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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) Nos. 8032/2009 & 8090/2009

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May 13, 2013

1. W.P.(C) No.8032/2009

SHRI RADHARANJAN PATTANAIK & ORS.

.....Petitioners

Through: Mr. Dipak Bhattacharya, Advocate with
Mr. Sujeet Kumar Mishra, Advocate.

VERSUS

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. R.V. Sinha, Advocate with Ms.
Sangita Rai, Advocate for respondent
Nos.1 to 3.
Mr. S.K. Bandopadhyay, Advocate for
respondent Nos.4 and 5.

2. W.P.(C) No.8090/2009

SMT. CHABI RANI PAL

.....Petitioner

Through: Mr. Dipak Bhattacharya, Advocate with
Mr. Sujeet Kumar Mishra, Advocate.

VERSUS

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Neeraj Chaudhari, CGSC Advocate
with Mr. Saqib, Advocate and Mr. Ravjyot
Singh, Advocate for Union of India.
Mr. S.K. Bandopadhyay, Advocate for
respondent Nos.4 and 5.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. Both these writ petitions are being disposed of by this common judgment as identical issues are to be decided in the cases. In W.P.(C) No.8032/2009 there are 12 petitioners and in W.P.(C) No.8090/2009 there is one petitioner. The issue which calls for decision is the entitlement or otherwise of the petitioners who were employees of the respondent No.4-University to pension. Pension was granted. Pension was thereafter continued for 10 years or so. Pension was thereafter stopped by the order dated 20.12.2008 of the Registrar of the respondent No.4-University which relied upon a memo dated 30.8.2007 of the respondent No.1/Union of India through the Ministry of Agriculture.

2. The facts of the case are that the petitioners were employees of Agro Economic Research Centre (AERC) which was functioning as a unit of the Ministry of Agriculture in the respondent No.4-University. AERCs have been functioning since about 1954 and were fully funded by the respondent No.1. Originally, AERC was sponsored by respondent No.4. After 1954 in due course many AERCs opened and at the time of filing of the writ petition, there were 15

AERCs in different States. Objects of the schemes for implementation of such Centres were:

- “(i) To conduct investigations into specified Agro Economic problems of the Country.
- (ii) To carry out continuous studies on the rural economy.
- (iii) To carry out research work on structural changes and fundamental problems of Agriculture economy and rural development.
- (iv) To give technical advise to the Union Government and the State Government.”

3. In view of the fact that there was effective functioning of the AERCs, a proposal was mooted to merge the AERCs at different places with the respective Universities where they were functioning. The proposal for integration so far as the subject AERC (in which petitioners were working) with the respondent No.4-University was concretized by means of an MoU dated 23.3.2000 which was signed between the respondent No.1 and respondent No.4. The MoU was signed on behalf of respondent No.1 by no less than the Secretary of the Ministry and on behalf of respondent No.4-University MoU was signed by the Registrar. The MoU came into force w.e.f 1.4.1995 and petitioners became the employees of the respondent No.4-University. Three of the petitioners were granted pension on their retirement post 1.4.1995. Other petitioners who were still working had opted for pension scheme by complying with the terms thereof, however were denied entitlement to the benefits of the pension scheme in view of the stand of the respondent No.4-University that the respondent No.1 was not

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getting sufficient grants-in-aid from the respondent No.1 and thus respondent No.4 did not have sufficient funds to give petitioners the benefit of the pension scheme as notified on 13.6.1998 w.e.f 1.1.1998. Thus, the only defence of the respondent No.4-University is that it is not able to pay pensions to the petitioners because they are not receiving the necessary funds from the respondent No.1.

4. On behalf of respondent No.1, the only defence which is raised is that the respondent No.1 has from time to time after signing of the MoU informed the respondent No.4-University that it will not be liable to pay funds towards the pension scheme of the respondent No.4 because it is not in accordance with its policies. The issue is that are the respondents justified in taking the stand that they have viz of the respondent No.1 stating that they will not give funds to the respondent No.4-University and of the respondent No.4-University that it will not pay the petitioners or give them benefit of the pension scheme unless funds are released to it by the respondent No.1.

