2024 INSC 616

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2024
[ARISING OUT OF SLP (CIVIL) NO. 16944 of 2022]

MAITREYEE CHAKRABORTY APPELLANT(s)

VERSUS

THE TRIPURA UNIVERSITY & ORS. RESPONDENT(s)

J U D G M E N T

K.V. Viswanathan, J.

1. Leave granted.

2. The present appeal calls in question the correctness of the judgment of the High Court of Tripura at Agartala dated 20.06.2022 in W.A. No. 5 of 2020. By virtue of the said judgment, the Division Bench of the High Court confirmed the judgment of the learned Single Judge dated 04.12.2019 dismissing the writ petition of the Appellant.

Brief facts:

3. The facts lie in a narrow compass. One Dr. Praveen Kumar Mishra was working as an Associate Professor in Law in the Respondent-University. On 27.11.2015, the Executive Council of the Respondent-University granted a lien for one year to Dr. Praveen Kumar Mishra to enable him to join the post of Associate Professor in Law in Sikkim University. On 02.12.2015, Dr. Praveen Kumar Mishra joined Sikkim University.

4. On 05.05.2016, the Respondent-University issued an advertisement through an employment notification for various posts by inviting applications from suitable candidates. In the Department of Law, for the post of Assistant Professor, three vacancies were advertised. One was an unreserved regular vacancy. One was a lien vacancy in the Open category and one was a lien vacancy for the OBC candidates. The pay-scale was Rs.15600-39100 and the Grade Pay was Rs.6,000/-. In the note appended in Clause 19, it was mentioned "*Appointment made to the posts against LIEN vacancy are likely to be regularized subject to vacation of lien and satisfactory performance.*" Importantly, it was a common advertisement for all the three vacancies.

We say this, at the outset, because both the learned Single Judge and the Division Bench proceeded on the basis that what was advertised was only a lien vacancy. No doubt, two of the vacancies were lien vacancies. However, there was one regular post also notified in the Unreserved category and hence it will be too much to assume that candidates would not have applied in full measure on the premise that only lien vacancies were advertised.

5. On 05.09.2016, pursuant to the Appellant's application for the post of Assistant Professor in Law in the Unreserved category (UR), she was asked to appear before the Selection Committee. On 09.09.2016, a list of shortlisted candidates called for interview for the post of Assistant Professor along with the date and time for the interview was published. Insofar as the post of Assistant Professor (Law) was concerned, the time fixed was 12.30 PM on 21.09.2016 and about 16 candidates including the Appellant and one Sri. Brij Mohan Pandey were called for the interview.

6. On 20.11.2016, the 26th Meeting of the Executive Council of the University was held and the Agenda for consideration of the panel and names of persons recommended by the concerned Selection Committee

for various teaching posts was taken up and approved. Insofar as the Assistant Professor in Law was concerned, the following was mentioned.

4.	Assistant Professor in Law	2-UR (1 lien Vacancy)	21.09.2016	1. Brij Mohan Pandey
				2. Maitreyee Chakraborty

A note was appended below which reads as under:-

> "N.B. Candidate at Serial No 2 against the post of Assistant Professor in Law shall be given the offer of appointment against Lien Vacancy. In case the candidate at Serial No 1 does not accept the offer of appointment given to him against regular/ substantive vacancy, the post shall go to the candidate at Serial No 2 and Candidate at Serial No 3 on the approved panel shall be given the offer of appointment against the Lien Vacancy."

7. As would be clear, at Serial Number No.1 was Sri. Brij Mohan Pandey and he was taken against the regular vacancy. The Appellant was adjusted against the Unreserved lien vacancy. There was a clear stipulation that in case Mr. Brij Mohan Pandey did not accept the offer of appointment given to him against the regular/substantive vacancy, the post was to go to the Appellant who was at Serial No.2. It is another

matter that Mr. Brij Mohan Pandey took up the appointment. However, this is significant because this fact negates the reasoning of the University, the learned Single Judge as well as the Division Bench that, what was advertised was only a lien vacancy and, as such, many meritorious candidates would not have applied.

