

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE**

Present:

The Hon'ble **Justice Kausik Chanda**

**W.P.A. No.22027 of 2022**

**PARTHA GHOSH**

**-VERSUS-**

**THE STATE OF WEST BENGAL AND OTHERS**

For the petitioner	: Mr. Pijush Chaturvedi, Adv., Mr. Tarun Kumar Das, Adv.
For the UGC	: Mr. Anil Kumar Gupta, Adv.
For the State	: Mr. Swapan Kumar Datta, Adv., Mr. Tapas Kumar Mandal, Adv.
For the University	: Mr. Arunangshu Chakraborty, Adv., Mr. Arijit Bera, Adv., Ms. Zeba Rashid, Adv., Ms. Shrabani Banerjee, Adv., Ms. Shaika Amin, Adv.
Hearing concluded on	: 01.05.2023
Judgment on	: 19.09.2023

**Kausik Chanda, J.:-**

This Court is surprised that a State-aided university, at the cost of public exchequer, has engaged in extravagant litigations seemingly without a productive purpose. This surprise is compounded by the university's disregard for a prior caution from a Division Bench of this Court. Despite being cautioned by the Division Bench of this Court, the learned advocate representing the university seems to have refused to internalise the lessons. This Court is constrained to make these observations in response to a challenge thrown by the petitioner to a notice of superannuation dated May 5, 2022, issued by Rabindra Bharati University (in short, the university), asking him to retire on October 31, 2022, on attaining 60 years of age.

2. The university by an office order dated December 29, 1995, appointed the petitioner as an "Accompanist" (Pakhawaj) in the Department of Vocal Music under the Faculty of Fine Arts.

3. It is the contention of the petitioner that he is entitled to the benefits outlined in Government notifications dated January 27, 2017, and February 24, 2019, which extended the age of superannuation of teaching staff in all universities (aided and unaided) in the State to be 62 and 65 years, respectively.

4. Mr. Chaturvedi, learned advocate appearing for the petitioner, has submitted that the Rabindra Bharati Act, 1981, was amended in 1985,

incorporating the term “Accompanist” within the definition of “Teacher of the University” in Section 2 (22) of the said Act. The petitioner was appointed as an Accompanist in the Rabindra Bharati University on December 29, 1995, following a selection process and his service was subsequently confirmed as a teacher of the university.

5. Though the West Bengal University Laws (Amendment) Act, 2012, omitted the term “Accompanist” from the definition of a university teacher, it did not alter the petitioner’s status retroactively. His initial status of “teacher” remained intact. Mr. Chaturvedi has contended that even in the said Act of 2012, the status of the petitioner as teacher had been protected by inserting the words “*or any other person, holding a whole-time substantive teaching post and appointed in a permanent vacancy in a University or recognized as such by the University with prior approval of the State Government;*”

6. Mr. Chaturvedi has pointed out that the issue as to whether an Accompanist is a teacher had been decided by a Single Judge of this Court in the writ petition, W.P. No.1747 (W) of 2019. In an appeal preferred by the university against the said judgment, a Division Bench of this Court by an order dated December 15, 2020, affirmed the order of the learned Single Judge. The Supreme Court also by an order December 10, 2021, dismissed the Special Leave Petition filed by the university against the order of the Division Bench.

7. The university filed a review application, which was dismissed by an order dated February 15, 2022. The university, thereafter, pursued a curative petition which met the same fate on January 19, 2023. Thus, the answer to the issue as to whether Accompanist teachers are entitled to the benefit of the increased age of retirement in terms of the notification dated January 27, 2017 and January 24, 2019, attained finality. The university cannot be permitted to reagitate the same issue by way of abuse of process of law. Mr. Chaturvedi has placed reliance upon the judgments reported at **(1998) 3 SCC 573 (K.K. Modi v. K.N. Modi)** and **(2011) 3 SCC 408 (M. Nagabhushana v. State of Karnataka)** to support his argument.

8. Mr. Chaturvedi has further drawn attention of this Court to another judgment dated February 3, 2022, passed in W.P.A. No.1068 of 2022, whereby a learned Single Judge of this Court allowed another Accompanist teacher of the university to remain in service till attaining the age of 65 years. The university preferred an appeal against the said order and the appeal Court by an interim order dated May 6, 2022, permitted the said "Accompanist" teacher to continue in service.

