

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

MAT 346 of 2020

Visva-Bharati
Versus
Sri Sandeep Kumar Bhakat & Ors.

For the Appellant : *Mr. Soumya Majumder, Sr. Adv.,*
Mr. Victor Chatterjee,
Ms. Shreya Bhattacharjee.

*For the Writ Petitioner/
Respondent no.1* : *Mr. Anjan Bhattacharyya,*
Ms. Anita Shaw,
Ms. Seema Thakur.

For the Respondent nos.9 &10 : *Mr. Kumar Jyoti Tiwari, Sr. Adv.,*
Ms. Sarda Sha,

For the U.G.C. : *Mr. Anil Kr. Gupta.*

Hearing is concluded on : *2nd April, 2026.*

Judgment On : **17th April, 2026.**

Tapabrata Chakraborty, J.

1. The present appeal has been preferred by Visva-Bharati (in short, the University) challenging a judgment dated 11th January, 2019 passed by the learned single Judge in a writ petition being WP 25050 (W) of 2015 which was preferred by the appellant, namely, Sandeep Kumar Bhakat (in short, Sandeep) primarily praying for issuance of necessary directions upon

the respondents *‘to fix and grant the pay of the petitioner as University teacher (Adhyapaka) being Assistant Professor of Visva-Bharati by granting Academic Grade Pay of Rs. 6000/- with effect from the year 2006 and upgradation thereof in accordance with law with all arrears; to grant and pay three non-compounded increments for acquisition of Ph.D degree with effect from 1st January, 2006 and pay all arrears thereof with effect from 1st January, 2006 with interest at the marketable rate prevalent from the day of entitle thereof’.*

2. Sandeep’s case in writ petition was that he obtained B.Sc (Hons) degree in Mathematics, M.Sc degree and Ph.D degree from the University in the year 1984, 1986 and 1996 respectively. In the midst thereof, he was selected and appointed to the post of Assistant Lecturer in Mathematics in Siksha Sastra of the University on 15th June, 1989. Upon completion of eight years continuous service in the said post, he was granted the scale Rs.2000-3500/-. He was thereafter placed in the next higher scale of Rs.2200-4000/- in terms of a resolution of the Karma Samita of the University dated 15th September, 1997 and as per the recommendation of the 4th Central Pay Commission (in short, CPC). As per the 5th CPC recommendation, he thereafter enjoyed the scale of pay of Rs.8000-13500/-. Subsequent thereto, as per 6th CPC recommendation with effect from 1st January, 2006, he was granted the pay band-3 of Rs.15600 -39100/- as an Adhyapaka instead of the Academic Grade Pay of Rs.6000/-. Sandeep was thereafter asked to execute an undertaking to accept the arrears due to implementation of the 6th CPC according to the pay scale of Kendriya Vidyalaya Sangha (in short, KVS) in terms of the scheme of revision of pay-

scales of school teachers of Central University. Sandeep, however, refused to submit such undertaking as a mark of protest for treating him as a school teacher instead of Assistant Lecturer of the University. The Ministry of Human Resources Development (in short, MHRD), Department of Higher Education by its memo dated 31st December, 2008 stipulated that there shall be only three designated scales in universities and colleges and the same shall not extend to school teachers of Central universities. The Executive Council of the University adopted a resolution on 24th April, 2013 observing that the authorities of the University cannot act contrary to the MHRD norms but the service rules of school teachers vis-à-vis University Teachers needs re-examination. Aggrieved by the pay fixation as per the MHRD memo, Sandeep submitted a representation for grant of the Academic Grade Pay and Ph.D increments from 1st January, 2006 at par with the Assistant Professor of University. As the said representation was not considered Sandeep was constrained to prefer the writ petition.

3. Upon contested hearing the learned single Judge directed that Sandeep shall be *'eligible to receive and maintain his pay as received by him prior to introduction of KVC scales of pay along with all benefits as revised from time to time'*.

4. Mr. Soumya Majumder, learned senior advocate appearing for the appellant University submits that there is no pleading to the effect that the procedural impropriety is of such a magnitude that it has operated to the severe detriment and prejudice to the appellant. The learned single Judge ought to have appreciated that no legally protected right of the appellant,

which can be judicially enforced, has been infringed warranting interference of the writ Court.

5. He argues that the University, which is a Central University, has two school units, namely, Siksha Satra and Pathabhavana. Sandeep's entry into service was in the post of Assistant Lecturer (later redesignated as Assistant Professor) of Mathematics in Siksha Satra. Till his superannuation, Sandeep had worked as a school teacher and such service rendered was not at par with teachers of the University and accordingly, he could not have claimed parity and equal pay as granted to the Assistant Professors in the University.