8. Be that as it may, on 07.12.2016, an offer of appointment was made offering the Appellant the post of Assistant Professor in Law (UR) against lien vacancy. Paras 1 and 2 of the appointment letter are crucial and reads as under:-

> "In accordance with the decision of the 26th meeting of the Executive Council of the University held on 20th November, 2016, I am to inform you that you have been selected for appointment to the post of Assistant Professor in Law (UR) against Lien vacancy in the Pay Band of Rs. 15600-39100 plus Academic Grade Pay (AGP) of Rs. 6000 and other admissible allowances subject to the terms and conditions as set out herein and as amended from time to time.
>
> 2. Your appointment is against Lien vacancy and hence liable to be terminated with the joining of the incumbent concerned back to the substantive post held by him in this University. In case the lien is vacated, your service may be continued further with the approval of the Executive Council of the University."

9. To summarize, the appointment order mentioned that a) the appointment was against the lien vacancy; b) it was liable to be

terminated with the joining of the incumbent concerned back to the substantive post and c) in case the lien is vacated, the Appellant's service may be continued further with the approval of the Executive Council of the University.

10. The Appellant, after resigning her job from the Tripura Government Law College, joined the University in the post of Assistant Professor in Law with effect from 17.01.2017 (F/N) and has been continuously working for the last seven years and six months.

11. On 08.03.2017, the lien granted to Dr. Praveen Kumar Mishra was extended by six months with effect from 15.12.2016. When the matter stood thus, in the 29th Meeting of the Executive Council of the University held on 14.11.2017 vide Agenda 12/29/2017, the resignation tendered by Dr. Praveen Kumar Mishra vide letter dated 18.09.2017 from the post of Assistant Professor, Department of Law, Tripura University was accepted. The situation then was that Dr. Praveen Kumar Mishra, who held the lien, forfeited any lien that may have existed. Ordinarily, by virtue of Note 19 of the employment notice, the Appellant was expecting her regularization since there was nothing adverse in her performance. However, that was not to be.

12. In the 32nd Meeting of the Executive Council held on 13.12.2018, vide Agenda 18/32/2018, while other teachers working in their respective posts were confirmed, the Appellant was not confirmed and the Executive Council resolved to re-advertise the post. On 28.12.2018, the Appellant was informed by the Registrar as follows:-

> "No.F.TU/REG/PF-T/201/17 Date 28.12.18
>
> To
>
> Smt. Maitreyee Chakraborty,
> Assistant Professor,
> Department of LAW,
> Tripura University
>
> Madam,
>
> You have joined this University to the Post of Assistant Professor, Department of LAW against lien Vacancy on 17.01.2016.
>
> As per resolution of 32nd Meeting of the Executive Council held on 13th December, 2018 your post has not been confirmed which will be re-advertised in time.
>
> This is for your information and doing the needful.
>
> (S.Debroy)
> Registrar (i/c)"

13. Here again, nothing was mentioned about any adverse performance. On the same day, the Appellant wrote a letter asking for the reasons and pointing out that the Minutes of the 32nd Executive Council Meeting which was circulated in the official mail merely

mentioned: "*as per rules not confirmed*". In the 32nd Meeting of the Executive Council dated 13.12.2018, at Agenda 18/32/2018, the issue was to consider the confirmation of services of the teachers of the University to their respective posts which are mentioned in the table as Annexure-II. The Resolution was :- "*as per rules not confirmed". Post to be re-advertised*."

14. On 06.02.2019, the Appellant was informed that (in continuation of the University's letter of 28.12.2018) her continuation in the post beyond 28.02.2019 was not possible and that the service against the lien was to expire on 28.02.2019. She was also asked if she was interested to work as a Guest Faculty and if so, she was asked to apply for the same, after observing all the formalities.

15. The Appellant represented to the Registrar, Tripura University, asking for reasons for the proposed discontinuance. The Appellant also sought a response to her letter of 28.12.2018 and further letters to the Vice-Chancellor and the Dean dated 24.01.2019. No reply was forthcoming.

Proceedings before the High Court:

16. The Appellant filed a Writ Petition No. 302 of 2019 before the High Court impugning the Resolution of the 32nd Meeting of the Executive Council dated 13.12.2018 and the letter of the Registrar dated 06.02.2019 and prayed that she be confirmed in the post of Assistant Professor in Law, Tripura University. An interim order of 28.02.2019 was passed suspending the Resolution of the 32nd Meeting of the Executive Council and the letter dated 06.02.2019 of the Registrar.