5. In my opinion, answer to the issue in the present case has to necessarily depend upon the terms of the MoU dated 23.3.2000 and which became effective as per its categorical language w.e.f 1.4.1995. Some of the relevant clauses of the said MoU read as under:-

**“MEMORANDUM OF UNDERSTANDING BETWEEN THE
UNION OF INDIA AND THE VISVA-BHARTI, SANTINIKETAN,
WEST BENGAL (UNIVERSITY) FOR INTEGRATION OF AGRO**

ECONOMIC RESEARCH CENTRE, SANTINIKETAN (CENTRE) WITH THE, LATTER

Whereas the Agro-Economic Research Centres functioning with the grants-in-aid provided by the Union of India was declared permanent with effect from 21.5.1990 in order to (i) create a net work for applied research on continuous basis on specified agro-economic problems which are of the interest to the Govt. of India and State Govt.,(ii) to have constant interaction with the Ministry of Agriculture, Dept. of Agriculture and Co-operation, Govt. of India (henceforth referred to as Ministry) and State Govt. for identifying and undertaking research studies on emerging problem areas and (iii) to study the impact of various programmers for the development of Agriculture and Allied Sectors.

Whereas it has been decided to integrate the Agro-Economic Research Centres with respective University from where it has been functioning.

In view of the foregoing, it has been decided to enter into a Memorandum of Understanding between the Union of India and the University on integrating the Agro-Economic Research Centre with the latter.

Therefore, a Memorandum of Understanding is signed between the Union of India and the University on the following terms and conditions:-

(i) The Centre will be integrated to the University and shall function as a separate Department/Section in the University as a Centre for Agro-Economic Research.

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(iii) The Ministry will release the grants-in-aid according to the approved budget provisions every year. The powers of drawing and disbursing authority will rest with the University which will keep a separate account for the Centre. Periodical expenditure statement in the prescribed format will be furnished to the Ministry of Agriculture. Annual Audited Statement of Accounts along with the Utilization Certification will be furnished by the Centre to the Ministry by 30th September of every year for the previous year ending 31st March.

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(ix) The staff of the Centre would be considered at par with the regular employees of the University for all the privileges enjoyed by the regular staff of the University i.e pension, gratuity, provident fund allotment of quarter as per the existing rules, medical benefits all other benefits etc. as applicable to the staff of the University. They will also be considered for such advances an loans as may be extended by the

University to its staff.

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(xi) The non-technical staff of the Centre will have the same scales of pay and allowances as applicable to equivalent posts in the University. They will have a common seniority and will, therefore, be eligible for transfers/rules prevailing in University. They will also be eligible for all facilities available to similar categories of staff in the other Departments of the University.

(xii) Future revisions in the scale of pay of pay and allowance in the posts in the Centre will as per provisions effective for similar posts in the University.

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(xvi) The Ministry approves in principle the extension of the University Grants Commission, Merit Promotion Scheme to the Centre, in case the scheme is already in operation in the University.

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(xxii) The foregoing terms and conditions of the Memorandum of Understanding will come into force with effect from 1.4.1995.”
(underlining added)

6. Since this Court will also be required to consider the notification which is issued by the respondent No.1 is dated 21.5.1990, the same is reproduced hereunder:-

“ No.5-3/86-RSC-S-ES/EA

Government of India

Ministry of Agriculture

Department of Agriculture & Cooperation

Krishi Bhavan, New Delhi.

Dated the 21 May, 1990

ORDER

I am directed to convey the approval of the competent authority to declare the following Agro-Economic Research Centre/Units as permanent Institutions:

1. Agro-Economic Research Centre,
University of Allahabad,
Allahabad.

2. Agro-Economic Research Centre,
University of Delhi,
Delhi.
3. Agro-Economic Research Centre,
J.N. Krishi Visva Vidyalyaya,
Jabalpur.
4. Agro-Economic Research Centre,
Assam Agriculture University,
Jorhat.
5. Agro-Economic Research Centre,
University of Madras,
Madras.
6. Agro-Economic Research Centre,
Gokhale Institute of Politics & Economics,
Pune.
7. Agro-Economic Research Centre,
Himachal Pradesh University,
Shimla.
8. Agro-Economic Research Centre,
Sardar Patel University,
Vallabh Vidya Nagar.
9. Agro-Economic Research Centre,
Visva Bharati University,
Santiniketan
10. Agro-Economic Research Centre,
Andhra University,
Waltair.
11. Agro-Economic Research Centre,
Institute of Economic Growth,

Delhi.

