

18.8.2023

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WPA 26195 of 2018

Dr. Rimi Paul

Vs.

The State of West Bengal & Ors.

Mr. Ekramul Bari

Mr. Siddhartha Sankar Mondal

Ms. Arunima Das

Sk. Imtiaz Uddin

... For the petitioner.

Mr. Mijanul Kabir

... For the University.

The State is not represented.

No submission has been advanced on behalf of the University.

It is the grievance of the petitioner that she joined Aliah University on January 28, 2016 as an Assistant Professor in Electrical Engineering Department. It is not in dispute that before joining Aliah University, the petitioner worked for about six years as an Assistant Professor in Electrical Engineering at University Institute of Technology under the Burdwan University.

The petitioner made a representation before Aliah University for counting her past service and consequential benefits. Such prayer was not favourably considered by the university on the ground that the petitioner applied for the post as a direct recruit and her application was not made through proper channel.

The relevant parts of the University's Further Statutes relating to counting of past service are quoted below:

“65. (1) The qualifications of the Teachers of the University shall be as specified in the Schedule-II to these Statutes and as may be prescribed and amended by the University/UGC/RUSA/State Government.

(2) Previous service, whether national or international, without any break as Assistant Professor, Associate Professor or Professor or equivalent in a University, College, National Laboratories or other scientific Organizations such as CSIR, ICAR, DRDO, UGC, ICSSR, ICHR may be counted for placement of a teacher as Assistant Professor, Associate Professor or Professor provided that :-

- (i) the essential qualifications of the post held were not lower than the prescribed qualifications;
- (ii) the post is/was in an equivalent grade as the post of Assistant Professor, Associate Professor or Professor;
- (iii) the candidate for direct recruitment has applied through proper channel only;
- (iv) the post was filled in accordance with the prescribed selection procedure as laid down in the Statutes for such appointments;

- (v) the appointment was against permanent post and not an ad hoc or Part-Time or in a leave vacancy; and
- (vi) provided further that doctoral or post-doctoral research experience shall not be considered while counting the past service.”

No doubt Statute 65 (iii) under the Further Statutes, 2016 of Aliah University, provides that for counting past services, a candidate should apply through proper channel.

In the current context, it appears that the petitioner has duly submitted a ‘No Objection Certificate’ from Electrical Engineering Department at University Institute of Technology to the Registrar of Aliah University. Relevant part of the said certificate reads as follows:

“This is to state that Ms. Rimi Paul has been working in this Institute as an Assistant Professor in Electrical Engineering since 20.08.2010.

This institute has no objection in releasing her for taking up the post of Assistant Professor at your institution, if selected, subject to fulfillment of the requirements of her bond of contract with the UIT & also the regulations of AICTE as applicable.

On the basis of the 'No Objection Certificate', the petitioner was allowed to participate in the selection process and ultimately she was selected for the post in question.

Statute 65 (2) provides for a substantial right to recognise past service subject to fulfilment of certain conditions. Statute 65 (2)(iii) pertains exclusively to a procedural part. The substantive right to count past service should not be denied on the ground of lapses in procedure as contemplated under Statute 65(2) (iii). The Statute 65(2) (iii) has been engrafted only to ensure that an employee makes her application for direct recruitment before the University with the knowledge and consent from her erstwhile employer.

In the present case, the petitioner has filed a non-objection certificate from her erstwhile employer and in my view, said no-objection certificate suffices as a substantial compliance with Statute 65(2) (iii). The University's Further Statute 65 does not define the term "through proper channel" and in absence of any specific definition or prescribed procedure, it has to be construed that a candidate for direct recruitment should apply with the knowledge and consent from his former employer.

In that view of the matter, the order dated May 30, 2018 is set aside.

The University shall grant the benefit of past services to the petitioner if the petitioner is otherwise eligible for such benefit in terms of Statutes 65 of the Further Statutes, 2016 of Aliah University,

The University should complete such exercise within a period of three months from the date of communication of this order.

Accordingly, **WPA 26195 of 2018** is disposed of.

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

(Kausik Chanda, J.)