

WPA 21875 of 2022
Mrs. Nipamanjari Bose & Anr.
Vs.
State of West Bengal & Ors.

Mr. Barun Kumar Samanta
...for the Petitioners
Mr. Swapan Kr. Datta,
Mr. Dipankar Das Gupta
...for the State
Mr. Amitava Chaudhuri,
Mr. N. Roy
...for the UNiversity

In this writ petition, the petitioners have challenged an order dated September 7, 2022, passed by the Special Secretary to the Government of West Bengal, Animal Resources Development Department. By the said order, the Special Secretary rejected the case of the petitioners for their absorption in the university as regular employee.

It is not in dispute that petitioner no. 1 has been working as a Junior Clerk and petitioner no. 2 has been working as a Technical Assistant under a project namely, “All India Co-ordinated Research Project” undertaken by the West Bengal University of Animal & Fishery Sciences (in short ‘the university’) on “Goat Improvement”.

The petitioners claimed regularisation in terms of a Government Order No. 6059F-June 25, 1979 issued by the State. The petitioners submit that the Executive Council of the university adopted a resolution for regularisation of service of the petitioners and thereafter necessary approval was sought from the State. By a communication dated February 25, 2022, the State sought certain clarifications from the Registrar of the

university. The university gave a reply to the communication dated March 7, 2022. Again by a letter dated June 2, 2022, the State raised some additional queries. At this juncture, alleging inaction on the part of the university to address their queries, the writ petitioners approached this Court by filing a writ petition, WPA 12889 of 2022 (Mrs. Nipamanjari Bose & Anr. Vs. The State of West Bengal & Ors.). The said writ petition was disposed of with the following orders :-

“In that view of the matter, I deem it fit and proper to dispose of this writ petition on the following terms:

- a.) Within one month from the date of this order the University will furnish the required information in response to the said letter dated 5th June, 2022 to the Special Secretary, Animal Husbandry, Government of West Bengal.*
- b.) Upon receiving such information from the University, the Special Secretary, Government of West Bengal Animal Resource Department will take a decision within a period of one month regarding the regularization of service of the petitioners. The decision should be communicated to the petitioners within one week thereafter.*
- c.) The Special Secretary Government of West Bengal will be at liberty to hear the University as well as the petitioners before arriving at his decision.”*

In terms of the said order dated July 6, 2022, the case of the petitioners was taken up by the Special Secretary, Government of West Bengal and by the order impugned dated September 7, 2022, the said authority observed as follows :-

“Consequent upon hearing the submissions of the petitioners and the University officials and on perusal of all records, after careful consideration, the undersigned has arrived at a decision that since there is no specific provision in the University Statutes or elsewhere for direct absorption against sanctioned vacant posts of project staff appointed on a purely temporary basis under a specific project and since the principal funding agency i.e. the ICAR-CIRG has already stopped funding the said project based posts and since the appointment and scale revision of the petitioners have been done by the University Authority without any approval from the State Govt., the proposal of the University for regularization/absorption of the incumbents who had been engaged on a purely temporary basis cannot be granted.

Absorption of temporary engaged staff in regular sanctioned posts goes contrary to the Supreme Court’s landmark judgment in the Umadevi Case which had, inter alia, emphasized that any recruitment exercise in Government bodies/Government aided bodies would have to be a transparent one, which would grant equal opportunity to all potential applicants through a competitive selection system open to all.”

In the light of the above, the matter is disposed off.”

It has been submitted by the learned advocate

appearing for the petitioners that the petitioners have been working in their respective posts since 2001. Petitioner no. 1 seeks her absorption to the post of Junior Clerk while the petitioner no. 2 wants to be absorbed as a Technical Assistant. He submits that both the petitioners have requisite qualifications for the said posts and in view of the prolonged service rendered by them, they should be absorbed as regular employees of the university.

Mr. Amitava Chaudhuri, learned advocate appearing for the University on the other hand submits that the project in question has already been wound up. The said project was funded by the Indian Council of Agricultural Research and by the State Government jointly in the ratio of 75 : 25. However, the Indian Council of Agricultural Research gradually reduced its budgetary allocation which prompted the university to close the project. Accordingly by a resolution dated April 10, 2023, the Executive Council of the university ultimately, decided to close the project. It was further decided that the project staff, whose service was co-terminus with the project, would be discontinued.

With regard to the claim of absorption of the petitioners, it has been pointed out by Mr. Chaudhuri that there is no Statute or Regulation which permits absorption of the petitioners as regular employees in the university. He, however, submits that the said two posts

namely, Junior Clerk and Technical Assistant were advertised on December 8, 2008 along with some other posts. The said selection process, however, could not be proceeded any further for want of approval from the State.

He submits that since as on date, no permission has been granted by the State to fill up the said posts and consequently, the university is not in a position to take any further steps in this regard.

Mr. Swapan Kr. Datta, learned advocate appearing for the State on the other hand submits that neither the West Bengal University of Animal and Fishery Science Act, 1995 nor the Statute of the university provides for regularisation of project staff. By referring to some resolutions of the university regarding closure of the project in question, Mr. Datta submits that number of casual workers directly employed by the university, are in the queue seeking their absorption. The petitioners are not employed by the university. They are project workers, appointed purely on temporary basis. As soon as the project is wound up, they have no right to continue their services since their services are co-terminus with the project.

Mr. Datta further submits that without adhering to the regulation and rules, no one can be absorbed.

To decide the issue involved in this writ petition, it is necessary to take note of Clause 105 (4) (ii) of the First

Statutes of The West Bengal University of Animal & Fishery Sciences. The relevant part of the Statute 105 is quoted below :-

“105.(4) (ii) Any employee appointed from the approved panel reverted to his original post or discharged for want of vacancy on winding up of the scheme, fully or partially, shall be given priority to the next vacancy.”

In my view, the aforesaid Statute 105.(4) (ii) makes it clear that if any employee is discharged for want of vacancy on winding up of any scheme, whether fully or partially, he shall be given priority to the available vacancies. I accept the stand of the university that Statute 105.(4)(ii) does not confer any right to regularisation but the same provides for giving priority to a project employee in the regular appointment under the university.

The undeniable fact remains that the petitioners have been working since 2001 in their respective posts and the project in question has been decided to be wound up by the resolution of the university on April 10, 2023. Therefore, the case of the petitioners are covered by Statute 105.(4)(ii) of the First Statute of the university. It is also admitted by the university that the petitioner no. 1 has the requisite qualification for the post of Junior Clerk while the petitioner no. 2 possess the qualification of a Technical Assistant in terms of the advertisement dated

December 8, 2008, published by the university.

In that view of the matter, this writ petition is disposed of with a direction upon the university to allow both the petitioners to participate in the selection process for the aforesaid two posts as and when it proceeds to fill up the said two posts condoning the age bar of the writ petitioners provided they fulfill the other conditions for appointment. The petitioners shall also be given priority in the selection process over the other aspiring candidates in accordance with law.

It has been submitted by the learned advocate appearing for the petitioners that the petitioners have not been paid any salary for the last year. The university will consider the payment of last one-year salary of the petitioners in accordance with law within one month from the date of communication of this order. .

The order impugned dated September 7, 2022 passed by the Special Secretary, Animal Resources Development Department, Govt. of West Bengal is set aside.

WPA 21875 of 2022 is 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.)