12. Agro-Economic Research Centre,
Transformation Unit,
Institute for Social and Economic Change,
Bangalore.
13. Centre for Management in Agriculture,
Indian Institute of Management,
Ahmedabad.

2. The Expenditure will be met from the Non-Plan and Plan budget provision (of the Department of Agriculture & Cooperation) made for the agro-Economic Research Centres.

3. There will not be any extra financial implications on account of making the Agro-Economic Research Centres permanent and the current level of expenditure will not be exceeded.

4. This issues with the concurrence of Integrated Finance vide their No.1441/Fin.I/90 dated 11.5.90.

Sd/-

(B.K. GUPTA)

Under Secretary to the Govt. of India

Copy to:-

1. All Vice-Chancellors of the concerned Universities.
2. All the Directors of the Agro-Economic Research Centres/Units.
3. Pay & Accounts Officer, Deptt. of Agri. & Coopn.,
16, Akbar Road Hutments, New Delhi.
4. Pay & Accounts Officer, Dte. Of Eco.& Stat.,
Shastri Bhavan, New Delhi.
5. Economic & Statistical Adviser, Dte. Of eco. & Stat.,
Krishi Bhavan, New Delhi.
6. PS to Secretary (A&C).
7. Guard File.”

7. A reading of the relevant clauses of the MoU which have been

reproduced clearly show that the AERC was integrated with the respondent No.4-University and it became a unit of the respondent No.4-University. The respondent No.1-Ministry was to release grants-in-aid according to the approved budget every year with no language of the grants being freezed at any level. The status of the employees of the AERC such as the petitioners would be that they would be considered at par with the employees of the respondent No.4-University for all privileges enjoyed by the regular staff of the University including for pension, gratuity, provident fund etc as per the rules of the respondent No.4-University. The scales of pay of the non-technical staff of AERC were also prescribed as equivalent to such staff of respondent No.4-University and they were to have a common seniority and were liable for transfers/promotions across various divisions/departments in the University. Clause (xii) of the MoU is extremely pertinent and relevant. This clause would be almost determinative of the issue at hand. This clause (xii) specifically provides that future revisions in the scale of pay and allowances in the posts in AERC will be as per provisions effective for similar posts in the University i.e it was recognized that budgetary allocation/financial provision by the respondent No.1 to the respondent No.4 will have to be increased whenever there was revision in the pay scales and allowances of the staff of the University including AERC. Clause (xvi) is also relevant because the respondent No.1 gave an approval of the Merit Promotion *WPC Nos.8032/2009 & 8090/2009*

Scheme, and which will entail additional budgetary allocation to the respondent No.4 with respect to such staff which became eligible for the Merit Promotion Scheme.

8. Therefore, even on a plain reading of the MoU the same leaves absolutely no manner of doubt that the employees of AERC would become the employees of the respondent No.4-University with complete parity with the employees of the respondent No.4-University. If the employees of the respondent No.4-University have benefits towards pay scales or pension or provident fund or residential accommodation or any other service benefits, the employees of AERC were to have identical benefits. Employees of AERC after the MoU came into effect from 1.4.1995 became employees of the respondent No.4-University and the respondent No.1-Union of India, Ministry of Agriculture took the burden to give grants-in-aid with respect to these employees in terms of budgetary allocation to be made/provided each year.

9. The issue is that can the respondent No.1 take up a stand that merely because it has subsequently written various letters after implementation of the MoU that the respondent No.1 will not be liable for making payments of pension because it is against its policies, can the same exempt the respondent No.4 from making payments of pensions to the petitioners when the same benefit is not denied to other employees of the respondent No.4-University. Also, can the
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respondent No.1 deny necessary grants-in-aid/budgetary allocation for meeting the financial requirements of the respondent No.4 for its employees such as the petitioners and who are otherwise entitled to pension under the pension scheme.

