

A THE MAHATMA GANDHI UNIVERSITY AND ORS.

v.

RINCYMOL MATHEW

(Civil Appeal No. 8031 of 2022)

B NOVEMBER 10, 2022

[M. R. SHAH AND M. M. SUNDRESH, JJ.]

C *Service law: Denial of the benefits of CAS to the respondent on the ground that her initial appointment as Lecturer in the School of Medical Education was not to a post that was duly sanctioned in terms of the Mahatma Gandhi University Statutes – Single Judge of High Court allowed writ petition filed by respondent by observing that the appointment of the respondent as Lecturer was after following selection procedure and that she was duly qualified and, thus, directed to count the past services of the respondent in the*

D *School of Medical Education in accordance with the UGC Regulations and to grant the benefit of CAS – Division Bench of the High Court upheld the order of Single Judge – Appeal by University – Held: Respondent was appointed as Lecturer in the regular pay-scale after inviting applications from qualified*

E *candidates – The said appointment was after obtaining appropriate approval from Director, School of Medical Education and sanction by the Vice-Chancellor and thereafter her probation was declared w.e.f. 03.10.1999 – Thereafter, she was appointed as Assistant Professor and thereafter as Associate Professor continuously in the regular pay-scale – It may be true that at the relevant time when she*

F *was appointed as Lecturer, the post was temporary but on that temporary post, her appointment was sanctioned by the Director as well as Vice-Chancellor – She has continuously worked right from 1998 (03.10.1998) – As per clause 10.1(f) with respect to grant of CAS, the previous appointment as ad hoc or temporary service of*

G *more than one year duration can be counted provided that : (i) the period of service was of more than one year duration; (ii) the incumbent was appointed on the recommendation of duly constituted Selection Committee; and (iii) the incumbent was selected to the permanent post in continuation to the ad hoc or temporary service, without any break – In that view of the matter, when respondent*

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worked continuously right from 1998 initially as Lecturer; thereafter her probation was confirmed; thereafter she was appointed/promoted as Assistant Professor and thereafter again promoted to the post of Associate Professor on regular basis and on regular pay-scale, therefore, she shall be entitled to get her regular service counted for the period from 03.10.1998 to 21.10.2011 for the purpose of grant of the benefit of CAS – Interference with order of High Court not called for.

Dismissing the appeal, the Court

HELD: 1. Regulation 10.1 is required to be read as a whole. As per clause 10.1(f), the previous appointment as ad hoc or temporary service of more than one year duration can be counted provided that : (i) the period of service was of more than one year duration; (ii) the incumbent was appointed on the recommendation of duly constituted Selection Committee; and (iii) the incumbent was selected to the permanent post in continuation to the ad hoc or temporary service, without any break. In that view of the matter, when the respondent worked continuously right from 1998 initially as Lecturer, thereafter her probation was confirmed; thereafter she was appointed/promoted as Assistant Professor and thereafter again promoted to the post of Associate Professor on regular basis and on regular pay-scale, therefore, the respondent shall be entitled to get her regular service counted for the period from 03.10.1998 to 21.10.2011 for the purpose of grant of the benefit of CAS. [Paras 6.2, 6.3][647-H; 648-A-C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8031 of 2022.

From the Judgment and Order dated 17.02.2021 of the High Court of Kerala at Ernakulam in Writ Appeal No. 1355 of 2019.

Ms. Sakshi Kakkar, Shakti Singh, Advs. for the Appellants.

Gaurav Agrawal, Nishe Rajen Shonker, Ms. Anu K. Joy, Alim Anvar, Abraham C. Mathews, Advs. for the Respondent.

A The Judgment of the Court was delivered by

M. R. SHAH, J.

B 1. Feeling aggrieved and dissatisfied with the impugned judgment
and order passed by the Division Bench of the High Court of Kerala at
Ernakulam in Writ Appeal No. 1355 of 2019 by which the Division Bench
of the High Court has dismissed the said writ appeal preferred by the
appellant and has confirmed the judgment and order passed by the learned
Single Judge passed in Writ Petition No. 13265 of 2018 directing the
appellant University to pass appropriate orders counting the past service
of the respondent, who was working as Assistant Professor in the School
C of Behavioural Sciences under the University, for the purposes of
computing the benefits due to her in accordance with the Career
Advancement Scheme (hereinafter referred to as “CAS”) under the
UGC Regulations, the University has preferred the present appeal.

