

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya

WPA 5808 of 2020

Prof. Dr. Sruti Bandopadhyay

vs

Visva-Bharati & Ors.

For the Petitioner : Mr. Pushpal Chakraborty, Adv.

Mr. Prisanka Ganguly, Adv.

For the UGC : Mr. Anil Kumar Gupta, Adv.

For the University : Mr. Soumya Majumder, Adv.
Mr. Victor Chatterjee, Adv.
Mr. Barnamoy Basak, Adv.

Last Heard on : 21.02.2024

Delivered on : 19.03.2024

Moushumi Bhattacharya, J.

1. The petitioner is a Professor of Manipuri Dance in Sangit Bhavan at Visva-Bharati, Santiniketan, where the petitioner joined in the said post on 17.1.2014. This is also the date of appointment of the petitioner as a Professor in Visva-Bharati / the respondent no. 1 University.

2. The petitioner is aggrieved by an agenda item of the Executive Council of the University dated 10.1.2020 and an Office Order dated 12.6.2020 by which the University took a decision to recover the alleged payment made to the petitioner from the date of her joining the University.
3. According to learned counsel appearing for the petitioner, the impugned agenda item of the meeting of the Executive Council is in breach of the principles of natural justice and contrary to the representation made by the University under Clause 6.4.1 of the UGC Regulations whereby the petitioner was allowed 4 additional increments on her basic pay on and from 1.4.2014. Counsel submits that the recovery from the petitioner of excess payment made for a period in excess of 5 years is contrary to settled judicial pronouncements.
4. Learned counsel appearing for the respondent University submits that the petitioner does not have a legal right to get additional increments and that the petitioner's representation for additional increments was based on personal convenience and is contrary to the UGC Regulations. Counsel submits that there was no inducement on the part of the University which could have had a bearing on the petitioner joining the University. It is submitted that the petitioner does not have a legally enforceable right for grant of the 4 additional increments and further that the terms of appointment mentions applicability of the UGC Regulations for the purpose of pay fixation.
5. The admitted dates which resulted in filing of the present writ petitioner are as follows.
6. The petitioner was given the offer of appointment on 17.1.2014 for the post of Professor of Manipuri Dance in the RSDD Department, Sangit Bhavan,

Visva-Bharati in the pay band of Rs. 37,400 – 67,000 and a probation period of 1 year. The petitioner requested for 5 increments on the petitioner's basic pay from the date of joining on account of financial burden which the petitioner would have to incur in having an independent establishment in Santiniketan. The petitioner's request was made by a letter dated 10.2.2014. The Executive Council of the University wrote to the Selection Committee Members on 24.2.2014 with reference to the petitioner's request for 5 additional increments. The petitioner thereafter joined the University on 1.4.2014 on probation and with a release order from Rabindra Bharati University where the petitioner was previously employed. The University issued a joining Circular to the petitioner on 3.4.2014. The petitioner was thereafter given 4 additional increments in May, 2014 and the petitioner's service was confirmed with effect from 1.4.2014. Rabindra Bharati University released the petitioner on 31.12.2015 with effect from 1.4.2014.

7. The impugned Office Order was issued by the Executive Council of the University on 12.6.2020 containing a resolution to withdraw the 4 additional increments granted to the petitioner from her date of joining and to recover the additional payment made to the petitioner.

8. The events after filing of the writ petition are also relevant. The writ petition was filed on 3.7.2020. On 28.7.2020, the petitioner was informed that an amount of Rs. 3,29,138/- is recoverable from the petitioner and will be recovered from the petitioner's salary of July, 2020 in 36 equal monthly installments. On 3.8.2020, a Co-ordinate Bench restrained the University from recovering any amount in terms of the communication and that the petitioner

will be permitted to enjoy her salary without claiming any equity from the same. The University challenged the order and the appeal was disposed of by the Division Bench on 24.12.2020 without interfering with the Order of the First Court. The Division Bench also directed the University to pay Rs. 2,30,258/- and the differential amount (the disputed amount) for every month which was to be deposited in a separate Bank account opened in the name of the University. The Division Bench noted that the said direction was passed upon the Division Bench recording that the petitioner's admissible dues were not released by the University. The Division Bench also directed payment of arrear salary from June, 2020 within 31.12.2020.

9. The petitioner filed contempt proceedings in view of the University's violation of the above directions. The contempt proceedings were disposed of by an order dated 5.3.2021 recording that the petitioner's salary for August, 2020 had been paid by the University.

