

**101**  
**26.02.2024**  
**Ct. No. 11**  
**Jayanta**

**FMA 2097 of 2016**  
**with**  
**IA No. CAN No. 1 of 2018 (Old No. CAN 1638 of 2018)**

**Dr. Asit Kumar Sarkar**  
**vs**  
**Bidhan Chandra Krishi Viswavidyalaya & Ors.**

Mr. Debdutta Basu  
Mr. Sudip Sarkar

..... For the petitioner.

Mr. Prabir Dasgupta  
Ms. Lina Majumder

..... For the University.

For better perception of the disputes involved in the appeal, in our earlier order, we directed Dr. Biswas, who is now officiating in the post of Registrar of the Bidhan Chandra Krishi Viswavidyalaya (hereinafter referred to as the University), to be present in Court and to assist us in rendering complete and effective justice.

We invited the parties to argue the matter on merits. Hearing is concluded and as such, further appearance of Dr. Biswas is not no more required. Personal appearance of Dr. Biswas is dispensed with.

In deference to our direction, Dr. Biswas has placed before us the reports of the first, second and third screening committee along with the photocopies thereof. The photocopies of those documents are retained with record and the original reports of those three screening committee are returned to Dr. Biswas.

Propriety of the order dated 1<sup>st</sup> February, 2016 passed in WP. 2970 (W) 2014 has been called in question in this intra

court appeal. It is a third round of litigation and there is a chequered history in this case. The landscape of the background facts as required to be imprinted for effecting adjudication of this appeal is as follows:

- i. The petitioner/appellant (here in after referred to as the appellant), who happened to be the professor of Department of Agronomy of the University, retired from service on 28<sup>th</sup> February, 2005 on attaining the age of superannuation. On 18<sup>th</sup> March, 2005, he presented an application before the competent authority of the University (hereinafter, the competent authority) seeking his re-employment in the post as per the extant rules. Despite receipt of such application, the same was left unattended. As such, the appellant was constrained to knock on the door of this Court by preferring a writ petition being WP 8289(W) 2007. In the affidavit-in-opposition used by the respondent to the writ petition, it was revealed that by passing an order dated March 9th, 2005, the appellant's prayer for re-employment was turned down.
- ii. Taking leave from the court granted in W.P. no. 8289(w) of 2007, the appellant assailed the decision of the competent authority and the report of the screening committee in a writ petition *vide*. WP No. 3025 (W) 2009, which was disposed of by an order dated 16<sup>th</sup> September, 2009, *inter alia*, holding that by passing a non-speaking order, the appellant's prayer of re-employment was turned down and accordingly, the decision of the competent authority was quashed with a direction to examine the appellant's prayer for re-employment afresh.

- iii. Resultantly, another screening committee was constituted and the second screening committee also refused to make recommendation for re-employment of the appellant in the post. Pursuant thereto, the competent authority also rejected the appellant's prayer for re-employment. The decision taken by the competent authority and the report of the second screening committee were challenged by the appellant by instituting another writ petition being WP 8359 (W) 2011, which was disposed of by an order dated 1<sup>st</sup> July, 2011 holding, *inter alia*, that the same person was part of the member of the first as well as of the second screening committee. For this reason, the said decision and the report of the second screening committee were set aside and the writ petition was disposed of directing the competent authority to take decision on the appellant's prayer for re-employment afresh.
- iv. Pursuant thereto, third screening committee was constituted and upon consideration of all the documents, report etc. placed by the appellant, the third screening committee also did not recommend the name of the appellant for re-employment. Accordingly, the competent authority by taking a decision on 29<sup>th</sup> August, 2013 refused to entertain the application for re-employment of the petitioner. The decision of the University taken on 29<sup>th</sup> August, 2013 and the report of the third screening committee

were challenged in the writ petition being WP 2970 (W) 2014, which was dismissed by an order dated 1<sup>st</sup> February, 2016. The order dated 1<sup>st</sup> February, 2016 is under challenge in this intra-court appeal.

