

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)

Case No. – OA 509 of 2017

Saibal Sankar Bhattacharyya -- VERSUS – The State of West Bengal & Ors.

Serial No. and
Date of order

For the Applicant

: Mr. A. Maiti,
Mr. D. Abbasi,
Ld. Advocates.

14
12.08.2025

For the State Respondents

: Mr. G.P. Banerjee,
Ld. Advocate.

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt.-II) dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

By filing this application the applicant has prayed for a direction to the respondents authorities to regularize their services as lectures in different government Polytechnic colleges. In the year 2001, the Deptt. of Technical Education & Training engaged a number of lecturers for their polytechnics on contractual basis, initially for a period six months but renewed at regular intervals. The appointment letter also reminded the ad hoc / contractual lecturers that his appointment is not only contractual but will not give him any right in future to claim for a post on regular basis. A written undertaking was also obtained from him. Sometime in the year 2010, the Deptt. moved a proposal for approval of Cabinet seeking absorption of total 63 number of contractual lecturers in the Department. The proposal justified such initiative on the ground that the selection of regular lecturers through P.S.C. is not only time consuming but services of regular lecturers are urgently need for teaching in the increasing number of polytechnics. Though, the Cabinet approved the proposal but at a later stage, it was pointed out by the Learned Advocate General and Learned Legal Remembrancer that such proposal will be in violation to the Judgment passed by the Hon'ble Supreme Court in the case of State of Karnataka Vs. Uma Devi & Ors. Thus, such intended action on the part of the respondent Department will be in violation of Article 320 of the Constitution of India. The competent authority accepted the opinion of the Ld. A.G. & Ld. L.R. and the proposal was not put into further action and as a result of such, the lectures earlier appointed on contractual basis,

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remained so and continued to work on contractual basis.

Appearing on behalf of the petitioner, Mr. Maity submits that the respondent Department cannot turn away from the decision of the Cabinet. It is argued that the opinions expressed by Ld. A.G. & Ld. L.R. cannot overrule the decision of the Cabinet. Further submission of Mr. Maity is that the Cabinet had accepted the proposal for regularization of the contractual lectures on regular establishment due to exigencies faced by the Deptt. Having done so, the Deptt. now cannot taken the plea of Uma Devi's case, as facts in this case are completely different from the Uma Devi's case. Concluding his submission, Mr. Maity prefers to mention relevant paras from the Civil Appeals arising out of SLP©2224-42OF 2016 IN Vinod Kumar & Ors. Union of India.

Responding on behalf of state respondents, Mr. Banerjee, learned counsel submits that though the Cabinet and approved the proposal but the same was not executed in the face of opinion expressed by the Ld. A.G. & Ld. L. R. Mr. Banerjee further submits that in terms of Rules of Business, the Govt. can always decide not to execute any of its decision taken earlier. Mr. Banerjee submits that one of the lecturers and similarly circumstanced though not an applicant in this application had earlier moved this Tribunal in O.A.-1222 of 2012. The Tribunal after findings no merit, dismissed the prayer in the application.

Mr. A. Maiti, learned counsel, in his rejoinder shows a copy of the order passed by the Hon'ble High Court in WPST-251 of 2014 in the matter relating to Md. Ayub Sheikh and Another. Submission is that Md. Sheikh also holding similar post, had moved the Tribunal which passed an order directing the respondent authorities to regularize the service of Mr. Sheikh in the post of Lecturer (Polytechnic). The Hon'ble High Court in WPST – 251 of 2014 with CAN529 of 2015 had confirmed the orders of the Tribunal. Submission of Mr. Maiti is that since Mr. Sheikh who was also holding a post on contractual basis as a Lecturer was given an order of regularization subsequently,

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similarly this applicant has also prayed for such regularization. In response to the submission made by Mr. Maity, Mr. Banerjee, Learned counsel, however, disagrees that Mr. Sheikh who was indeed regularized was not appointed on contractual basis, but was engaged as an ad hoc in 1999. Mr. Sheikh having been appointed as an ad hoc in 1999 had fulfilled the guidelines framed in the case of Uma Devi and thus, was regularized, whereas the applicant in this application was appointed at a later stage and not as an ad hoc, but on contractual basis. Further, the applicants when he accepted the terms of the contractual had given his consent not to have any claim in the future.

After hearing the submissions of the Ld. Counsels and on examination of the records, the Tribunal has come to observe that it is a case in which the applicants on contractual service basis have prayed for permanent absorption in regular establishment as lecturer in different Government polytechnic colleges. It is not in dispute that the applicant has been performing his duties with full satisfaction of the employer since his engagement in 2001.

Although a Cabinet's decision was taken in 2010 to regularize his services but such decision could not be implemented due to an opinion given by the Ld. Legal Remembrancer. Any decision of the Cabinet without any enabling executive order cannot be considered as full and complete order of the Government. The issue of filling up of vacant post either from recruitment or through absorption is a complete discretion of the Government. The Tribunal cannot use its authority to direct the Government as to why the vacant posts should not be filled up by absorption. Similarly, whether any employee engaged serving on contractual basis should be absorbed or not is also the sole discretion of the Government. Further, the same issue was also agitated by the applicants before this Tribunal in O.A-1222 of 2012 which was dismissed or lack of merit.

It is also to be appreciated that not only his appointment was purely on ad hoc basis but such appointment were accepted by the

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applicant without protest. Unless the terms of any appointment are modified, the applicant continues to be guided by the same wordings of the appointment letter. Engagement and continuation in the same post on ad hoc basis does not automatically confer any right upon the applicant. However, the Tribunal would also clearly emphasise the other side of the issue, which relates to action by the respondent Department. It is the aspiration of the employees engaged on contractual/adhoc basis to be absorbed permanently in regular establishments. It is their expectation that having served satisfactorily, the respondent authorities will absorb them in regular establishments. It would also be unfair on part of the applicants to continue serving in the ad hoc / contractual basis endlessly. The applicant has been serving in this post as lecturer on ad hoc basis since 2001 and have completed a major part of his service life. Such post of lecturer in government polytechnic colleges cannot and ought not continue on adhoc basis. The respondent authorities must take concrete steps to fill up these posts on regular basis, either through absorption or through fresh recruitment process.

Therefore, a direction is given to the Respondent No. 3, the Additional Chief Secretary, Department of Technical Education and Training to initiate concrete steps in filling the vacant posts of lecturers either through absorption of the applicant or through fresh recruitment process. Such steps shall be initiated within three (03) months from the date of communication of this order. With this direction, this application is **disposed of**.

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SAYEED AHMED BABA
Officiating Chairperson & Member (A)