9. Mr. Chaturvedi has argued that the present petitioner is also entitled to get similar benefits citing the judgment reported at **(2006) 2 SCC 747 (State of Karnataka v. C. Lalitha)**.

10. Mr. Arunangshu Chakraborty, learned advocate representing the university, has vehemently argued that the Amendment Act of 1985 incorporating Accompanist within the definition of University teacher is a

colourable legislation as the State has no competence to make law on Entry 66 List-I of the Seventh Schedule of the Constitution which confers exclusive jurisdiction upon the Parliament to make law pertaining to co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

11. It has further been submitted that the U.G.C. Regulations and Guidelines prescribing minimum qualifications for appointment of university teachers are applicable to all universities even in the absence of the same being incorporated under the respective universities' Act of the respective States. The U.G.C. Regulations never recognised an Accompanist as a university teacher. The designations for university teachers before 2010 under the U.G.C Regulations were Lecturer, Reader and Professor.

12. It has also been submitted that judgments of this Court in M.A.T. 193 of 2019 (*Rabindra Bharati University v. Ashish Mukherjee*), W.P. No.1747(W) of 2019 (*Ashis Mukherjee v. The State of West Bengal*) and W.P.A. No.1068 of 2022 (*Dilip Mukherjee v. State of West Bengal*) are “non-est in the eye of law” as the said judgments had been passed in “in consequence of fraud on the constitution by the State legislature.”

13. He has further suggested that this Court without following the U.G.C. Regulations prescribing minimum qualifications for university teachers “and in total ignorance and/or forgetfulness of the binding precedents and constitutional scheme for maintaining higher standard in the University declared the Accompanists as the University Teachers.”

14. It has further been suggested that the judgment of this High Court has been passed on the basis of “false submission and withholding the relevant documents by the writ petitioners in various writ petitions claiming the status of a university teacher.”

15. He has argued that *in limine* dismissal of a Special Leave Petition is not an affirmation of High Court judgment and the doctrine of res-judicata is not applicable if the Supreme Court dismisses a Special Leave Petition without any reason.

16. In support of his submission, he relied upon the following judgments of the Supreme Court: **(2005) 5 SCC 420, (2013) 2 SCC 617, (2013) 10 SCC 519, (2016) 7 SCC 353, (2015) 8 SCC 129, (2015) 6 SCC 363, (1987) 4 SCC 671, (2015) 8 SCC 129, (2009) 4 SCC 590, (2013) 10 SCC 519, (2009) 4 SCC 590, (2015) 2 SCC 189, (2011) 3 SCC 139, (2010) 8 SCC 701, (2002) 4 SCC 388, (1981) 4 SCC 421, (2006) 2 Cal LT 482, (1986) 2 SCC 709, (2014) 3 SCC 159, (2017) 14 SCC 722 and (2014) 7 SCC 340.**

17. The learned advocate for the university was allowed to place his case for nearly a full day. His submission has been followed by a 38 (thirty-eight) page written notes of argument.

18. This Court does not find any substance either in his oral argument or in the writ notes of argument prepared by him; rather this Court is surprised that a learned advocate of this Court, despite being cautioned by

the Division Bench refuses to learn any lesson and fails to discharge his obligation to assist the Court in arriving at a right decision.

19. First of all, it needs to be appreciated that the petitioner does not claim his status or pay scale equal to that of a university teacher provided in U.G.C. Regulations namely “U.G.C. Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education”, as introduced time to time. The designation gives him the recognition as a teacher without conferring any financial benefit in the pay scale provided to the Assistant Professors, Associate Professors, (Lecturers), Readers or Professors of the university. The only benefit the petitioner seeks is an enhancement of his retirement age in terms of the State Government notifications dated January 27, 2017, and February 24, 2019.

20. The petitioner’s case is in no way relatable to the U.G.C. Regulations on “Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities.” The entire argument of the learned advocate for the university with regard to the U.G.C. Regulations is absolutely substanceless.

21. Equally misconceived is the notion of the learned advocate representing the university that the judgment of the Division Bench of this Court in **Ashis Mukherjee** case does not operate as a precedence for this Court.

22. The issue involved in this writ petition is no more res-integra. The issue in this writ petition has been consistently decided by this Court with the imprimatur of the Supreme Court.

