

04.04.2024
Item No.27
Ct. No. 238
AKG

WPA 25176 of 2023
Arindam Gupta
Vs.
State of West Bengal & Ors.

Ms. Susmita Saha Dutta,
Mr. Gautam Bhakta,
Mr. Niladri Saha,
Ms. Madhurima Basu

...for the Petitioner

Mr. Arindam Ghosh

...for the State

Ms. Debjani Sengupta,
Ms. Koyel Bag,
Ms. Shahina Haque,
Mr. Abhijit Chatterjee
Ms. Jonaki Khan

...for Respondent Nos. 2, 3 & 5.

The present writ petition has been filed by a Professor from Vidyasagar University, aspiring to be appointed as the temporary Dean of the Faculty of Commerce and Arts.

The petitioner contends that despite being the most senior professor in the faculty, a junior professor has been appointed as the temporary Dean.

During the pendency of this writ petition, a professor named Debasish Mondal was appointed as the temporary Dean on February 1, 2024. He has been added as a respondent in this writ petition, although no one appears on his behalf before this Court.

The list of professors provided by the university indicates that the petitioner joined the university on December 19, 1994, with 29 years of teaching experience, of which he has served 18 years as a professor starting from May 26, 2005. On the other hand, Professor Debashis Mondal, the added respondent, joined the university on February 27, 1987 with a total teaching experience of 40 years, of which he has served 15 years as a professor starting from April 16, 2008. If seniority is reckoned from the date of joining the university, regardless of the post/position, then Professor Debashis Mondal would be considered the most senior teaching staff. However, if the date of assuming professorship is used for counting seniority, then the petitioner, who assumed professorship earlier, should be appointed as the temporary Dean.

Ms. Saha Dutta, the learned advocate appearing for the petitioner, has referred to Section 5(9) of the West Bengal University Laws (Amendment) Act, 2012.

She argues that seniority for the purpose of appointing a temporary Dean should be calculated from the date when a faculty member assumes the position of Professor in the university.

Conversely, Ms. Sengupta, the learned advocate representing the university, argues that the seniority of a faculty member should be reckoned from the date

when he or she joins the university, regardless of his/her designation as Assistant Professor, Associate Professor, or Professor.

Ms. Sengupta points out that Section 5(9) of the West Bengal University Laws (Amendment) Act, 2012 uses the words "a seniormost" and not "the seniormost." She further draws attention to the phrase "according to date of their joining" to suggest that the intention of the legislature was not to limit the selection of the temporary Dean to the most senior professor of the faculty.

She argues that the proper interpretation should be that the university has the freedom to select one of the senior professors of the faculty.

To understand the controversy, it is necessary to reproduce Section 5(9) of the West Bengal University Laws (Amendment) Act, 2012, which states:

"(9) The Vice-Chancellor shall, in the event of any temporary vacancy of the office of Dean, select a seniormost Professor of that University according to the date of their joining in the same University for a period not more than six months:"

It has to be noticed that under the said statute while for appointment as a permanent Dean certain criteria have been prescribed and a permanent Dean has to be appointed by a duly constituted selection committee, in the case of a temporary Dean, if

appointed not for more than a period of six months, the only criterion is the seniority of a professor.

A plain reading of Section 5(9) makes it clear that to be appointed as a temporary Dean, a person has to be a “seniormost professor.”

The word "seniormost" deployed in Section 5(9) of the Act of 2012, qualifies the term "professor" and not any other teaching posts like Assistant Professor or Associate Professor. The word “seniormost professor” therefore, cannot be read as the “seniormost faculty member.” A teaching staff member of the university forms a separate and distinct cadre when he becomes a professor. The *inter se* seniority amongst the professors is determined only from the date they assume the position of a professor. Therefore, the date of assuming the post of Professor is only relevant in determining seniority.

Therefore, the petitioner should be considered to the post of temporary Dean of the faculty of Arts and Commerce at the university being the seniormost professor.

Therefore, the appointment of the added respondent as temporary Dean of the Faculty of Arts and Commerce is set aside. The university, accordingly, is directed to appoint the petitioner as the temporary Dean within ten days from the date of communication of this order.

Ms. Sengupta submits that the university is actively pursuing the State for selecting a permanent Dean by sending its nominee in selection committee. It is up to the university to pursue the matter with the State, and the university cannot expect any orders on this writ petition filed by the petitioner.

WPA 25176 of 2023 is allowed.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)

After the judgment is delivered, Ms. Sengupta prays for stay of the operation of the order. Such prayer is considered and rejected.

(Kausik Chanda, J.)