I may note that it is not an issue before me that the petitioners have not opted for the pension under the pension scheme which came into effect in terms of the notification dated 13.6.1998 w.e.f 1.1.1998 i.e the petitioners have opted for the pension scheme. As already stated above, a reading of the MoU dated 23.3.2000 which came into effect from 1.4.1995 leaves no manner of doubt that the respondent No.1 will provide all grants-in-aid/financial resources which would be consequent upon employees of AERC becoming employees of the respondent No.4-University on account of integration of AERC with the respondent No.4-University pursuant to MoU without in any manner freezing of budgetary allocation. I am surprised that the respondent No.1 is in fact taking up a stand which does violation to the language of the MoU because MoU both in letter and spirit provides for entitlement of respondent No.4-University to necessary budgetary allocation consequent upon employees of AERC becoming employees of the respondent No.4-University. As already stated above, no less than the Secretary of the respondent No.1/Ministry of Agriculture signed the MoU. I do not understand therefore how can there at all be any doubt of necessary budget allocation by respondent No.1 to respondent No.4. Not only

there can be no doubt that the budgetary allocation will be given each year so required for the employees of AERC who had become employees of the University, the MoU also takes into care by virtue of Clause (xii) the requirement of additional budgetary allocation because of future revision of scales of pay and allowances. I therefore do not understand how Union of India can argue on the basis of the notification dated 21.5.1990 that clause (3) of the said notification states that there will be no extra financial implications on account of making AERC permanent and the current level of expenditure will not be exceeded. Though para (3) of the notification dated 21.5.1990 surely cannot be read for making level of expenditure constant because surely there were bound to be appropriate pay revisions, in any case, the notification which is relied upon is 21.5.1990 and the same clearly stands superseded by the categorical terms of the later MoU dated 23.3.2000. Therefore, it is not open to the UOI to canvass and contend that budgetary allocation will remain fixed by virtue of the notification dated 21.5.1990, and which in my opinion quite clearly was no longer operative once the MoU dated 23.3.2000 became operative.

10. In the course of arguments, great stress was sought to be placed by the respondent No.1 upon the judgment of the Allahabad High Court in the case of *Dr. Rajendra Singh Vs. Vice Chancellor, University of Allahabad* in Civil Misc. Writ Petition No.6801/2002 decided on 22.5.2007 to contend that the facts *WPC Nos.8032/2009 & 8090/2009*

in the case of ***Dr. Rajendra Singh (supra)*** are similar to the facts of the present case and therefore the present writ petitions have also to be dismissed. It is also argued that the judgment of Division Bench of Allahabad High Court was upheld by the Supreme Court by its order dated 30.3.2012, and therefore this Court is bound or in any case must apply the findings and conclusions of the Allahabad High Court in the case of ***Dr. Rajendra Singh (supra)***.

In my opinion, the argument on behalf of respondent No.1 relying upon the judgment in the case of ***Dr. Rajendra Singh (supra)*** is totally fallacious. This I say so because we do not know what was the term of MoU between the parties which was to operate in the case of ***Dr. Rajendra Singh (supra)***. Unless and until the MoU in the case of ***Dr. Rajendra Singh (supra)*** is before this Court and whose terms were no different than the terms of MoU in the present case dated 23.3.2000, no benefit can be derived by the respondent No.1 of the judgment of the Allahabad High Court in the case of ***Dr. Rajendra Singh (supra)***. The following paragraphs in the judgment in the case of ***Dr. Rajendra Singh (supra)*** in my opinion quite clearly distinguish the facts of the present case with the facts of the case of ***Dr. Rajendra Singh***:

“What has been relied upon by the petitioner are certain communications between the government of India and the AERC, or between the Govt. of India and the Allahabad University. It has not been shown to us that these communications, or declaration of intentions, on part of the govt., were intended or calculated to be communicated to, or act upon by, the AERC

employees so as to confer any legally enforceable rights on such employees. A reading of these documents suggests merely a contingent scheme in contemplation with regard to pension and other benefits, which was required to be crystallized by further action.

We have not been shown anything in the correspondence, or for that matter in the MOU, which would indicate that it contained any promise or representation made or held out to the AERC employees, which was intended to be acted upon by such employees.