10. The admitted facts narrated above would show that the impugned Office Order dated 12.6.2020 referring to the meeting of the Karma Samiti / Executive Council held on 10.6.2020 deciding to recover the excess payment made to the petitioner was taken 6 years after the petitioner joined the post of Professor, Manipuri Dance, Sangit Bhavan of the University. What is striking about the impugned Office Order as well as the decision of the Executive Council taken at this meeting is the complete go-by to the principles of natural justice.

11. The fact that the petitioner was all along kept in the dark about the meeting of the Executive Council held on 10.6.2020 and the impugned Office

Order pursuant to such meeting dated 12.6.2020 would be evident from the letters written by the petitioner to all the functionaries of the University including the Registrar of the University (acting), the Financial Officer of the University as well as the Joint Registrar (Accounts) on the same day i.e. 15.6.2020 expressing her shock and surprise at the impugned decision.

12. The petitioner reiterates in these letters that the petitioner did not have any intimation with regard to the impugned decision or the reason behind the decision. The petitioner's letter to the Registrar also underscores the fact that the petitioner was not given a copy of the Office Order with regard to the withdrawal of the 4 additional increments granted to the petitioner in 2014.

13. Even if the University's argument of the petitioner being bound by the UGC Rules and pay-scales is to be accepted as correct, there is no credible defence forthcoming from the University as to why the University waited for 6 long years before it realised its alleged mistake of granting the 4 additional increments to the petitioner and thereafter decided to correct the course by recovering the excess payment made to the petitioner.

14. Contrary to the submissions made on behalf of the University, the joining Circular dated 3.4.2014 does not contain any specific reference to the UGC Rules or that the 4 additional increments were being given to the petitioner on a probational basis or otherwise. It is evident that the Executive Council or the deciding authority of the University exercised their discretion in May, 2014 to grant the 4 additional increments to the petitioner and thereafter confirmed the petitioner's service on 4.4.2015. The Office Order confirming the service of the petitioner also does not refer to the 4 additional increments given to the

petitioner in 2014 or that the increments were liable to be recovered at any point of time in future.

15. The impugned Office Order is cryptic to the core without even a basis for the decision to recover the alleged excess payment made to the petitioner from her date of joining. There is in fact no reference to the UGC Rules pay-scales in the impugned Office Order. The fact that the Executive Council met after 6 years to take such a decision and that too on a totally unilateral basis without seeking a response from the petitioner or giving an opportunity to the petitioner to make a comprehensive representation, falls foul of all the established rules of fair play in action.

16. It is inconsequential whether the petitioner was induced into accepting the post offered by the University by reason of the 4 additional increments or whether the offer of the University culminating into a contract refers to any additional increments. What is material is that the petitioner was allowed to serve the University for 6 long years after having been granted 4 additional increments and was put in a non-negotiable position all of a sudden without notice by the University's decision to deduct the excess payments from the petitioner's salary in equal monthly installments. The action of the University constrained the petitioner to come to the Court and invoke the extraordinary writ jurisdiction of the High Court under Article 226 of the Constitution of India since the petitioner was virtually left with no option to seek the Court's protection for the highhandedness of the University.

17. Even if it is argued that the petitioner was granted 4 additional increments by mistake, the University was liable for the mistake and could not

unilaterally seek to damage control the slip by way of the unilateral and cryptic Office Order. It certainly does not behove the University to now take a stand that the petitioner does not have a legal right to get the additional increments. This stand after 6 years is not acceptable and should be rejected at the very outset. Civil consequences resulting from breach of principles of natural justice require an even more prompt response from the Court. The facts of the present case call for such a response since the University's decision to recover the additional increments paid to the petitioner 6 years back is bound to have a bearing on the petitioner's life and livelihood under Article 21 of the Constitution of India.

18. In *State of Punjab vs. Rafiq Masih; (2015) 4 SCC 334*, the Supreme Court outlines the situations where recovery would be impermissible in law and includes recovery from employees where the excess payment was made in excess of 5 years before the order of recovery was issued. The last of these situations also include other cases where the Court deems that recovery would be inequitable, harsh or arbitrary and would outweigh the equitable balance of the employer's right to recover. The Supreme Court came to a similar decision in *Thomas Daniel vs. State of Kerala; 2022 SCC OnLine SC 536* and held that the attempt to recover increments after 10 years of the petitioner's retirement is unjustified.

