

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Heard on: 18.09.2024

Delivered on: 18.09.2024

CORAM:

The Hon'ble Mr. Justice Harish Tandon
and
The Hon'ble Mr. Justice Prasenjit Biswas

M.A.T. of 2005 of 2023
With
IA No. CAN 1 of 20024
With
I.A. No.CAN 2 of 2024

Dr. Mohammadi Tarannum
Vs.
State of West Bengal & Ors.

Appearance:-

Mr. Kallol Bose
Mr. Suman Banerjee
Mr. Ayusman Dasgupta

.....For the Appellant

Mr. Amitava Chaudhuri
Mr. N. Roy

...for the State

Mr. Somnath Ganguli
Mr. Tapas Kumar Dey

...for the respondent no. 2

Mr. Pulak Ranjan Mandal
Ms. Bandana Mandal
Mr. Subhrangsu Panda

...for the respondent no. 3

Mr. Anil Kumar Gupta

...for the UGC

JUDGMENT

(Judgment of the Court was delivered by Harish Tandon, J.)

1. The facts, as unfolded, are undisputed and for the purpose of determining the point urged before us, the salient features are required to be adumbrated.
2. Admittedly the appellant was appointed as a whole-time lecturer on a contractual basis for a period of one year in the South Calcutta Law College vide letter dated 16.09.2006. The said appointment was on the basis of a resolution taken by the Governing Body of the said college subject to the further decision of the Governing Body. Subsequently, the appellant decided to switchover from the said college to the Surendranath Law College and she was offered as a whole-time contractual lecturer in law on the basis of a letter dated 16.08.2007. It is pertinent to record that such whole-time contractual lecturer post, to which the petitioner was offered, was for a period of 12 months subject to renewal by the Governing Body of the said college. Undisputedly the contract was renewed from time to time and the appellant continued to discharge duties as a whole-time contractual lecturer in the said college until she was permanently appointed on the basis of a recommendation of the West Bengal College Service Commission.
3. The West Bengal College Service Commission Act, 2012 was promulgated with effect from November 29, 2012 to provide a reformation of the functioning, management and the control of the West Bengal College Service Commission ('the Commission', for short). The primary object of the said Act is to bring reformation in the functioning, management and the

administration of the colleges affiliated with the West Bengal State University under the Act of the State. It is an undisputed position that the college in which the appellant is discharging the duties as a whole-time contractual lecturer, comes within the ambit of the said Act. The said Act empowers the Commission to undertake the exercise of recruitment under the various categories of posts including the teaching faculty and the recommendation to be made to the respective college for appointment to a substantive sanctioned post. Admittedly the appellant offered her candidature when the recruitment process was initiated but was denied to participate therein on a flimsy ground that she did not acquire requisite educational qualification on the date when the vacancy arose. The decision of the authority was assailed before this Court by the petitioner in WP No. 20178(W) of 2010 and the same was allowed with the categorical finding that, the moment the advertisement for filling up the post in various colleges was published inviting the application from the eligible aspiring candidates, the aspiring candidate must possess the education qualification as on the date of the submission of an application and therefore the stand of the authority that such qualification relate back to the date of the vacancy having arisen, is untenable and contrary to the settled propositions of law. The judgment of the Single Bench was carried to a Division Bench in an intra-court appeal being MAT 897 of 2012. In the interregnum, the petitioner was permitted to sit in all tiers of the recruitment process and emerge successful as her name figured in the panels so prepared by the Commission. The aforesaid fact was brought to the notice of the Division Bench and taking into account the subsequent event, more particularly that the appellant had emerged successful and empanelled by the

competent authority, there cannot be any fetter in giving appointment to the appellant. The Division Bench proceeded to dispose of the said Mandamus Appeal on 17.12.2013 directing the Commission to complete the exercise within a stipulated time. Admittedly the petitioner was recommended by the Commission to be appointed to the post of an Assistant Professor in Law, Surendranath Law College, and it is undisputed that the petitioner joined the said post and continued to render service uninterruptedly.