17. A counter affidavit came to be filed by the Respondent-University. A plea was set up that discretion lay with the authority about the continuance of the Appellant, even if the candidate holding the lien had vacated the lien. It was further averred that the issue about regularizing or re-advertising was in the larger interest of the candidates who had not applied (as the post was under lien). What is significant is that nothing adverse about the appellant was set out anywhere in the counter. By a judgment of 04.12.2019, a learned Single Judge, while rejecting the contentions of the Appellant and dismissing the writ petition held as follows:-

> "[9] The stand taken by the Tripura University one can find no fault. It can be appreciated that when a temporary vacancy is advertised which vacancy is created on account of the substantive holder of the post not being available for a temporary period, many eligible interested candidates may be persuaded not to apply. If a person is holding a permanent post or even a semi-permanent engagement under some other organization, he may not want to join a temporary vacancy, resign from his permanent or semi-permanent engagement at the risk of being told sometime later and since the lien holder has returned back and is likely to join his original position he should vacate the post. In that view of the matter, the decision of the Executive Council to re-advertise the post once the post became permanently vacant stands to reason. The decision therefore must be upheld."

18. Aggrieved by the order of the learned Single Judge, the Appellant preferred a Writ Appeal No. 5 of 2020 before the Division Bench of the High Court. The Division Bench of the High Court, by a judgment dated 20.06.2022, affirmed the order of the learned Single Judge and dismissed the Appeal.

Contentions:

19. We have heard Mr. Ghanshyam Joshi, learned counsel for the Appellant and Mr. Sujeet Kumar, learned counsel for the Respondent-University. We have also considered the written submissions filed by the Appellant.

20. Mr. Ghanshyam Joshi, learned counsel for the Appellant reiterated the submissions made before the courts below and contended that the decision of the Executive Council dated 13.12.2018 resolving not to confirm the Appellant and to readvertise the post was illegal and that it deserves to be quashed. Learned counsel also contended that the courts below have erred in appreciating the true nature and character of the advertisement issued. According to the learned counsel, the employment notice issued insofar as the unreserved category was concerned, advertised for two posts of Assistant Professor in Law. According to learned counsel, one was a full regular vacancy and the other was designated as a lien vacancy.

21. Learned counsel submits that it was an error to assume that all eligible candidates desiring to apply would not have applied since the vacancy was a lien vacancy as there was no separate method of applying prescribed. Whoever applied was entitled to be considered for the regular vacancy also and as such until the final selection there was no way of knowing against which vacancy they would be selected. According to learned counsel, this erroneous assumption formed the

basis of the judgment of the learned Single Judge and the Division Bench.

22. Learned counsel further made reference to Clause 19 in the employment notice as well as to the Minutes of the 26th meeting of the Executive Council dated 20.11.2016 and to the letter of offer of appointment, to contend that the absence of anything adverse being noticed in the performance of the Appellant, she ought to have been confirmed since she had undergone the normal process of selection. Learned counsel relied upon the judgment in ***Somesh Thapliyal & Anr. vs Vice Chancellor, H.N.B. Garhwal University & Anr., (2021) 10 SC 116*** and the judgment in ***Meher Fatima Hussain vs. Jamia Milia Islamia & Ors., 2024 INSC 303*** in support of his submissions. Mr. Sujeet Kumar supported the findings in the judgment of the courts below and contended that there was no scope for interference with the same.

Question for Consideration:

23. The question that arises for consideration is whether the Respondent-University was justified in resolving on 13.12.2018 at the

32nd Meeting in Agenda No.18/32/2018, that the Appellant was not to be confirmed and that the post was to be readvertised? If not, the further question would be as to what relief should the Appellant be entitled to?