19. The Supreme Court in *M/s. Motilal Padampat Sugar Mills Co. Ltd. vs. State of Uttar Pradesh; (1979) 2 SCC 409*, the leading case on promissory estoppels, held that where the Government makes a promise knowing that the promise would be acted upon by the promisee and the promisee alters his/her

position, the promise would be enforceable against the Government at the instance of the promisee. The doctrine of promissory estoppel again found its place in the Supreme Court judgment in *State of Jharkhand vs. Brahmputra Metallics Ltd.*; 2020 SCC OnLine SC 968 where the Supreme Court drew a distinction between the doctrine of promissory estoppel and legitimate expectation and laid emphasis on the fairness aspect of the matter particularly in the face of abuse of power.

20. In the present case, the doctrine of promissory estoppel may not be as relevant in the face of the contract entered into between the petitioner and the University and the petitioner's appointment on 3.4.2014. In *S.L. Kapoor vs. Jagmohan*; (1980) 4 SCC 379, the Supreme Court held that even an administrative order which involves civil consequences must be consistent with the rules of natural justice and further held that "civil consequences" would cover infraction of not only property/personal rights but of civil liberties, material deprivations and non-pecuniary damages: *Mohinder Singh Gill v. Chief Election Commissioner, New Delhi*; (1978) 1 SCC 405. There is little doubt that the impugned Office Order directing recovery of the alleged excess payment made to the petitioner involves civil consequences in the widest possible sense.

21. The UGC Regulation on minimum qualification for appointment of Teachers and Other Academic Staffs in University and Colleges and Measures of Maintenance Standard in Higher Education, 2010, published in the official Gazette on 30.6.2010, has also been relied upon by the parties. Regulation 6.4.11 gives a discretion on the appropriate authority of the concerned University based on the recommendations of the selection committee while

negotiating the award of additional increments for candidates. who join as Associate Professors or Professors. It is evident from the records that additional increments were granted to the petitioner in May, 2014 on the selection committee of the University exercising its discretion in that respect. Significantly, the University has not produced records to show that the discretion exercised by it in May, 2014 should be recalled or reversed after 6 years in June, 2020.

22. *B.L. Sreedhar vs. K.M. Munireddy (Dead); (2003) 2 SCC 355* defined the principle of estoppel where a person is precluded from showing the existence of a particular state of facts as a consequence of some previous act or statement to which that person is a party. The Supreme Court further explained that the relationship between the parties must also be such that the imputed truth of the statement is a necessary step in the accrual of the cause of action. *Securities and Exchange Board of India vs. Kanaiyalal Baldevbhai Patel; (2017) 15 SCC 1* defined “inducement” as the act of enticing or persuading another person to take a certain course of action. In the facts of the present case, it is possible that the petitioner would not have left her position in Rabindra Bharati University had the 4 additional increments been refused by the respondent no. 1 University. Although the writ jurisdiction of this Court does not permit speculation or presumptions as to the possible motives of the petitioner leaving Rabindra Bharati University and joining of the respondent no. 1 Visva-Bharati University, there is an element of enticement in joining the latter by reason of the 4 additional increments being granted in May, 2014. *Kanaiyalal Baldevbhai Patel* in fact dwelt on the wider meaning of inducement

as the intention behind the representation/ misrepresentation where it was not necessary to prove or establish the element of dishonesty and only an inference was sufficient to show that the person induced would not have acted in a manner but for the inducement.

23. The above reasons are significant issues which strengthen the Court's view on the impugned Office Order and the decision taken by the Executive Council being in patent breach of the principles of natural justice. The petitioner continued to work as a Professor in the respondent no. 1 University for more than 6 years after being granted the 4 additional increments. The action of the University in suddenly deciding to recover the alleged excess payments made to the petitioner for more than 6 years by way of an opaque and cryptic order - certainly calls for interference.

24. WPA 5808 of 2020 is accordingly allowed and disposed of by cancelling Agenda Item 13 of the Meeting of the Executive Council dated 10.6.2020 and the Office Order dated 12.6.2020 issued pursuant to the Meeting. The University shall refund any amounts recovered from the petitioner's salary from June, 2020 till date, whether on a monthly basis or otherwise, within 6 weeks from the date of this judgment. The respondent no. 1 University shall also continue to pay the petitioner's salary according to the appropriate pay scale which the petitioner is entitled to without disturbing the pay band/scale in any manner by reason of the impugned decision of the Executive Council or the Office Order.

Later

Considering the fact that the University took the impugned action six long years after the increments were granted to the petitioner and that too without giving an opportunity of hearing to the petitioner, the University's prayer for stay is considered and refused.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)