

(1998) 04 CAL CK 0027

Calcutta High Court

Case No: F.M.A.T. No. 1263

Vidyasagar University

APPELLANT

Vs

Tapan Kr. Dey

RESPONDENT

Date of Decision: April 23, 1998

Acts Referred:

- Vidyasagar University Act, 1981 - Section 10, 10(4), 10(5), 10(6), 11
- Vidyasagar University Ordinance, 1985 - Ordinance 10, Ordinance 27, Ordinance 28, Ordinance 5, Ordinance 8

Citation: (1998) 1 ILR (Cal) 470

Hon'ble Judges: Satyabrata Sinha, J; D.B. Dutta, J

Bench: Division Bench

Advocate: Debjani Sengupta and Ratna Ghosh, for the Appellant; Sardar Amjad Ali, Saidul Islam Khan and Swapan Kr. Pramanik for Respondent Nos. 4, 6, 7 and 9 and Anjan Banerjee and S.K.S. Arafin for Respondent Nos. 1-3, 5 and 8, for the Respondent

Final Decision: Allowed

Judgement

Satyabrata Sinha, J.

This appeal is directed against a judgment and order dated September 8, 1995 passed in C.O. No. 1272 (W) of 1988 whereby and whereunder a learned single Judge of this Court allowed the writ petition filed by the writ Petitioners.

2. The writ Petitioners who are 9 in numbers are claiming absorbtion in the post of Junior Assistant Typists and Peons in the University on the ground that they have worked therein for the following period:

3. The said Petitioners are said to have been appointed and worked as under:

1	Petitioner of	Post
2	No.	
3	Control	
4	Deptt.	26௧௮87
5	Feasibility	
6	Staff	26௧௮87
7	Deptt.	
8	Feasibility	
9	Staff	௨௮௯௮7
10	Deptt.	
11	Donor's	
12	Deptt.	24.8.87
13	No.	
14	Donor's	24.8.87
15	No.	
16	Donor's	24.8.87
17	No.	
18	Registration's	
19	No.	27௮௯௮7
20	Deptt.	
21	Librarian's	27௮௯௮7
22	No.	
23	Section	
24	Lipitor's	
25	Section's	
26	Registration's	27௮௯௮7

4. The fact of the matter lies in a very narrow compass. Admittedly an advertisement was issued by the Appellant-University on February 12, 1987 for the posts of Typist, Peons, Sweepers etc. It appears that the appointing authority for the said posts having not been constituted and owing to certain technical difficulties, a decision was taken by the University for filling up some of the vacant posts on an ad hoc basis. Although for that purpose the vacancies were not required to be notified to the Employment Exchange in terms of Employment Exchange (Compulsory Notification of Vacancies) Act, 1959, such intimation had been given, pursuant whereunto the names of the Petitioners along with about 200 others were sponsored.

5. The Petitioners were not selected by the Selection Committee. As the appointments thus were to be for a period of less than 3 months, they were merely asked to see the Registrar or the Deputy Registrar either on the dates specified or on any date after receipt of the said letter, pursuant whereunto they were allegedly interviewed and asked to join. Admittedly no appointment letter was issued. It is also admitted that they were asked to discontinue work from January 13, 1988. A representation was made by the Petitioners and allegedly they were allowed to work for a few days more. There appears to be a controversy as regard the last date of their working inasmuch as according to the Petitioners, they have worked upto January 27, 1988, whereas according to the University, they have worked after

January 13, 1988 only on January 19, 1988 to January 21, 1988 and January 25, 1988.

6. Before the learned trial Judge it was inter alia contended that in absence of the constitution of the statutory authorities, empowered to select and make appointments viz. establishment committee and administrative Council, such posts could be created by the Vice-Chancellor of the Appellant-University First Act (hereinafter referred to as the said Act). It was further contended that as in the proposed budget the amount of salaries paid to all the employees were stated, they would be deemed to have been permanently appointed.