23. The Division Bench of this Court in M.A.T. No.193 of 2019 duly noticed the West Bengal University Law (Amendment) Act, 2012, that omits Accompanist as included in definition Section 2 (22) of Rabindra Bharati Act, 1981, and negated the argument advanced on behalf of the university holding, *inter alia*, as follows:

“We are not convinced with the argument made by Mr. Chakrabarty. The status of the writ petitioner should be decided on the day when he was appointed as an Accompanist. The status of the said writ petitioner cannot be altered by the Amendment Act, 2012. The said Act cannot have any retrospective effect. Any interpretation giving retrospective effect in the said Statute would be unfair and arbitrary.”

Moreover, clause (14) in section 2 of Rabindra Bharati Act, 1981 was not correspondingly amended to include ‘Accompanist’ in 3 definition of non-teaching staff. Thus intention of legislature is clear for ‘Accompanist’ to be included in substituted amended clause (22) in section 2, to be any 5 other person appointed whole time, assisting in teaching.

Clause (14) in section 2 of Rabindra Bharati Act, 1981 is reproduced below:

“14. “non-teaching staff” in relation to the University or a college, institution or centre affiliated to the University means the non-teaching staff, not holding any teaching post (including part-time teaching post), appointed or recognized as such by the University, and includes technical staff



*but does not include a Librarian or an officer.”*

It has been ascertained that petitioner accompanies a teacher in assisting in the teaching of music and dance by providing instrumental or vocal accompaniment. This function does not appear to be included in meaning technical staff given in clause (14) of section 2 in Act of 1981. Controversy in the writ petition was regarding retirement age of petitioner who was duly appointed.

It is a question of the notification applying to his service as already appointed to the post. Since the Legislature has amended clause (22) in section 2 to omit word ‘Accompanist’ but corresponding amendment not made to clause (14) in section 2, as existing before substitution by amending Act XXX of 2012, Court was inclined to interfere in favour of petitioner.

In a similar matter, the coordinate bench decided that the appellants in the said appeals namely, Biswajit Ghosh and Dhimadhab Kirtania similarly placed as that of the present writ petitions were entitled to the benefits on the basis of the definition under Clause 22 of Section 2 of the Rabindra Bharati Act, 1981.

The points that have fallen for consideration in the present appeal are squarely covered by the decision in Biswajit Ghosh (supra) where the University denied similar benefits to two of the Accompanists namely, Biswajit Ghosh and Dhimadhab Kirtania.

The said decision of the co-ordinate Bench squarely applies in the instant case. ... ”

(emphasis added)

24. It is not at all necessary for this Court to revisit the aforesaid issue since at least two Division Benches of this Court have already decided the

issue in favour of the petitioner. None of the judgments cited by the university dilutes the binding effort of the aforesaid Division Benches. The judgments cited by the learned advocate for the university even remotely do not deal with the issues involved in this petition. In the facts of the case, it is not necessary to discuss the judgments separately. There cannot be, however, any quarrel with the abstract proposition of law as laid down in the said judgments.

25. Mr. Chaturvedi, learned advocate appearing for the petitioner, has rightly placed reliance upon the judgments delivered by the Supreme Court in **(2011) 3 SCC 408 (M. Nagabhushana v. State of Karnataka)**. The relevant paragraph of the said judgment is quoted below:

**“23.** Thus, the attempt to re-argue the case which has been finally decided by the court of last resort is a clear abuse of process of the court, regardless of the principles of res judicata, as has been held by this Court in *K.K. Modi v. K.N. Modi*. In SCC para 44 of the Report, this principle has been very lucidly discussed by this Court and the relevant portions whereof are extracted below: (SCC p. 592)

“44. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata.

...

**25.** On the premises aforesaid, it is clear that the attempt by the appellant to reagitate the same

issues which were considered by this Court and were rejected expressly in the previous judgment in AIMO case, is a clear instance of an abuse of process of this Court apart from the fact that such issues are barred by principles of res judicata or constructive res judicata and principles analogous thereto.”

26. It is imperative to highlight the university’s action that after the said judgment of the Division Bench in **Ashis Mukherjee** case was delivered.