Mr. Basu, learned advocate appearing for the appellant contends that after retirement the appellant rendered his service for almost eighteen months to give proper guidance to the students in pursuing their Ph.D. courses which would be explicit from the certificates and various other documents yet the competent authority in a pre-determined and pre-conceived manner has refused to grant re-employment to the appellant in the post and even, the appellant has not been paid any single penny for rendering his service after his superannuation. He next contends that many similarly situated candidates and even lesser talented candidates have been re-employed but by adopting a coarse form of discriminatory and hostile attitude towards the appellant, the competent has negated the appellant's prayer for re-employment.

Mr. Das Gupta, learned advocate assisted by Ms. Majumder, learned advocate appearing for the University vehemently opposes the contention canvassed by Mr. Dutta. He contends that in the guise of giving guidance to one student to pursue his Ph.D. course, the appellant desperately made attempts to secure his re-employment but the appellant did not fulfill the essential criteria for being re-employed in the post. He asserts that by passing reasoned order, the competent authority has negated the appellant's claim for re-employment and the learned Single Bench has accepted such rejection by

passing a speaking order and hence, there is no scope before this Court to interfere with the order impugned in the appeal.

Heard the learned advocates. Perused the materials on record.

From the circular vide. no. 3276/Edn dated 27<sup>th</sup> February, 1984, it is explicit that the stand of the Education Department, Government of West Bengal is that the re-employment would be given only in exceptional case where highly talented teacher cannot be immediately replaced and service of such teacher is indispensable for any research program. As per the extant executive fiat, to extend the benefit of re-employment, the prescribed procedure is required to be strictly followed. The circular dated 16<sup>th</sup> November, 1979 prescribes the procedure to be followed in extending the benefits of re-employment which is as follows:

- a) that the teacher seeking re-employment is to send a self-assessment report indicating his/her academic activities particularly during last five year preceding the date of his/her superannuation, supported by relevant documents;
- b) On receipt of such document, University concerned shall form a screening committee consisting of some experts in the field of specialization of the teacher;
- c) The screening committee upon scrutiny of the performance of the teacher concerned as a teacher and/or the quality of research papers in books produced by him, make necessary recommendation justifying his/her re-employment.

Subsequently, two circulars dated 07.12.2006 and 18.05.2009 were issued by the Education Department concerned dealing with issue of extending the benefits of re-employment to the superannuated teachers which also prescribes the same procedure for selecting the deserved and/or suitable candidate for such purpose.

The third screening committee upon scrutiny of the documents submitted by the appellants observed as follows:

1. *'Re-employment of a teacher beyond 60 years can be granted in exceptional cases where a highly talented teacher cannot be immediately replaced or continued availability of his service is found indispensable for research programmed in existence;*
2. *The research papers of Dr. Sarkar during the period of assessment were not published in reputed journal.*
3. *He did not guide any Ph. D. student for successful completion and awarding Degree during assessment period.*
4. *His activities in teaching, research and extension during the period of assessment do not substantiate his claim for re-employment as a talented teacher.'*

The appellant guided one student namely, Prodyut Chandra in his research work but ultimately, Mr. Chandra completed his research work under the guidance of another professor. In the affidavit-in-opposition used by the University before the learned Single Bench, the University took the stand

that there is no rule and/or norms to make payment to any teacher after his superannuation in case he continues to guide any student in his research work. The appellant could not place any plausible evidence to justify his claim for payment for giving guidance to any student after his superannuation.

It is condign to note that on the basis of such report of the third screening committee, the competent authority rejected the appellant's prayer for re-employment. The third screening committee consisted of the experts in the field of specialization of the appellant. The learned Single Judge has rightly observed that the Court cannot sit in appeal over the decision taken by the screening committee. We do not find any illegality, irrationality and unreasonableness either in the decision making process followed by the competent authority or in the decision of the competent authority whereby the appellant's prayer for re-employment was negated and also in the report of the third screening committee which could have prompted the learned Judge to exercise his discretion in favour of the appellant. The learned single judge after considering all these aspects has rightly refused to decide the writ petition in favour of the appellant. We do not find in error, least to say any patent error in the decision of the competent authority, in the report of the third screening committee and also in the order impugned in the appeal warranting interference of this court.

In view of the foregoing analysis, the appeal and its connected application are dismissed.

There shall, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

**(Partha Sarathi Chatterjee,J.)    (Tapabrata Chakraborty,J.)**