

22.07.2025
Item No.02
Court No.11
Avijit Mitra

MAT 394 of 2025
with
IA No.CAN 1 of 2025
with
IA No.CAN 2 of 2025

The Governing Body of the Hijli College & ors.
- Versus -
Sk. Liakat Ali & ors.

Mr. Amitava Chaudhuri,
Ms. Monoleena Chaudhuri,
Mr. N. Roy,
Mr. Pradipta Siddhanta
.....for the appellants
Mr. Swapan Kr. Datta, Sr. Adv.,
Mr. Dipankar Das Gupta
...for the State
Mr. Amar Nath Sen,
Mr. Malay Dhar
...for the writ petitioner/respondent no.1
Mr. Sukanta Das
....for the respondent no.4

Affidavit-of-service, as filed, be kept on record.

The present appeal has been preferred by the Governing Body of the Hijli College (hereinafter referred to as the said college) and its functionaries challenging an order dated 13th June, 2019 passed by the learned single Judge in the writ petition being WPA 12326 of 2012.

As we have invited Mr. Chaudhuri, learned advocate appearing for the appellants to advance his arguments on the merits of the matter, the delay in filing the present

appeal is condoned and the application for condonation of delay being IA No.CAN 1 of 2025 is disposed of.

Mr. Chaudhuri contends that a perusal of the order impugned would reveal that the learned single Judge had issued peremptory direction upon the college authorities to issue necessary orders for regularization of the service of the writ petitioner/respondent no.1 herein, namely, Sk. Liakat Ali (in short, Liakat) though the college authorities have no authority to direct regularization of a candidate. The order impugned has been passed without taking into consideration the specific stand of the college authorities, as disclosed in the affidavit-in-opposition filed in the writ petition.

He further argues that the learned single Judge failed to appreciate that the submissions made by the learned advocate appearing for the college authorities cannot bind the appellants in any manner. It was also not considered that Liakat preferred an earlier writ petition being WPA 16655 of 2021, *inter alia*, praying for issuance of necessary directions upon the respondents therein applying the principle of '*equal work and equal pay basis*' and the same was dismissed. In the said conspectus, the learned single Judge ought not to have issued the directions, as contained in the order impugned.

Mr. Dhar, learned advocate appearing for Liakat denies and disputes the contention of Mr. Chaudhuri and submits that an innocuous order passed by the learned single Judge has been challenged in the present appeal and that too belatedly. There is no dispute as regards the fact that Liakat was engaged on the basis of a resolution adopted by the Governing Body of the said college purely on temporary basis. He was paid a paltry wage of Rs. 100/- and such amount was paid from the college fund. As he was discharging service similar to that of a Group – D post employee, Liakat sought for grant of grant of equal pay with that of a regular government employee. However, such claim of Liakat was turned down. The said order, in fact, did not debar the learned single Judge to pass the order impugned inasmuch as in the subsequent writ petition, Liakat sought for consideration of his claim on the rudiments of a government notification dated 5th October, 2018. The said notification was issued on behalf of the Hon'ble Governor in supersession of all previous orders and with the concurrence of the Finance Department directing creation of non-teaching posts in State aided colleges upon declaring some posts as dying cadre posts and directing that the existing incumbents shall continue till his/her retirement.

He further submits that Liakat is serving in the said college continuously and without any break since the year 2008. He has neither been discontinued by the college authorities nor there had been any allegation that he was negligent in the duties. Such sequence of facts and the present student strength clearly establish that there is a subsisting need of the said college for creation of an additional post of peon and in view thereof, the learned single Judge directed consideration of Liakat's claim towards regularization and there is no infirmity in the order impugned warranting interference of this Court.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

The contents of the order impugned need to be considered together and not in isolation. A particular clause cannot be picked up and highlighted. In the present case, Liakat is continuously serving in the said college since 2008 till date and his service had not been discontinued by the college authorities. A perusal of the order impugned would reveal that taking into consideration the notification dated 5th October, 2018, the learned single Judge, in our opinion, rightly directed the college authorities to consider Liakat's claim for regularization with utmost sympathy considering his length of service and to take a decision and forward the same to the State of

West Bengal for approval. By way of abundant caution, the learned single Judge also observed that such decision taken shall not create a precedent.

State is a model employer and it must conduct itself with high probity and candour and ensure that its employees do not succumb to the procedural rigmarole. Judiciary has a very strong sense of justice and it works to maintain social justice and fairness. Courts have to be allowed a little free play in the joints if the conferment of discretionary power is to be meaningful. Applying such proposition to the facts of the case, we do not find any reason to interfere with the discretion exercised by the learned single Judge. However, the time period specified for consideration has already expired and the representation of Liakat directed to be considered is of the year 2012.

In view thereof, this Court directs Liakat to submit a detailed representation including all necessary particulars and annexing relevant documents to the appellant no.1 within a period of three weeks from date. Upon receipt of such representation, the Governing Body of the said college, upon giving an opportunity of hearing to Liakat, shall take a decision, in accordance with law and forward the same to the respondent no.2 within a period of four weeks thereafter.

Upon receipt of such decision, the Secretary, Department of Higher Education shall consider the same in the light of the observations made in the order impugned and to take a final decision, in accordance with law and to communicate the same to Liakat within a period of four weeks thereafter.

With the above observations and directions, the appeal and the connected applications are disposed of.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Reetobroto Kumar Mitra, J.) (Tapabrata Chakraborty, J.)