27. The university did not comply with the order and filed a Special Leave Petition, S.L.P. No.3268 of 2021 before the Supreme Court which was dismissed on December 10, 2021. The university then filed a review application, R.P. (C) No.119 of 2022, which was again dismissed by the Supreme Court on February 15, 2022.

28. The university’s futile bid not to comply with the order of the Division Bench dated December 15, 2020, continued. It filed a Curative Petition before the Supreme Court which met the same fate on January 19, 2023.

29. In the meantime, a contempt application was filed before the said Division Bench by the petitioner and despite the dismissal of the Special Leave Petition, the university refused to comply with the order of the Division Bench on the specious plea that the Supreme Court dismissed the Special Leave Petition in limine without entering into the merit of the case.

30. The Division Bench requested the learned advocate general to appear in the case as the amicus curie and ultimately, with the intervention of the learned Advocate General, the State took the responsibility to make

payment to the petitioner directly on account of arrear of salary emoluments as admissible.

31. It is necessary to quote the order of the Division Bench dated December 2, 2022, passed in the aforesaid contempt application. The relevant part of the said order reads:

“We are unable to accept the submission of Mr. Chakraborty that the alleged contemnors are not duty bound to obey the direction passed by this court since the Special Leave Petition was dismissed in limini. It was the clear stand of Mr. Chakraborty that by reason of dismissal of the Special Leave Petition, there is no automatic affirmation of our order of which an implementation has been sought for in the contempt proceeding. In other words, the contention of the alleged contemnors is despite dismissal of Special Leave Petition and Review Petition by the Apex Court, the order of this court does not attain finality and not required to be implemented.

...

It was least expected from Mr. Chakraborty, learned advocate representing the alleged contemnors to advise the alleged contemnors not to comply with our order, as such advice runs counter to the basic tenets of law. The majesty of law has suffered to which we cannot turn our blind eyes. The order of the court has to be obeyed and respected.

...

We hold that the alleged contemnors have violated the order passed by us on December 15, 2020. However, such violation may not be willful or deliberate, as we hold that they have proceeded on the basis of the legal advice detrimental to their interest and to their peril.

With a word of caution, we dispose of the contempt application with the aforesaid directions. We record our appreciation for the assistance of Mr. Soumendra Nath Mookherjee, Senior Advocate, in deciding the application.”

(emphasis added)

32. It was expected that after the fiasco as noticed above, the university would take a reasonable stance before this Court. Unfortunately, such a stance has not been taken. It is the high-time that Rabindra Bharati University should be advised to refrain from indulging in unnecessary litigation.

33. It is equally surprising and disappointing that though in **Ashis Mukherjee** case, the State took the responsibility to comply with the order of this Court, a different stance has been assumed in this case.

34. The State sought to contend that the West Bengal University Law (Amendment) Act, 2012, is clarificatory in nature with retrospective operation. It has been further contended that in view of the exclusion of “Accompanist” from the definition of “University Teacher” under the said Act of 2012, the petitioner is not entitled to any relief.

35. Since both the issues have been addressed by the Division Bench in **Ashis Mukherjee** case, I am not inclined to allow the State to reagitate the said issues in this writ petition.

36. Given the university’s refusal to adhere to the consistent views of this Court on the retirement age of Accompanist and its indulgence in

unnecessary litigation at the cost of the public's expense, and considering that the State has also failed to issue appropriate directives upon the university to halt such undesirable practices, this writ petition is disposed of with the following directives:

a) It is declared that the retirement age of the petitioner is 65 years, and accordingly, the university shall allow the petitioner to serve as an Accompanist till he attains 65 years of age.

b) The university shall release the salary of the petitioner along with arrear, if any, within a period of three weeks from the date of communication of this order.

c) The university is further directed to issue a general order notifying that the retirement age of all similarly circumstanced Accompanists at the university who were appointed between the date of commencement of the Rabindra Bharati (Amendment) Act, 1985, and the West Bengal University Laws (Amendment) Act, 2012 shall be 65 years. Such notification shall be made within a period of three weeks from the date of communication of the order.

This Court has, however, not gone into the question as to whether the Accompanists appointed after the commencement of the West Bengal University Laws (Amendment) Act, 2012, shall be entitled to retire at the age of 65 years.

37. Accordingly, W.P.A. No.22027 of 2022 is disposed of.

38. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

**(Kausik Chanda, J.)**