7. The learned trial Judge by reason of the impugned judgment, inter alia, held that when names of the writ Petitioners were forwarded by the Employment Exchange, without intimating them that they were being interviewed for a temporary post, they should have been allowed to continue in their services. In any event, according to the learned trial Judge, such termination of service could not have been made without issuing any formal letter of termination and without payment of one month's salary in terms of the provisions of the Act. The learned trial Judge in support of his aforementioned contention relied upon a decision of this Court in *Professor Kalipada Banerjee v. State of West Bengal* 1984 (1) C.L.J. 445 and [Marathwada University Vs. Seshrao Balwant Rao Chavan](#),

8. Ms. Debjani Sengupta, the learned Counsel appearing on behalf of the Appellant, inter alia, submitted that keeping in view the provisions of the Act and Ordinances, the impugned order could not have been passed. The learned Counsel contended that all the posts pursuant to the advertisement have been filled up in a regular manner and thus the impugned judgment must be held to have been illegal in law.

9. Mr. Amjad Ali, the learned Counsel appearing on behalf of the Respondents on the other hand, submitted that the very fact that statutory bodies were not constituted for the purpose of making regular appoints, it must be a case where the Vice-Chancellor had exercised his power u/s 10(6) of the Act for the purpose of creation of post pursuant whereto the writ Petitioners were appointed. According to the learned Counsel, the Appellant-university has committed an illegality in not issuing the appointment letters as also the letters of termination inasmuch as any appointment or termination made by the statutory authority must be done in terms of the statute. The learned Counsel submitted that appointments having been made in consonance with the provisions of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 and upon holding interviews, the Petitioners could not have been directed not to continue with their services.

10. The basic fact of the matter is not in dispute. The advertisement was issued in the year 1986 inviting applications in various posts mentioned therein. The Petitioners admittedly did not apply pursuant thereto.

11. It also stands admitted that appointments are required to be made in terms of the provisions of the said Act and the First Ordinance issued by the University. The

relevant provisions for the purpose of disposal of the instant appeal may be noticed.

12. Section 3(1) of Vidyasagar University Act, 1981 provides for the constitution of Vidyasagar University. Section 4 provides for the power of the University. Sub-section (22) of Section 4 empowers the University to create and make appointment to such administrative, clerical and other posts as it may deem fit. Section 10 envisages that the Vice-Chancellor shall be the principal executive and academic officer of the University. He in terms of Sub-section (4) of Section 10 is also empowered to exercise general control and supervision of all the officers and further in terms of Sub-section (5) he is entitled to exercise such power and discharge such other duties as may be delegated.

Section 10(6) of the Act reads as follows:

The Vice-Chancellor may take on behalf of the University such action as he may deem expedient in any matter which, in his opinion is either urgent or of an emergent nature and shall report the same for confirmation of the next meeting of the Authority or body which, in the ordinary course, would have dealt with the matter.

Provided that if the action taken by the Vice-Chancellor is not approved by the Authority or body concerned, or if there is no such Authority or body constituted under this Act, the matter shall immediately be referred to the Chancellor whose decision thereon shall be final.

13. The duties of the Registrar have been enumerated in Section 11 of the Act. Section 21 of the Act provides for the power and the functions of the executive council which includes the power to create with the approval of the State Govt., post of officers, teachers and other employees of the university and to appoint them as also to fix their emoluments.

14. Section 32(1) provides that every teacher, every officer and every employee shall be provided with the letter of appointment. Section 44 puts an obligation on the University to prepare budget wherein the receipt and expenditure for a financial year shall be submitted for approval of the State Govt. at least 4 months prior to commencement of the financial year. The State Govt. admittedly is to release the fund from time to time on the basis thereof. Section 44(3) prohibits the University from incurring any expenditure except with the prior approval of the State Govt.

15. Vidyasagar University First Ordinance, was issued in the year 1985. Under Ordinance No. 10 executive Council is the appointing authority which is to be done on the basis of the recommendations of the Establishment Committee.

Ordinance No. 10(b) reads thus:

Junior Assistants and permanent posts of lower subordinate staff of any category by the Establishment Committee, subject to delegation of such powers by the Executive

Council and reported to the Executive Council for record. Explanation in this Ordinance "Assistants" included a technical assistant, a stenographer, a typist, "mechanic, and a skilled labour, whether in the University press or elsewhere".

16. Ordinance No. 27 specifies the functions of the Establishment Committee. Ordinance No. 28 provides that the Establishment Committee may also obtain names from the Employment Exchanges of District of Midnapore for consideration for appointment in the posts of Junior Assistants and those of lower subordinate staff of any category.

