

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Harish Tandon**

And

The Hon'ble **Justice Prasenjit Biswas**

FMA No. 604 Of 2015

With

MAT No. 1777 of 2014

With

IA No. CAN 3 of 2024

Governing Body of Kandi Raj College & Ors.

-Versus-

Indrajit Das & Ors.

For the Appellants : **Mr. Pratip Kr. Chatterjee,
Ms. Priyanka Saha,
Ms. Maitrayee Chatterjee.**

For the Respondent : **Mr. Samim Ahammed,
Ms. Ambiya Khatun.**

For the State in MAT 1777 of 2014 : **Mr. Tapan Kr. Mukherjee, Ld. AGP,
Mr. Rabindra Nath Pal,
Mr. Somnath Naskar.**

For the State in FMA 604 of 2015 : **Mr. Rajarshi Basu,
Mr. Debangsu Nandi.**

Hearing Concluded on : **15.07.2024**

Delivered on : **19.08.2024**

Prasenjit Biswas, J:-

1. The orders dated 26th September, 2012 passed in connection with WP No. 23273 (W) of 2006 and 18th July, 2014 in connection with WP 21725 (W) of 2008 passed by the learned Single Bench of this Court are assailed in these two appeals. These two appeals are taken up together for disposal as the matter in issue involved are the same and identical.

2. By order dated 26th September, 2012 passed by the learned Single Bench the appellants were directed to regularize the service of the writ petitioners with effect from 16th January, 2001. There is further direction upon these appellants to complete the exercise within the period of 8 weeks from the date of communication of the order. It is further directed that the writ petitioner will not get any financial benefit and the period spent would be taken into consideration only for fixation of pension at the time of his retirement. By passing the order dated 18th July, 2014 in connection with WP 21725 (W) of 2008 the learned Single Bench set aside the order of termination of casual appointment of the writ petitioner and held that the said order of termination is bad in law and illegal. Consequently, appellants/ the college authorities are directed to allow the writ petitioner to resume his duties.

3. Writ petitioner was appointed as a class IV casual worker at Kandi Raj College Library on 16th January, 2001. Although his name was recommended

for approval before the Director of Public Instruction, Government of West Bengal but the said approval was not given. The prayer of the writ petitioner was before the appellant to regularize his service.

4. It is stated by the petitioner that he was appointed as a casual worker in pursuance of resolution taken by the governing body of the college dated 15th January, 2001 and accordingly, he joined his duties as a casual worker at the college. It is the specific case of the writ petitioner that the Director of Public Instruction, Government of West Bengal approved appointment of one Subir Kanti Bagchi who was also casual Class III staff of the college to the post of clerk and this writ petitioner stands in the same footing with said employee. So, it is prayed that an approval may be given in respect of regularization of service to his post as he discharged duties as Class III employee. Subsequently, the writ petitioner was served with a show cause notice on 3rd April, 2008 on the basis of some complaints against him and his service was terminated in July 28, 2008. It is stated by the petitioner that the entire action taken by the appellants/ college authorities is totally illegal, arbitrary and mala-fide. Being aggrieved with the said termination order passed by the college authority the writ petitioner preferred a writ petition before the learned Single Bench of this Court being WP 21725 (W) of 2008 and the said writ petition was allowed by giving direction upon the present appellants/college authorities to allow the writ petitioner to resume his duties.

5. Another writ petition was filed by the writ petitioner being WP No. 23273 (W) of 2006 before the learned Single Bench of this Court with a prayer for regularization of his service and the said writ petition was also

allowed by the Court by giving direction upon the present appellants/ college authorities to regularize the service of the writ petitioner w.e.f. 16th January, 2001. The said impugned order is hereby challenged by the college authorities in one of these two appeals.

6. Mr. Pratip Kr. Chatterjee, learned Counsel appearing on behalf of the appellants submitted before us interalia that the writ petitioner had already been terminated long back in July 28, 2008 but the said fact was not disclosed before the learned Single Bench of this Court at the time of hearing. It is stated by the learned counsel for the appellants that a casual worker may be in continuance in service for a time but he would not be entitled to absorb in regular service or made permanent merely on strength of such continuance. It is further submitted by the learned Counsel that the appointment was not made by following the process of selection process at the time of initial appointment and as such this type of appointment is quite illegal one. It is further submitted by the learned Counsel that the writ petitioner has no right of regulation as his service has already been terminated by a resolution taken by the governing body of the college dated 27.07.2008. So, as per submission of the learned Counsel that the appointment of the writ petitioner is illegal one and could not be regularized in service.

7. It is the case of the private respondent he has been performing his duties continuously since after his appointment despite that his service was not regularized and he did not get a status of permanent employee. It is further averred that a show cause notice was sent to the writ petitioner and consequent to that notice the order of termination was passed by the

governing body of the college which is quite illegal and violates the principle of natural justice.