Reasoning and Conclusion:

24. As explained earlier, the reasoning that many interested eligible candidates would not have been persuaded to apply is not correct because what was advertised was one regular vacancy and two lien vacancies, with one of the lien vacancies being unreserved. At least 16 candidates were shortlisted for the interview from the many applicants. In our view, it would not be correct to assume that because one of the unreserved vacancies was a lien vacancy many eligible candidates would not have applied. One vacancy advertised being a regular vacancy, it is fair to assume that the interested candidates would have definitely applied and as such no prejudice has been caused to any person. This fact is reinforced by a perusal of the 26th Meeting of the Executive Committee dated 25.11.2016 whereby while offering Mr. Brij Mohan Pandey the regular vacancy, the Appellant at Serial No.2 was offered the lien vacancy which is for the Unreserved Category (UR) with a note that, in case the candidate at Serial No.1 did not take the

regular vacancy, the Appellant was to be accommodated against the same. No doubt Mr. Brij Mohan Pandey took the regular vacancy but it could not be disputed that all the candidates were competing against the regular vacancy also.

25. Quite apart from that, Note 19 to the employment notice also indicated that, subject to satisfactory performance and on vacation of lien by the candidate holding the lien the appointee is likely to be regularized. No reasons have been given in the 32nd Meeting of the Executive Council dated 13.12.2018 or in the letter dated 28.12.2018 as to why the Appellant was not confirmed. The liberty reserved in the appointment order cannot be exercised in an arbitrary manner. There was no case made out by the University to deny the Appellant, her confirmation.

26. The Appellant went through the normal process of selection. The employment notice set out that appointments made to the posts against LIEN vacancies are likely to be regularized subject to vacation of lien and satisfactory performance. The lien admittedly got vacated. The performance has been satisfactory as nothing adverse had been pointed out and the Appellant is discharging the duties for more than seven

years. While approving the panel of names also it was clearly mentioned that in case the candidate at Serial No.1 – Sri. Brij Mohan Pandey did not accept the offer, the Appellant was to be accommodated against the regular vacancy. This clearly demonstrates that all the applicants competed for the regular post also and no one from the open market could have been prejudiced. Most importantly, the offer of appointment also stated that in case the lien was vacated, the Appellant's service was to be continued further with the approval of the Executive Council of the University.

27. In this background, particularly when the Appellant was put through the fire test of a regular selection, was the University justified in denying her confirmation when all the contingencies were cleared with the vacation of the lien and the performance being satisfactory? We think not. The University cannot be heard to say:- '*may be the lien is vacated, and your performance is satisfactory, but we do not want to confirm your service*'. The Respondent-University, being a statutory body, any such conduct would tantamount to an arbitrary and unreasonable exercise of power, apart from being unfair. The discretion vested in the Executive Council should be exercised in a fair and non-

arbitrary manner. It cannot be based on the whim and caprice of the decision-making authority. If asked to justify, the Executive Council must have good reasons to defend the exercise of power. In this case, alas, there are none. The resolution of the Executive Council denying confirmation and preferring readvertisement is delightfully vague and offers no justification. The justification desperately attempted in the counter affidavit to defend the decision has, as demonstrated above, come a cropper.

28. In ***Somesh Thapliyal*** **(supra)** it was held as under:-

> *"49. In our considered view, once the Appellants have gone through the process of selection provided under the scheme of the 1973 Act regardless of the fact whether the post is temporary or permanent in nature, at least their appointment is substantive in character and could be made permanent as and when the post is permanently sanctioned by the competent authority.*
>
> *50. In the instant case, after the teaching posts in the Department of Pharmaceutical Sciences have been duly sanctioned and approved by the University Grants Commission of which a detailed reference has been made, supported by the letter sent to the University Grants Commission dated 14-8-2020 indicating the fact that the present Appellants are working against the teaching posts of Associate Professor/Assistant Professor sanctioned in compliance of the norms of the AICTE/PCI and are appointed as per the requirements, qualifications and selection procedure in accordance with the 1973 Act and proposed by the University, such incumbents shall be treated to be appointed against the sanctioned posts for all practical purposes."*

29. ***Mehar Fatima Hussain (supra),*** while following ***Somesh Thapliyal (supra),*** held on the facts of that case that where appointment was after undergoing a regular selection process and the incumbents possess the relevant qualification, they should have been continued on the posts merged with the regular establishment of the University instead of adopting a fresh selection procedure. Further in that case the University's action of not continuing the incumbents and starting a fresh selection process was held to be unjust, arbitrary and violative of Article 14 of the Constitution of India. Directions to continue the employment were given. On the facts of the present case too we are inclined to adopt a similar course.