4. The dispute subsequently arose when the petitioner intended to offer her candidature to the post of Principal in the said College perceiving to have requisite qualification but her candidature was rejected by the authorities solely on the ground that the tenure which Assistant Professor must undergo, is lacking in case of the candidature of the appellant. The authorities took further ground that the requisite qualification for offering candidature for the post of a Principal is Associate Professor and, therefore, the petitioner being an Assistant Professor, is ineligible to offer her candidature to such post.
5. The order of the authority is challenged by the appellant on two counts. Firstly, she should be promoted to the post of an Associate Professor having rendered services for a qualified period; secondly in order to arrive at a decision relating to a qualified period, the period as a whole-time contractual lecturer should be counted. Challenge is further made to a notification dated 22nd July, 2015 issued by the Government of West Bengal, Higher Education Department where the services rendered by the approved part-time teacher or an approved whole-time contractual teacher or a guest teacher appointed in a government college, shall not be counted for any purpose.

6. According to the petitioner, the appointment made to the post of a whole-time contractual lecturer being perennial in nature, the period thereof should be subsumed into the entire tenure of service rendered by the appellant and therefore, the said notification runs counter to the provisions contained under University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in higher Education) Regulations, 2010.
7. Mr. Basu, learned advocate for the appellant, submits that the regulation 10.1 thereof postulates that the previous regular service, whether national or international, as Assistant Professor, Associate Professor or Professor or equivalent in the University or College or other professional organizations, should be counted for direct recruitment and promotion, under the Career Advancement Scheme of a teacher as Assistant Professor, Associate Professor or any other nomenclature which is brindled with certain conditions including that the previous appointment was not as a guest lecturer for any duration or an ad hoc or in a leave vacancy of less than one year duration. According to Mr. Bose if the ad hoc or temporary service spanned over one year, such period should be integrated into a total tenure of service rendered by the appellant as the appellant was appointed on the recommendation of a duly constituted selection committee and continued to render services without any break. Mr. Bose sought to rely upon the notification issued by the State Government on 16.03.2018 as and by way of an additional evidence as the said notification was not within the knowledge of the appellant at the time when the judgment was delivered despite having exercised due diligence in

this regard. It is thus submitted that since the service was perennial in nature and uninterrupted service was continuously discharged by the appellant, such service should be construed as the service rendered at the substantive post which are akin to a regular appointment and placed reliance upon a judgment of the Apex Court in case of *Vinod Kumar & Ors. Etc. -Vs.- Union of India & Ors.*, reported in 2024 INSC 332. Mr. Basu thus concludes that the authorities have committed a grave illegality in not counting the period of service rendered by the petitioner as a whole-time contractual lecturer, nor have been given the status of an Associate Professor and, therefore, the stand taken by the authorities is patently illegal and ought to have been interfered by the Single Bench.

8. The authorities refuted the contention of the appellant in submitting that in view of the notification dated 22.07.2015, issued by the department on the basis of an order of the Governor is exposit of the proposition that the services rendered during the contractual period, cannot be counted for any purpose. It is submitted that the said notification does not run counter to the UGC Regulation of 2010 and a distinction can be seen from the very object and purpose behind the incorporation of the said Regulation. It is further submitted that there is no incongruity between the regulation and the notification issued from time to time by the government as they are complementary in nature.
9. On the conspectus of the facts as adumbrated hereinbefore, the question which fell for consideration in the instant appeal is whether the period of service rendered by the appellant as a whole-time contractual lecturer, should be counted for the purpose of computing the tenure of service so as to make

the appellant eligible to offer her candidature for the post of a Principal. Another ancillary point, in our opinion, emerged in course of the hearing whether the notification dated 22.07.2015 and the notification dated 16.03.2018 are in tune with the provisions contained in the UGC Regulation of 2010. Distinction must be drawn between the ad hoc or the temporary appointment and the appointment made on contractual basis. Undoubtedly the appellant was appointed as a part-time lecturer on a contractual basis previously in South Calcutta Law College and subsequently she shifted to Surendranath Law College. The language and the expression used in the letter of appointment is indicative of the fact that such appointment is purely on contractual basis and switching over from one law college to another, cannot be regarded as a continuous service as on the basis of fresh offer, the appointment was made by another law college. The letter of appointment clearly postulates that it is contractual in nature for a limited period of one year/12 months subject to the renewal thereafter. The word 'renewal' has to be construed in order to ascertain the intention of the appointing authorities and in the legal sphere the renewal can be dissected in two compartments, i.e., 're' and 'newal'. There is no ambiguity in our mind that 're' means again and the 'newal' means afresh. Etymologically the word 'renewal' means – again a fresh appointment. It is distinct from the concept of extension which postulates the continuance, something flowing from, arising from or in furtherance thereof the existing thing is state of affairs. Every renewal constitutes a fresh appointment and, therefore, the incorporation of the period of service rendered on contractual basis which is subject to renewal, is not permissible. Even Regulation 10.1 is relatable to a previous regular