17. The said Ordinance defines as to who would be the assistants and the subordinate staff. The note appended to Ordinance No. 8 of 1988 provides for daily rated employees and other similar staff who are paid from contingency bill. Note 2 appended to the aforementioned Ordinance No. 8 provides that in case of any doubt the matter shall be referred to the Executive Council and its decision shall be final.

18. Ordinance 91(1) reads thus:

Wherever a permanent vacancy occurs in the posts of Lower Subordinate staff the appointing authority shall issue notifications in the University Notice Boards requiring the candidates to register their names in the manner to be prescribed, for being considered for appointment to any such post. Appointment shall be made on the basis of a Test and/or an interview by the appointing authority.

Part-IV of Ordinance No. 5 provides for pay and allowances. Vidyasagar University First Statute, 1985, inter alia, specifies the duties of the Finance Committee.

19. A bare perusal of the aforementioned provisions clearly go to show that it is only the executive council who can give an appointment in the manner laid down under the statute. There cannot be any doubt whatsoever that the Vice-Chancellor in exercise of its power conferred upon it u/s 10(6) of the Act may pass such orders in emergency but there is nothing to show that such an order had been passed. Only because certain steps had been taken pursuant to the direction of the Vice-Chancellor or otherwise (although there is nothing on record to show that any specific order was passed by the Vice-Chancellor), that Vice-Chancellor had exercised any such power. In absence of any such order the court cannot presume that the Vice-Chancellor satisfied himself about the existence of an emergency so as to enable him to create post. Even the other conditions of the said provision were not complied with.

20. It is true that in terms of the provisions of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 it was not necessary for the University to intimate the Employment Exchange, but a bare perusal of the notification forms which have been filed by the Petitioners themselves with their supplementary affidavit clearly show that the Employment Exchange was clearly

intimated that all temporary posts were for less than 3 months except in case of two posts of Typists. The said fact would appear from pages 61 to 68 of the supplementary paper book.

21. The Petitioners, as indicated hereinbefore, were asked to appear before the interview by the Registrar or Joint Registrar (although the latter has no power whatsoever under the said Ordinance) to appear on a specified or unspecified date. In fact, some of the Petitioners who did not appear earlier were asked to appear on the day they reported although no prior date therefore was fixed. No letter of appointment was issued. The Petitioners did not raise any question at that point of time. They were continued to be paid on the basis of no work no pay and on daily wages. They were asked not to work with effect from January 13, 1988 i.e. on the expiry of 90 days. However, they worked for few days more. This in this situation did not create any right in favour of the writ Petitioners.

22. As indicated hereinbefore, there is nothing to show that the Vice-Chancellor has exercised his power u/s 10(6). Admittedly the writ Petitioners did not file any writ application for their appointment in terms of the said advertisement. The Petitioners, in our considered view, cannot be said to have derived any right only because their names had been sponsored by the Employment Exchange. The provisions of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 may or may not have any application. But for the purpose of maintaining a writ of mandamus they must show existence of a legal right meaning thereby a right to continue in a post when an appointment had been made in terms of the statute by an authority empowered therefor. No appointment had been made by the executive council. In fact, the executive council was not constituted at the relevant time warranting such an ad hoc measure to be adopted by the University.

23. It has not been disputed that all the permanent posts had since been filled up from amongst the candidates who had applied pursuant to the aforementioned advertisement. We have, thus, no doubt in our mind that the Petitioners were appointed as a stopgap measure only for a period of less than three months so as to enable the university to constitute the executive council and make proper appointments by it in terms of the Act and the Ordinance.

24. We, having given our anxious consideration to the matter are unable to agree with the learned trial Judge that only because the writ Petitioners allegedly have worked for a period of 4 months or more they have derived any right to continue in the said post and for that purpose, the court has jurisdiction to direct creation of post. The decision of the Apex Court in Marathwada University Supra has no application in the instant case. In that case a question arose as to whether the Vice-Chancellor has the jurisdiction. The Apex Court held that in view of the provision of the University Act, Vice-Chancellor has no such power. Such a question does not arise in the instant case. The Petitioners were to continue in service for a limited period. They ceased to have any right after cessation thereof. The writ

petition was, therefore, not maintainable as in absence of any legal right no writ of mandamus could be issued by this Court.

25. For the reasons aforementioned the impugned judgment and order cannot be sustained which is accordingly set aside and the appeal is allowed. In the facts and circumstances of this case there will be no order as to costs.

D.B. Dutta, J.

26. I agree.