30. Considering the facts obtaining in the present case, we are inclined to hold that, in the absence of any material indicating unsatisfactory performance, in the ordinary course of things, fair and just exercise of power would require that the Appellant be confirmed against the vacancy since there was no more a lien being exercised by Dr. Praveen Kumar Mishra. The reasoning given by the learned Single Judge and of the Division Bench, as demonstrated above, are fallacious. The Appellant has, after undergoing the regular selection process, been

working since 17.01.2017, for the last seven years and approximately six months. Even in the impugned order, pending the proposed re-advertisement, she was continued in service.

31. The representations in the employment notice, the Resolution of the Executive Council and the appointment order did give rise to a legitimate expectation to the Appellant that in the event of the lien being vacated, the appellant would be continued in service and regularized in the said post. The only condition was that it will need the approval of the Executive Council.

32. In ***Ram Pravesh Singh and Others*** vs. ***State of Bihar and Others***, (2006) 8 SCC 381, this Court observed that the repository of the legitimate expectation is entitled to an explanation as to the cause for denial of the expected benefit flowing from the representation held out. ***Ram Pravesh Singh (supra)*** was recently followed by the Constitution Bench in ***Sivanandan C.T. and Others*** vs. ***High Court of Kerala and Others***, (2024) 3 SCC 799. Chief Justice D.Y. Chandrachud, speaking for the Constitution Bench, after felicitously tracing the entire history of the development of the doctrine of legitimate expectation, held in para 18 as under:-

> "18. The basis of the doctrine of legitimate expectation in public law is founded on the principles of fairness and non-arbitrariness in Government dealings with individuals. It recognises that a public authority's promise or past conduct will give rise to a legitimate expectation. The doctrine is premised on the notion that public authorities, while performing their public duties, ought to honour their promises or past practices. The legitimacy of an expectation can be inferred if it is rooted in law, custom, or established procedure."

33. In the said judgment of the Constitution Bench, it was further held following ***Food Corporation of India*** vs. ***M/s Kamdhenu Cattle Feed Industries***, (1993) 1 SCC 71 that public authorities have a duty to use their powers for the purpose of public good and that the said duty raises a legitimate expectation on the part of the citizens to be treated in a fair and non- arbitrary manner. One of the exceptions recognized in the above judgment is that the doctrine of legitimate expectation will cede to larger public interest.

34. In the present case, the only explanation given in the counter affidavit of the State was that the University had a discretion and that the denial of regularization and the decision to re-advertise was in the larger interest of the candidates who had not applied as the post was under lien. This explanation found favour with the High Court. However, we have in our discussion above, demonstrated that one of

the post of the Assistant Professor (Law) was clearly a regular post in the Unreserved Category. We have found that no prejudice to public interest could have been caused as eligible candidates desiring the appointment would have anyway applied to compete for the regular slot. In view of this, in the facts of the present case, we find that the legitimate expectation was not outweighed by any overriding public interest.

35. The mandate of ***Ram Pravesh Singh (supra)*** as reiterated in ***Sivanandan C.T. (supra)*** that the appellant was entitled to an acceptable explanation for the denial of the expectation remains unfulfilled. This is an additional ground on which the appellant should succeed.

36. In view of the aforesaid, we set aside the judgment of the learned Single Judge dated 04.12.2019 and of the Division Bench dated 20.06.2022. We also set aside the Resolution in Agenda No.18/32/2018 of the 32nd Meeting of the Executive Council held on 13.12.2018 insofar as it records that the Appellant is not confirmed in service and that the post should be readvertised. We also set aside the letter of the Registrar dated 06.02.2019 directing that her services will not be continued

beyond 28.02.2019. We further issue a writ of mandamus directing the Respondent-University to place the Appellant's case for confirmation before the Executive Council and that the Executive Council and the Respondent-University shall pass appropriate resolution/order(s), in accordance with the findings given in the present judgment. The said exercise is to be carried out within four weeks' time. The Appellant should also be given all consequential benefits.

37. The appeal stands allowed in the above terms. There shall be no order as to costs.

.....J.
[**J.K. MAHESHWARI**]

.....J.
[**K. V. VISWANATHAN**]

New Delhi;
22nd August, 2024.