8. It is undisputed that the writ petitioner was appointed as a class IV casual worker at the college on 16th January, 2001. Subsequently, he was recommended for approval of his service to permanent employee before the Director of Public Instruction, Government of West Bengal but it declined to approve the said recommendation. It further appears that a show cause notice was issued to the writ petitioner as there were some allegations against him and thereafter he was terminated from his casual service in July 28, 2008. The writ petitioner challenged his order of termination passed by the governing body of the appellants/ college authorities as well as with a prayer for regularization of his service by filing the above two writ petitions before the Single Bench of this Court and those two writ petitions were disposed of in favour of the writ petitioner by passing those two impugned orders which are under challenge in these two appeals.

9. Mere engagement as part time employee would not confer any right to seek regularisation or permanent absorption. No doubt, there was a situation, which was prevailing long before by engaging part time and full time employees on temporary basis without adverting to the recruitment process. The Constitutional Bench of the Hon'ble Supreme Court of India in the case of **Secretary, State of Karnataka Vs. Uma Devi and others** reported in **(2006) 4 SCC 1**, settled the principles to be followed for grant of regularisation and permanent absorption. No doubt, the Constitution Bench in paragraph 53 of the judgment had given a one time opportunity to the respective States to regularise the services of such employees, who were

otherwise appointed by following the procedures as contemplated under the rules. In other words, regarding pending proposals during the relevant point of time, when the judgment was delivered, the Hon'ble Supreme Court permitted those proposals to be finalised for grant of regularisation or permanent absorption. Such onetime measure cannot be followed as permanent measure in order to regularise illegal or irregular appointments.

10. A reference to para 53 above in the case of **Umadevi** (supra) shows that irregular appointments were to be regularized only as a one-time measure. One time measure by its plain and simple language means that only for once at the time of passing of the judgment in Umadevi's case there can be regularization of irregularly appointed employees i.e. after the decision in Umadevi's case, there cannot be regularization of appointees who are irregularly appointed i.e. the appointments may not be illegal and only are irregular in the sense that appointment is not through the means of calling of eligible candidates vide circulations in newspapers for ensuring competition amongst the eligible candidates but even such persons cannot be regularized after the decision in Umadevi's case as even irregular appointments are in violation of recruitment rules and there cannot be violation of recruitment rules post Umadevi's case. Therefore, in our opinion, the ratio of para 53 above of Umadevi's case makes it clear that the issue of regularization of irregularly appointed employees post Umadevi's case is time and again not permissible because that is exactly what the ratio of Umadevi's case prohibits i.e. regularization of persons appointed in violation of recruitment rules which will require calling of candidates by proper advertisements through newspapers.

11. The very principles laid down by the Constitution Bench are to make appointments only through recruitment process as per rules in force. The Constitution Bench in unambiguous terms ruled that irregular and illegal appointments cannot be regularised. Thus, the onetime permission granted in paragraph 53 of the judgment cannot be followed in perpetuity. It was intended to clear the proposals, which was pending during the relevant point of time and more so, even in such cases, the authorities competent are bound to verify, whether it is illegal or irregular appointments. It is not as if the Hon'ble Supreme Court of India directed the authorities to regularise illegal appointments. No such approval was granted by the Constitution Bench as the principles are well settled by the Constitution Bench of the Apex Court of India. At the outset, the writ petitioner was not appointed in accordance with the Recruitment Rules in force in a sanctioned post. If at all the post is sanctioned by the Government, then the appellants are bound to appoint persons in accordance with the Recruitment Rules in force by affording equal opportunity to all the eligible candidates, who all are aspiring to secure public employment through open competitive process. Rule of reservation is to be followed under the Constitutional scheme of appointments. Equal opportunity in public employment is the mandate. Thus, in the event of undertaking the process of selection, appointments for sanctioned posts, the procedures are to be scrupulously followed.

12. The Hon'ble Supreme Court of India in unequivocal terms held that the High Court in exercising powers of Article 226 of the Constitution of India, will not issue direction on regularisation or permanent absorption, unless the employees claiming regularisation had been determined in

pursuance of the regular recruitment in the relevant rules through open competitive process, even in case of sanctioned post.

13. In the case at hand it appears that the writ petitioner was appointed as a class IV casual employee and as there are some allegations against him he was served with a show cause notice which culminates in passing an order of termination of his casual employment in the post since long back in July, 2008. We have already observed that the nature of the work rendered by this writ petitioner is of a casual employee.

14. Accordingly, we hold that there are illegalities and material irregularities in the impugned orders passed by the learned Single Bench and cannot stand in the view of observation of the Hon'ble Apex Court rendered in case of Uma Devi (3).

15. Thus, these two appeals are hereby allowed. The orders passed by the learned Single Bench of this Court dated 26th September, 2012 in connection with WP No. 23273 (W) of 2006 and 18th July, 2014 in connection with WP 21725 (W) of 2008 are hereby set aside.

16. Connected application, if any, is hereby also disposed of accordingly.

17. Urgent photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)