D 2. The respondent herein was initially appointed as a Lecturer in
the School of Medical Education, a self-financing institution under the
appellant University w.e.f. 03.10.1998. The said appointment was
consequent to a selection process that was conducted pursuant to
administrative sanction accorded by the Vice-Chancellor of the University
after obtaining necessary approval from the Director, School of Medical
Education. Initially, she was appointed on probation. Her probation in
E the post of Lecturer was thereafter declared on 03.10.1999 and she
continued to work as Lecturer till 05.02.2001. That thereafter she was
appointed as Assistant Professor in Nursing for the period between
06.02.2001 and 11.10.2004 as Associate Professor in Nursing between
04.10.2004 and 11.04.2005 and as Professor in Nursing between
F 12.04.2005 and 20.01.2011. That thereafter w.e.f. 21.01.2011, she was
appointed as Assistant Professor in the School of Behavioural Sciences,
department of the Mahatma Gandhi University.

G 2.1 The dispute arose with regard to the entitlement of the
respondent to reckon her service in the School of Medical Education for
the period between 03.10.1998 to 21.02.2011 for the purpose of the
CAS envisaged under the UGC Regulations. Her request for extension
of benefit of CAS was considered favourably by the University and by
order dated 06.12.2013, the Syndicate of the University decided to grant
her the benefits of promotion, pay fixation etc. by reckoning her service
in the School of Medical Education for the said purpose. That thereafter,
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the Vice-Chancellor, in exercise of his powers under Section 10(17) under Chapter III of the Mahatma Gandhi University Act, 1985 accepted the recommendation of the Syndicate Staff Sub-Committee and revoked the earlier resolution of the Syndicate that had granted the respondent the benefits of the CAS. The reason stated for revocation of the earlier Syndicate decision and the denial of the benefits of CAS to the respondent was that her initial appointment as Lecturer in the School of Medical Education was not to a post that was duly sanctioned in terms of the Mahatma Gandhi University Statutes.

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2.2 The denial/revocation of the earlier Syndicate decision and the denial of the benefit of CAS were the subject matter of writ petition before the learned Single Judge. The learned Single Judge allowed the writ petition by observing that the appointment of the respondent as Lecturer was after following selection procedure and that she was duly qualified. The learned Single Judge therefore directed to count the past services of the respondent in the School of Medical Education in accordance with the UGC Regulations and to grant the benefit of CAS. The appeal preferred by the appellant before the Division Bench of the High Court has been dismissed by the impugned judgment and order. Hence the University has preferred the present appeal.

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3. Learned counsel appearing on behalf of the appellant University has taken us to Regulation 10.1 of the UGC Regulations. It is submitted that as per Regulation 10.1, only previous regular service as Assistant Professor, Associate Professor should be counted for direct recruitment and promotion under CAS. Therefore, it is submitted that as initially, the appointment of the respondent as a Lecturer was on temporary post and was not made after following due procedure as required under the Mahatma Gandhi University Statutes, 1997, respondent shall not be entitled to past services rendered for CAS benefits.

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4. While opposing the present appeal, Shri Gaurav Agrawal, learned counsel appearing on behalf of the respondent has taken us to the appointment orders appointing the respondent initially as a Lecturer and thereafter as Assistant Professor and thereafter as Associate Professor. It is submitted that the initial appointment of the respondent – original writ petitioner was after following due procedure and on probation and her probation came to be confirmed subsequently thereafter by order dated 21.10.2000. It is submitted that thereafter by order dated 03.02.2001 on the approval of the Director, School of Medical Education, respondent

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A – original writ petitioner was appointed as Assistant Professor w.e.f. 06.02.2001 in the regular pay-scale. It is submitted that thereafter her probation as Assistant Professor was confirmed. It is submitted that thereafter by order dated 12.10.2004, she was promoted to the post of Associate professor in the regular pay-scale of Rs. 14300-450-19250. It is submitted that in that view of the matter neither the learned Single Judge nor the Division Bench have committed any error in directing the University to count the period during which the respondent worked as Lecturer/Assistant Professor/Associate Professor for the purpose of granting the benefit under the CAS.