service to a post as indicated therein rendered either at the national or international level in any University college or professional organisation for the purpose of direct recruitment and promotion, provided the conditions enshrined therein are fulfilled. One of the conditions which we find assumes significance in this regard is clause (f) thereof where an ad hoc or temporary appointees of a duration of more than one year, may avail the benefit of the past service period if appointed on the recommendation of a duly constituted selection committee and selected to the permanent post without any break in such capacity. The Regulation does not include the contractual appointments and the intention of the lawmaker is laudable that the same was consciously not included. The doctrine of *casus omissus* has equal application from the language employed therein and, therefore, the contractual appointment has to be understood on a different pedestal that of an ad hoc or temporary appointment. The appointment on contractual basis was for a fixed duration and was susceptible to be renewed at the pleasure of the appointing authority. The renewal is not automatic as perceived in a legal parlance, but subject to the conscious decision of the appointing authorities and is always regarded as a fresh appointment. The moment the lawmakers have omitted to include the contractual appointment within the circumference of the aforesaid provisions, it cannot bring the concept of a legal fiction that what was intended is the included therein. After the promulgation of the West Bengal College Service Commission 2012, the appointment to the substantive post of a teaching and non-teaching staff in a college or the university is entrusted upon the College Service Commission and in fact the appellant offered her candidature to the post of an Assistant Professor in terms of the

advertisement so published in this regard. She emerged successful and appointed at the regular/permanent post of an Assistant Professor on the recommendation of the Commission and, therefore, it does not admit any ambiguity in our mind that such appointment would reckon from the date when she has been appointed on the recommendation of the Commission. The service rendered on the basis of a contract, cannot be incorporated and/or infused into the appointment made on the regular basis to the sanctioned post and thus we thus do not find any applicability of the provisions contained in the UGC Regulation of 2010 or the notification dated 16.03.2018. The judgment of the Apex Court as relied upon by Mr. Basu, has to be read as a whole in order to find the ratio so as to bind the High Court by virtue of Article 141 of the Constitution of India. In the said report the plea of regularization and absorption in the post of an accountant/clerk against which the appellants therein were temporarily appointed was negated by the Tribunal which was affirmed by the High Court. The Apex Court found that the said temporary appointment was made to the ex-cadre post after undergoing the selection process involving the written test and/or viva voce and the rejection to the plea was founded upon that such appointment was temporary and for a specific scheme. The Apex Court found that the stand of the authorities does not conform to the notion that if it is under the scheme, it should be for a limited period but the appellant therein was allowed to continue rendering the service uninterruptedly and that too over a quarter century. The striking feature which was noticed by the Apex Court in the said report was that the appellant therein was allowed to participate in the departmental promotion process undertaken by the departmental

promotional committee and in such backdrop it was held that the judgment of the Constitution Bench in the case of the Secretary, State of Karnataka – Vs.- Umadevi, reported in 2006(4) SCC 1, does not come in the way of accepting the stand of the appellants therein. We do not find any parity on the fact involved in the instant case. A decision is what is decided on the facts scenario and should not be read out of context. The ratio has to be culled out from the context in which the same is decided as the additional facts or little difference in facts, may invite a different decision. We have already found that the contractual employment is distinct and different from the other nature of an employment as it was limited for a period of one year or subject to the renewal which postulates a fresh appointment on a successful completion of the contractual period and, therefore, we do not find that the judgment of the Apex Court relied in Vinod Kumar & Ors. Etc. (Supra) can be of any assistance to the appellant.

10. From whatever angle we look at it, we do not find that the reliefs claimed by the petitioner is tenable. We also do not find any illegality in the ultimate decision of the Single Bench without making any comment on the findings returned therein.

11. Urgent Photostat certified copy of this order be given on a priority basis, more particularly, within three days from the date of application.

(Harish Tandon, J.)

I agree,

(Prasenjit Biswas, J.)