**22.04.2024**
**Sl. No.17.**
**Suman**
**Ct.No.238**

**WPA 27812 of 2023**

**Abhijit Mukherjee**
**Vs.**
**Jadavpur University and Ors.**

Mr. Anindya Lahiri
Mr. Arkadipta Sengupta
Ms. Aayushi Mukherjee
Ms. Sanghamitra Mirdha
..for the petitioner

Mr. Soumya Majumder
Ms. Sanjukta Dutta
..for Jadavpur University

Though in the prayer, the petitioner has prayed for his promotion to the post of Senior Superintendent from the date of eligibility, at the time of submission Mr. Lahiri, learned advocate appearing for the petitioner submits that the petitioner is only interested in counting his past service as Accounts Clerk-cum-Store Keeper in computing his retiral benefits.

It appears that the petitioner was initially appointed as Part Time Accounts Clerk-cum-Store Keeper in the National Service Scheme at Jadavpur University on temporary basis on June 25, 1984. Subsequently, the petitioner was appointed as Junior Assistant-Cum- Typist by a letter dated September 30, 2000, issued by the Registrar, Jadavpur University. At present the petitioner is holding the position of Junior

Superintendent at the university and he is due to retire in 2025.

Mr. Lahiri, learned advocate appearing for the petitioner submits that the service rendered by the petitioner as a Part Time Accountant Clerk-cum-Senior Store Keeper should be reckoned as a regular service for the purpose of computing the retiral dues of the petitioner. Mr. Lahiri submits that the initial appointment of the petitioner was against a sanctioned post and thereafter his service was regularised under the regular establishment of the university. He further submits that similarly circumstanced employees of the Calcutta University were given the benefit of their past service in computing the retiral benefits.

Mr. Soumya Majumder, learned advocate appearing for the university, on the other hand, submits that appointment of the petitioner as Accounts Clerk-cum-Store Keeper was in a project. The petitioner was not treated to be an employee of the university. The post of Accounts Clerk-cum-Store Keeper had been created only by an order dated October 14, 1998, and the petitioner was appointed against that newly created post by way of regular recruitment. In the above facts, the petitioner cannot claim benefit of his past service as the same amounts to regularisation of his service with retrospective effect. Such regularisation with retrospective effect will not only upset the seniority in the cadre but also result in unwarranted financial burden upon the State exchequer.

In support of his submission, Mr. Majumder has relied upon the following judgments of the Hon'ble Supreme Court.

(i) 1986 Supp Supreme Court Cases 185 (Shitla Prasad Shukla-Vs.-State of U.P. and Others)

(ii) (2007) 15 Supreme Court Cases 230 (Union of India and Others-Vs.-Sheela Rani)

(iii) (1998) 8 Supreme Court Cases 690 (Registrar General of India and Another-Vs.- V. Thippa Setty and Others)

I am of the view that in the facts of the case, there is no scope to take into account the past service rendered by the petitioner as Part Time Accounts Clerk-cum-Store Keeper.

It appears from the first appointment letter of the petitioner that he was not an employee of the university. The petitioner was appointed in a project, namely, National Service Scheme. He was also directed to report to the Programme Co-ordinator of the said scheme.

Therefore, I cannot accept the contention of Mr. Lahiri that the petitioner was initially appointed against a sanctioned post of the university.

I find substance in the submission advanced by Mr. Majumder that when the post of Junior Assistant-cum-Store Keeper was created only on October 14, 1988, it could not be said that the initial appointment of the petitioner on June 25, 1984 was against a sanctioned post.

Whether a past service should be reckoned for the purpose of seniority or for conferring any other service benefits would depend on the applicable service rules. During the course of submission, no such rules, regulations or orders have been cited before this Court to justify the regularisation or taking into account the past service in the scheme on temporary basis for the purpose of computing the retiral benefits.

In my view, as a general rule, a temporary appointment cannot be regularised with retrospective effect. Since in the present case, there is no provision for taking into account the past service of the petitioner spent in a project, I am of the view that the petitioner cannot claim benefit of the same in computing his retiral dues.

With these aforesaid observations, **WPA 27812 of 2023** is dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

**(Kausik Chanda, J.)**