C 5. We have heard the learned counsel for the respective parties at length.

D 6. We have considered the initial appointment order of the respondent as Lecturer. Applications were invited from qualified candidates and thereafter the respondent was appointed as Lecturer in the regular pay-scale, initially on probation. The said appointment was after obtaining appropriate approval from Director, School of Medical Education. The sanction was accorded by the Vice-Chancellor. That thereafter by order dated 21.10.2000, her probation was declared w.e.f. 03.10.1999. That thereafter, she was appointed as Assistant Professor and thereafter as Associate Professor continuously in the regular pay-scale.

F 6.1 It may be true that at the relevant time when she was appointed as Lecturer, the post was temporary but as observed hereinabove, on that temporary post, her appointment was sanctioned by the Director as well as Vice-Chancellor. As observed hereinabove, she has continuously worked right from 1998 (03.10.1998) till she continued to work as Associate Professor. At this stage, the Regulation 10.1 with respect to the grant of CAS is required to be considered, which reads as under:-

G “10.1. Previous regular service, whether national or international as Assistant Professor, Associate Professor or Professor or equivalent in a University, College, National Laboratories or other scientific/professional Organizations such as the CSIR, ICAR, DRDO, UGC, ICSSR, ICHR, ICMR, DBT, etc., should be counted for direct recruitment and promotion under CAS of a teacher as Assistant Professor, Associate Professor, Professor or any other nomenclature these posts are described as per Appendix III-Table No. II provided that:

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- (a) The essential qualifications of the post held were not lower than the qualifications prescribed by the UGC for Assistant Professor, Associate Professor and Professor as the case may be. A
- (b) The post is/was in an equivalent grade or of the pre-revised scale of pay as the post of Assistant Professor (Lecturer) Associate Professor (Reader) and Professor. B
- (c) The candidate for direct recruitment has applied through proper channel only.
- (d) The concerned Assistant Professor, Associate Professor and Professor should possess the same minimum qualifications as prescribed by the UGC for appointment to the post of Assistant Professor, Associate Professor and Professor, as the case may be. C
- (e) The post was filled in accordance with the prescribed selection procedure as laid down in the Regulations of University/State Government/Central Government/Concerned Institutions, for such appointments. D
- (f) The previous appointment was not as guest lecturer for any duration, or an ad hoc or in a leave vacancy of less than one year duration. Ad hoc or temporary service of more than one year duration can be counted provided that: E
 - (i) the period of service was of more than one year duration;
 - (ii) the incumbent was appointed on the recommendation of duly constituted Selection Committee; and F
 - (iii) the incumbent was selected to the permanent post in continuation to the ad hoc or temporary service, without any break.
- (g) No distinction should be made with reference to the nature of management of the institution where previous service was rendered (private/local body/Government), was considered for counting past services under this clause.” G

6.2 Regulation 10.1 is required to be read as a whole. As per clause 10.1(f), the previous appointment as ad hoc or temporary service of more than one year duration can be counted provided that : (i) the H

- A period of service was of more than one year duration; (ii) the incumbent was appointed on the recommendation of duly constituted Selection Committee; and (iii) the incumbent was selected to the permanent post in continuation to the ad hoc or temporary service, without any break.

- 6.3 In that view of the matter, when the respondent worked continuously right from 1998 initially as Lecturer, thereafter her probation was confirmed; thereafter she was appointed/promoted as Assistant Professor and thereafter again promoted to the post of Associate Professor on regular basis and on regular pay-scale, therefore, the respondent shall be entitled to get her regular service counted for the period from 03.10.1998 to 21.10.2011 for the purpose of grant of the benefit of CAS.

7. In view of the above and for the reasons stated above, no error has been committed by the learned Single Judge and/or the Division Bench of the High Court in allowing the writ petition / writ appeal and directing the University to grant the benefit of CAS after counting her earlier service rendered from 03.10.1998. We are in complete agreement with the view taken by the High Court. No interference of this Court is called for.

- Under the circumstances, present appeal fails and deserves to be dismissed and is accordingly dismissed.

Devika Gujral

Appeal dismissed.