

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.7740 of 2022

TARAK BHATTACHARYA

-VERSUS-

THE STATE OF WEST BENGAL AND OTHERS

For the petitioner : Mr. Manas Kumar Ghosh, Adv.,
Ms. Susmita Dey (Basu), Adv.

For respondent nos.3,4 to 5 : Mr. Sharanya Chatterjee, Adv.,
Mr. Ayaskanta Ghosh, Adv.

Hearing concluded on : 04.01.2024

Judgment on : 08.01.2024

Kausik Chanda, J.:-

The petitioner had retired from service in the year 2022 as a Laboratory Attendant in the Geology Department at Trivenidevi Bhalotia College, Paschim Burdwan.

2. The petitioner, by way of filing this writ petition, seeks regularisation of his service.

3. Learned advocate appearing for the petitioner submits that though the petitioner has retired from service, he is entitled to get pension and other retiral dues without any arrear as a consequence of his post-retirement service regularisation.

4. It is an admitted fact that on February 6, 1983, the petitioner was appointed as a part-time Laboratory Attendant (Day Section) on a temporary basis on a monthly remuneration of Rs.40.

5. Subsequently, on July 1, 1984, the petitioner was appointed as a full-time Laboratory Attendant in the Geology Department. The remuneration of the petitioner was fixed at Rs.300/- per month.

6. Significantly, two other employees namely, Kshamapada Deogharia (respondent no.6) and Janndev Das (respondent no.7) were also given full-time appointments along with the petitioner in the General Section and the Department of Physiology, respectively.

7. The College by a reasoned order dated March 28, 2022, rejected the case of the petitioner for regularisation of his service. By filing this writ petition, the petitioner has challenged the said order.

8. It has been vehemently argued by the learned advocate appearing for the petitioner that while the College regularised the service of respondent nos.6 and 7, there was no ground whatsoever to deny the similar benefit to the petitioner. The petitioner has been discriminated by not regularising his service.

9. Learned advocate appearing for the petitioner submits that the petitioner's service is liable to be regularised since he had the requisite qualification for the post and he continued in service for more than ten years against a sanctioned post. The appointment of the petitioner cannot be said to be illegal though it may be termed as an "irregular appointment". It has further been submitted that the petitioner's service may be regularised even after his retirement and such regularisation shall entail pensionary benefits and other retiral dues without any arrear. In support of his submission, the learned advocate appearing for the petitioner has relied upon the judgment reported at **(2006) 4 SCC 1 (Secretary, State of Karnataka v. Umadevi (3))** (paragraph 53), and **(2014) 7 SCC 223 (State of Jharkhand v. Kamal Prasad)**.

10. Learned advocate for the College, on the other hand, submits that the petitioner was not appointed against a sanctioned post and as such, the service of the petitioner could not be regularised. It has been submitted that the petitioner has no right to regularisation against a post which is not sanctioned.

11. It appears from the document disclosed by the College in its affidavit-in-opposition that post of Laboratory Attendant in the Geology Department was not sanctioned by the State.

12. It cannot be said that appointment of the petitioner was a mere irregular appointment when the petitioner was not appointed against a sanctioned post and without following the applicable recruitment rules. The petitioner in the given facts cannot claim regularisation of his service in view of the paragraph 53 of the judgment rendered in **Umadevi** case.

13. The law with regard to the regularisation of ad-hoc, illegal appointments has been negatively decided by the Supreme Court in a series of consistent judgments. [**See:** (2010) 5 SCC 475 (*Mohd. Ashif v. State of Bihar*), (2001) 1 SCC 37 (*Subedar Singh v. Distt. Judge, Mirzapur*) and (2023) 3 SCC 639 (*Vibhuti Shankar Pandey v. State of Madhya Pradesh*).]

14. I am also of the view that the petitioner cannot claim a negative equality on the ground that some other employees of the College have been regularised by the College though they were not appointed against any sanctioned post.

15. Accordingly, W.P.A. No.7740 of 2022 is dismissed.

16. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)