In fact, the letter dated 27.2.1986 only indicated that certain recommendations of a 'Review Committee' have been considered by an Empowered committee appointed by the Ministry, and the empowered committee has agreed to the recommendations with certain conditions. It also says that crucial recommendations need follow up action at the end of the University. The last part of that letter says that detailed proposals should be sent, to enable obtaining of sanction of the competent authority for their implementation. Thus, the matter had not reached the stage of final commitment of any kind. We are, therefore, unable to translate any of these documents, correspondence, MOU, or the resolution of the executive council into a right, crystallized in favour of the petitioner, to get pension.

For the reasons given above, we are unable to follow the succession of a learned Single Judge of this Court dated 3.1.2003 in Civil Misc. Writ Petition No.44050 of 2000 Smt. Pratibha Sose Vs. Union of India & Others, whether a mandamus has been issued to the University of Allahabad to pay pension and other post-retirement benefits to the petitioner of that case and also directing the Government of India to reimburse the amount so paid. That decision has no doubt gone into details of the correspondence between the government and the University, the MOU, the resolution of the Executive council., but we are unable to find from that decision on what principle of law these documents have been translated into a right to receive pension.

It is well settled that, for succeeding in a writ petition of this nature, the petitioner must first establish that there is a right vested in the petitioner and only then the petitioner can claim a writ for enforcement of the right established by the petitioner. Because we have held above that the petitioner has not been able to establish any right to receive pension from the government of India therefore the writ petition fails and is hereby dismissed.

Sd/ Sushil Harkauli, J

Sd/ A.K. Singh,J

Dated May 22, 2007

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11. The Allahabad High Court in the case of ***Dr. Rajendra Singh (supra)*** proceeded on the issue of existence of legal rights as per the terms of MoU of respondent No.1 with Allahabad University. In that case it was held that no enforceable right arose because of specific language of the MoU before the Allahabad High Court in that case. In the facts of the present case a reading of the clauses of the MoU dated 23.3.2000 leaves us with no manner of doubt that all employees of AERC who became employees of the respondent No.4-University by virtue of the MoU were entitled to all the service benefits including the pension, as those available to the other employees of the respondent No.4-University. These clauses of the MoU quite clearly operate as an estoppel in favour of the petitioners and against both respondent Nos.1 and 4. In fact, the observations made by the Allahabad High Court seem to suggest that the scheme was only tentative and there was no finalization to the scheme for operation. So far as the ‘judgment’ of the Supreme Court dated 30.3.2012 is concerned, it is not a judgment but it only records the withdrawal of the SLP by the petitioner who was an employee of the Allahabad University for making of a representation to the Central Government for grant of pension as per the applicable MoU of the Allahabad University with the Union of India in that case. In fact, I may note that

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by the order dated 30.3.2012, Supreme Court dismissed the transfer petitions which were filed by the Union of India so as to consolidate various cases which arose of various Universities. Therefore, there does not arise the issue of any applicability of binding precedent by the order dated 30.3.2012 passed by the Supreme Court in S.L.P.(C) No.18441/2007.

12. The petitioners have legal rights as the employees of respondent No.4, and as per rules/regulations/circulars of respondent No.4. Refusal to give petitioners pension is arbitrary and violative of Article 14 of the Constitution. Refusal by respondent No.1 to give necessary budgetary allocation is also arbitrary hence also violative of Article 14 in view of the categorical language of the MoU. Petitioners have enforceable legal rights which are violated.

13. In view of the above, the writ petitions have to succeed. The impugned order of the respondent No.4 dated 20.12.2008 is quashed. Petitioners will be entitled to all the pensionary benefits as available to employees of the respondent No.4-University. Respondent No.1 is directed to give the necessary financial resources by making necessary budgetary allocations for ensuring that the respondent No.4-University gets the finances for payment of pensionary benefits to the petitioners. Respondent No.4 is directed to release the pensionary benefits including the arrears so far as those petitioners are concerned who already had the pensionary benefits; and such pensionary benefits were

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withdrawn by the order dated 20.12.2008; within a period of three months from today. Respondent No.1 is directed to ensure that within this financial year the necessary financial resources as per business rules are transferred to the respondent No.4-University so that the pensionary benefits can be granted to the petitioners.

MAY 13, 2013
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VALMIKI J. MEHTA, J.