

13.07.2022.
Item no. 51.
Court No. 1
ap

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

W.P.A. No. 152 of 2022

Nirmalendu Roy & Ors.
Versus
The State of West Bengal & Ors.

Mr. Subhasish Misra,
Mr. Swarup Das.

..For the petitioners.

Mr. Bikramaditya Ghosh,
Mr. Momenur Rahaman.

...For the State.

Exception to the report of the State filed in Court today be taken on record.

The writ petitioners are aggrieved by an order dated 14th November, 2019 passed by the Deputy Director of Agriculture (WBP) & Project Director, ATMA, Cooch Behar.

By the said order an increase remuneration in the form of costs norms for the post of Block Technology Manager (BTM) and Assistant Technology Manager (ATM) under Agricultural Technology Management Agency (in short "ATMA") Scheme of the Central Government came to be revoked.

By an earlier order dated 1st August, 2019 the Director of Agriculture & Ex-Officio Secretary & SNO-

ATMA, West Bengal had purportedly based on a communication made by the Department of Agriculture, Government of West Bengal increased the remuneration of the petitioners, who are the BTM and ATM employees.

Admittedly, the petitioners are all contractual employees under the aforesaid ATMA Scheme of the Central Government. The said Scheme is implemented through the State by a Nodal Agency. The highest authority in the State is the said Nodal Agency. The petitioners engagement is purely contractual and guided by ATMA norms and Rules.

Counsel for the petitioners would argue that enhancement of remuneration once given cannot be revoked or taken back. It is next argued that enhancement has been given by the Director of Agriculture & Ex-Officio Secretary & SNO-ATMA, West Bengal, who is the authority higher than the Deputy Director of Agriculture (WBP) & Project Director, ATMA, Cooch Behar, who passed the impugned order of revocation.

The State has filed a report by way of an affidavit. The petitioners have taken exception to the said report.

It is contended by the learned Advocate for the State that Director of Agriculture & Ex-Officio Secretary & SNO-ATMA, West Bengal passed an order

dated 1st August, 2019 acted without authority of the Nodal Agency.

It is in those circumstances that Deputy Director of Agriculture (WBP) & Project Director, ATMA, Cooch Behar on instructions from the Nodal Agency passed in the impugned order dated 14th November, 2019.

Mr. Misra, Counsel for the petitioners relies upon a decision of the Hon'ble Supreme Court of India in the case of ***Syed Abdul Qadir & Ors. – Vs. – The State of Bihar & Ors.*** reported in ***(2009) 3 Supreme Court Cases 475.***

This Court is of the view that the said decision may not be applicable in the facts of the present case since the employees therein were permanent teachers of a Secondary School. In the instant case, the petitioners are contractual employees, who were aware of the terms of the contract and hierarchy to approve any payment being made.

The petitioners' engagement is pursuant to a beneficial Scheme of the Central Government. This Court is of the view that application of the aforesaid Qadir's case (supra) in the facts of the present case could jeopardize the implementation of the aforesaid beneficial scheme of the Central Government.

It is now settled law that there can be no estoppel against the law. If a payment or benefit or

sum of money is received contrary to law by any person, the same cannot create any vested right.

The other question, as to whether the enhanced remuneration already paid to the petitioners can be recovered from them prospectively has become rather academic since the recovery has already been effected.

The prayers made in the writ petition, therefore, cannot be allowed.

Since the enhancement of remuneration has been revoked merely because the present authority, who passed the order, did not have the approval of the Nodal Agency, the disposal of the writ petition shall not prevent the Nodal Agency from considering afresh if such enhancement can be allowed to the petitioners even prospectively, if possible.

With the aforesaid observations, the instant writ petition shall stand disposed of.

There will be no order as to costs.

Urgent certified website copy of this order, if applied for, be made available to the petitioner upon compliance with the requisite formalities.

(Rajasekhar Mantha, J.)