

FMA 1013 of 2022
with
IA No. CAN 1 of 2019 (Old No. CAN 6484 of 2019)
(The University of Kalyani & Ors. Vs. Dr. Sushanta
Biswas & Ors.)

Mr. Amitava Chaudhuri
Ms. Monolena Chaudhuri
Mr. N. Roy
Mr. Pradipta Siddhanta

.... For the appellants

Mr. Sukanta Chakraborty
Mr. Anindya Halder
Mr Suman Agarwal
Mr. Shawondeep Chakraborty

..... For the respondent
nos. 1 & 2

Mr. Pantu Deb Roy, AGP
Mr. Panna Lal Bandyopadhyay

..... For the State respondents

Mr. Anil Kr. Gupta

..... For the UGC

1. The University of Kalyani (hereinafter referred to as the said University) and its functionaries have preferred the present appeal challenging an order dated 17th April, 2019 passed by the learned single Judge in the writ petition being WP 12710 (W) of 2016. The said writ petition was preferred primarily challenging communications dated 03/08th February, 2016 and 17th June, 2016 issued by the Registrar of the said University.

2. Records would reveal that the writ petition was dismissed observing, *inter alia*, as follows:

‘In the present case, an associate professor has been promoted to the position of a professor. Since it is admitted that the writ petitioner are teachers the moment that the

amending Act of 2011 came into force by virtue of clause (v) thereof the power of the respondent no. 6 to appoint and, therefore, to keep in abeyance the appointment of any teacher vanished. In such view of the matter, I am of the considered opinion that the respondent no. 6 had no jurisdiction to resolve to keep in abeyance the appointment of the writ petitioners on promotion to the post of professors on any ground whatsoever including an error on the face of the records. However, this entire exercise has been mainly an academic diversion and a manner in which the Court and the learned advocates pass their time because no benefit can accrue to the writ petitioners on the basis of this finding in view of the fact that they have consciously chosen not to challenge the resolution at Annexure R/1 to the affidavit in opposition by which the error was corrected in 2015 by the same body which I have held has no jurisdiction.

Since no prayer has been made for Rule NISI this Court has considered the records otherwise than under certiorari jurisdiction and prayer (c) to the writ petition does not seek quashing of any annexed decision apart from Annexure P/18 and P/15 respectively. Therefore, I cannot give consequential relief to the writ petitioners in this petition. However, this order shall not prevent the writ petitioners from challenging the said resolution as Annexure R/1, if so advised.'

3. Mr. Chaudhuri, learned advocate appearing for the appellants argues that the learned single Judge erroneously proceeded on the basis that the writ petitioners were teachers and that as such the Executive Council of the said University had no jurisdiction to keep the order of re-designation in abeyance seeking concurrence of the State Government. The writ petitioners were appointed to the post of Scientific Officer. The University authorities inadvertently described the writ petitioners as Associate Professors and subsequently as Professors. Such designation and status were without prior approval of the State Government. To create any new post in the University, the State Government is the appropriate authority and in the absence of such approval of the State Government, the writ petitioners were not entitled to the consequential reliefs on the rudiments of such re-designation.

4. He submits that for such re-designation concurrence of the State was mandatory inasmuch as such re-designation involves expenditure over and above the budgetary sanction of the State Government. The writ petitioners were never appointed as Associate Professors nor were ever recruited according to the recruitment rules. They were simply re-designated as holding teaching posts. Recruitment under the recruitment rules and the conversion of posts are different and mutually exclusive. The writ petitioners could not have availed entry into the

cadre of teaching staff. Such argument, as advanced, was glossed over by the learned single Judge and no finding was returned on the same. Such infirmity warrants interference of this Court.

5. Mr. Chakraborty, learned advocate appearing for the writ petitioners/respondents denies and disputes the contention of Mr. Chaudhuri and submits that the issues urged in the present appeal were considered by a coordinate Bench of this Court in case of *Dr. Niladri Biswas Vs. State of West Bengal & Ors.*, reported in 2019 SCC OnLine Cal 9405 and by a judgment delivered on 27th September, 2019, the writ petitioner therein was directed to be allowed to continue as the professor and head of the relevant department till he attains the age of superannuation in normal course and the said University was directed to calculate and to pay the arrears of salary which he would have been entitled to. By the said judgment, the Hon'ble Court also directed payment of interest. Aggrieved by the said order, the University authorities preferred a Special Leave Petition (hereinafter referred to as SLP) before the Hon'ble Supreme Court and the same was disposed of by an order dated 6th April, 2023 vacating only the direction towards payment of interest and subject to such modification, the SLP was disposed of.

6. Mr. Chakraborty further submits that the issues urged by the appellants in the present appeal have, thus,

been negated and such decision in the appeal being MAT 1086 of 2018 (*Dr. Niladri Biswas Vs. State of West Bengal & Ors.*) has attained finality and the appellants cannot apply any different yardstick in case of the writ petitioners.

7. He further submits that as per the direction contained in the order impugned in the present appeal, the writ petitioners have already preferred a writ petition being WPA 11467 of 2019 challenging the decision of Executive Council of the said University and due to pendency of the present appeal, the said writ petition has not yet been disposed of. Let a copy of the order dated 4th August, 2021 passed in the said writ petition, as placed, be kept on record.

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

9. It appears that the objections raised by the appellants in the present appeal are identical to those, as urged, in the appeal being MAT 1086 of 2018. The writ petitioners in both the proceedings are employees of the same University. The appellant in the said appeal was working as a Project Officer whereas the writ petitioners/respondents in the present appeal were working as Scientific Officers prior to re-designation. Both the posts of Project Officer and Scientific Officer come within non-teaching post/officer cadre. The objections

urged were scrutinized, considered and negated by the judgment delivered in the said appeal being MAT 1086 of 2018 and such observations and directions in the said appeal had already attained finality as the same were not interfered with by the Hon'ble Supreme Court in the SLP except the direction towards payment of interest. In view thereof, the objections raised and the issues urged in the present appeal are no longer *res integra* and accordingly, no interference is called for in the present appeal.

10. For the reasons discussed above, the appeal and the connected application are dismissed.

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

12. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)