6. He contends that Ministry of Human Resources Development (in short, MHRD), Department of Higher Education by its memo dated 31st December, 2008 stipulated that there shall be only three designated scales in universities and colleges and the same shall not extend to school teachers of Central universities. Accordingly, the Executive Council of the University adopted a resolution on 24th April, 2013 observing that the authorities of the University cannot act contrary to the MHRD norms which are binding upon the University since it is a Central university. Furthermore, by memo dated 28th March, 2009 the Under Secretary of UGC had directed the University to sanction pay of the school teachers as per KVC norms failing which '*withheld grant of Rs. 210.00 lakhs will be lapsed*'. In the said conspectus and as the central government scheme was not under challenge, the learned single Judge erred in law in exercising discretion in favour of Sandeep.

7. Mr. Majumder argues that having observed that a mere integrated university structure comprising both school and college/university education does not *ipso facto*, confer a right to claim the UGC pay structure, the learned single Judge proceeded to act contrary to the scheme on the rudiments of a tentative observation that such rigors would not apply to a teacher who has acquired the threshold qualification to be accommodated in the post of Assistant Professor in the University.

8. Mr. Majumder argues that the in the case of *Roshan Lal Vs. Union of India & Ors.*, reported in *AIR 1967 SC 1889* the Court was considering the status of government servants and the same has no manner of application in the present case since Sandeep was not a government servant and his relationship with his employer was in the sphere of contract.

9. Mr. Tiwari learned senior advocate appearing for the Union of India submits that Sandeep had no legal right to claim parity of pay with the Assistant Professors of the University. The University is a Central university and is bound by the provisions of the scheme framed by the central government and the said scheme had also not been challenged by Sandeep. In view thereof, the learned single Judge erred in law in exercising discretion in favour of Sandeep by merely flagging his position as a teacher/Adhyapaka in the university structure and as he had obtained the Ph.D degree.

10. Mr. Bhattacharyya, learned advocate appearing for Sandeep denies and disputes the contention of the appellants and submits that the right earned by Sandeep to avail the benefits of the post of Assistant Professor in the University cannot be curtailed. Such denial of benefit would

be iniquitous and unsustainable in law and as such the learned single Judge has rightly exercised discretion in his favour directing that he is eligible to receive and maintain his pay as received by him prior to introduction of KVC scales of pay along with all benefits as revised from time to time.

11. He further argues that the Section 3(c) of the Visva-Bharati Act, 1951 defines the expression '*Adhyapaka*' which includes a professor, reader, lecturer and any other person imparting instruction in relation to any learning process. In view thereof, no artificial distinction can be drawn amongst Assistant Professors in schools under the University and the Assistant Professors of the University. The two classes cannot be segregated.

12. We have heard the learned advocates appearing for the parties at length and we have given our anxious consideration to the facts and circumstances of the case.

13. Law is not absolute logic but handmaid of current social facts of life. The claim raised by Sandeep is premised on the ground that his duties and responsibilities are same as the duties and responsibilities of the Assistant Professors of University. In view of such parity, Sandeep was granted the same benefits as extended to the Assistant Professors of University till 31st December, 2005. The parameters as regards such equality stands satisfied and as such Sandeep cannot be denied similar benefit. The differentiation of pay scales for posts having no difference in degree of responsibility, reliability and confidentiality would not fall within the realm of valid classification. The nature of work of the subject post is the

same and not less onerous than the reference post. The difference sought to be created among the Assistant Professors of a school under the University and the Assistant Professors of University is not based on legitimate foundation.

14. Indisputably, Sandeep was appointed to the post of Assistant Lecturer in a school, namely, Siksha Satra under the University on and from 15th January, 1989. At that juncture equal pay was granted to an Assistant Lecturer, redesignated as an Assistant Professor, in a school and to an Assistant Professor of the University and Sandeep was granted all consequential benefits till the commencement of the 6th CPC. The post of an Assistant Professor, in a school and the post of an Assistant Professor University were inextricably bound in the University conceptual framework and the incumbents in the said posts received the same benefits. The denial of Academic grade pay after 1st January, 2006 has taken away Sandeep's vested and accrued teaching status as '*Adhyapaka*' and in such factual backdrop the proposition of law discussed in the case of *Roshan Lal (supra)* that a contract of service, while for the most part pertaining to the sphere of contract also pertains to that of status and the condition of service followed since the appointment of an incumbent cannot be altered to his/her disadvantage arbitrarily, was rightly applied. The University though not desirous to take a hard look at the dichotomy created by the novel nomenclature of the posts adopted in the University Act and Statutes, was compelled to alter the status and benefits and to segregate the classes on threat of lapse of UGC grant. In the said conspectus, and as Sandeep had acquired the requisite qualification for the post of Assistant Professor of the

University and as there was no allegation of fraudulent misrepresentation against him, the learned single Judge exercised discretion in his favour and we do not find any infirmity in the judgment impugned moreso when Courts have to be allowed a little free play in the joints if the conferment of discretionary power is to be meaningful. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. We do not find any such patent error of law in the judgment impugned warranting interference in appeal.

15. Accordingly, the appeal being MAT 346 of 2020 is dismissed.

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

17. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)