deputy Librarian at a University or Deputy Librarian of a College.

I also cannot permit the petitioner to agitate the issue of non-payment of pay scale of Assistant Librarian at this juncture. The petitioner has neither pleaded nor prayed for anything in this regard in this writ petition. The petitioner throughout his career accepted the pay-scale provided to him as an Assistant Librarian and accordingly received all

retiral dues. After about eight years from retirement, the petitioner should not be allowed to contend that during his service career, he was deprived from the pay-scale of Assistant Librarian.

I, however, grant liberty upon the petitioner to make a representation within one month from date before the appropriate authority for giving the benefit of the last paragraph of the impugned order dated January 29, 2004 issued by the Registrar. If such representation is filed, the same shall be considered in accordance with law.

Accordingly, **WPA 14734 of 2018** is dismissed.

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.)