

IN THE HIGH COURT OF ORISSA AT CUTTACK**W.P.(C) No.6156 of 2006****Balaram Behera**

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Petitioner***-versus-******The Indian Council of Agricultural Research, New Delhi-1 and others*** ***Opposite Parties*****Appeared in this case:*****For Petitioner*** : Mr. K. C. Kanungo, Advocate***For Opposite Parties*** : Mr. S. B. Jena, Advocate**CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK****JUDGMENT
05.04.2022****Dr. S. Muralidhar, CJ.**

1. This petition is directed against the order dated 21st March, 2006 of the Central Administrative Tribunal, Cuttack Bench, Cuttack (CAT) dismissing the Petitioner's O.A. No.295 of 2003.

2. By the said impugned order, the CAT rejected the prayer of the Petitioner, who was working as a Training Associate T-9 (LPM) in Krishi Vigyan Kendra (KVK) under the Central Institute of Freshwater Aquaculture (CIFA) at Kausalyaganga, Bhubaneswar, that the refusal of the Indian Council of Agricultural Research

(ICAR) to extend to the Petitioner the benefit of the pay package of the University Grants Commission (UGC) was unsustainable in law. The CAT held that the Petitioner could not be stated to be on par with his counterpart Training Associates (TAs) and Training Organizers (TOs) in the State Agriculture University (SAU), the Central University (CU), the Central Agriculture University (CAU) and Non-Governmental Organizations (NGOs). However, the CAT agreed with the Petitioner that there was no justification in changing his designation as Senior Training Associate (STA) under the functional group i.e. Field/Farm Technicians and expressed “hope and trust that the Respondent will safeguard the interest of the Applicant as per his entitlement.”

3. The background facts are that the Petitioner was initially appointed as a Training Associate equally to T-6 Grade of the Technical Service (TS) under KVK project of the ICAR on 17th January, 1983. He was subsequently transferred to the KVK project of the ICAR at CIFA Kausalyaganga in the same post by inter-institutional transfer with effect from 20th July, 1987. Training Associates of ICAR in KVKs were given ICAR pay scales from the inception of the KVKs in the ICAR system.

4. After the 4th Pay Commission, Scientists were given UGC pay package. However, TAs, being placed in the TS of the ICAR, were not given the UGC pay package. It is categorically stated on behalf of the Opposite Parties that the TAs “being placed in technical service of ICAR were not given the UGC pay package. The Training Associates working in Krishi Vigyan Kendra of

SAU, CU & NGO's are being treated as scientist/subject matter specialist/teaching staff by the ICAR and the Council has extended the UGC Pay scale to them.”

5. It is further mentioned that ICAR has established 291 KVKs in the country. This is besides strengthening 53 Zonal Agricultural Research Stations to take up the additional functions of KVK for testing and transfer of Agricultural technologies and to increase self employment opportunities for farmers. It is stated that ICAR provides 100% financial assistance to all KVKs run by SAU, CU and NGO for smooth functioning of the scheme. The first KVK was established in 1976 at Dhauli with four subject matter specialists (SMSs), two demonstrators/technicians to carry out the mandate of the KVK.

6. The case of the Petitioner is that “the duties and responsibilities of all Training Associates working in KVKs run by ICAR, SAU, CU and NGO are same. The UGC pay package has been extended to the Training Organisers and Training Associates of KVKs run by the above organization except ICAR run KVKs due to their placement in Technical Service of ICAR.”

7. According to the Opposite Parties, ICAR extended the UGC pay scale only to ARS Scientists. It is stated that since the post of TO in KVK is a Scientific post, the UGC pay scale was extended to such post. This excludes TAs even though they performed the job/work exactly of a similar nature as that of SAU, CU and NGO. It is admitted by the Opposite Parties that “no designation/nomenclature of the post of Training Associate was in existence

under any of the functional group in Appendix-II of the ICAR Technical Service Rules of ICAR. In order to provide benefit of assessment promotion, the post of Training Associate is re-designated as Senior Training Assistant under functional group 'Field/Farm Technicians'."

8. It is pointed out that a Scientist and a Technical Staff of the ICAR belong to two different and separate categories. In the Scientific category, the entry level recruitment is in the grade of Scientist and it is on the basis of the ARS Examination held on an all-India basis followed by an interview. When this is contrasted with the recruitment in Category III grade of Technical Personnel at the entry level, the latter is made by the respective institute/ASRB on the basis of interview. It is stated that the S-O Grade of the Scientific cadre is now a dying cadre. As far as the Petitioner is concerned, it is stated as under:

"Shri Behera was appointed as Training Associate in the pre-revised scale Rs.700-1300 and was subsequently promoted to Training Organiser in Grade T-7 (Rs.1100-1600/Rs.3000-4500) of ICAR Technical Service. He cannot, therefore be granted UGC scale as requested by him without being appointed in Agricultural Research Service."

9. In the initial round, the CAT had asked the Director, CIFA to examine the case and give its comments. For the second time, the Competent Authority turned down the Petitioner's representation dated 6th November, 2001 regarding non-extension of the UGC pay scale/package on the ground that he was governed by the

Technical Service Rules (TS Rules) and was not appointed in Agricultural Research Service (ARS) of ICAR.

10. This Court has heard the submissions of Mr. K. C. Kanungo, learned counsel for the Petitioner and Mr. S. B. Jena, learned counsel for the Opposite Parties.

11. Learned counsel for the Petitioner argues that the Petitioner was throughout an SMS and at no point in time was his appointment governed by the TS Rules. He further points out that the ICAR is not only the funding agency but determines the service conditions and pay scales of the personnel of the SAUs, CAUs and CUs. The UGC pay scales were extended to the employees of SAU, CAU including staff posted at KVK corresponding to the teaching staff of the SAU on the basis of a decision taken by the ICAR, which was the “paymaster of all the bodies.”

12. Learned counsel for the Petitioner further submits that although the CAT in para 8 of the impugned order concluded that “notwithstanding the facts, their nature of duties in so far as KVKs is concerned, are one and same”, acknowledged that TOs and TAs in SAUs, CAUs, CUs and NGOs are similarly situated as the Petitioner. Therefore, the ultimate conclusion that these were not similarly situated was illogical.

13. Counsel for the Petitioner then pointed out that apart from the duties and responsibilities, the qualification, mode of recruitment, functions and duties, as spoken of in the counter affidavit of the

Opposite Parties, were similar. Consequently, there was no reason why a TA would not get the UGC pay scales. Learned counsel for the Petitioner finally pointed out that during the pendency of the present petition, the ICAR itself has brought out an order dated 29th May 2006, which has been enclosed to the rejoinder, declaring TAs as SMSs. It is pointed out that if they are indeed SMSs then they should get the same UGC pay scales as has been provided to the TAs in the KVKs of SAUs, CUs and CAUs.

14. On the other hand, learned counsel appearing for the Opposite Parties 1 to 4, Mr. S. B. Jena, submits that no designation/nomenclature of TA was in existence under any of the functional groups in Appendix-II of the ICAR's TS Rules and it is only to provide benefit of the assessment promotion that the post of TA was redesignated as Senior Training Assistant under the functional group i.e. Field/Farm Technicians. Reliance is placed on the judgment of the Supreme Court of India in ***State of U.P. v. J.P. Charuasia, AIR 1989 SC 19***, to urge that the equation of posts or equation of pay scale must be entirely left to the executive government. They must be determined by expert bodies like the Pay Commission and not by the Court. It is accordingly submitted that the CAT committed no error in rejecting the plea of the Petitioner.

15. The principal contention of the Opposite Parties is that the Petitioner's service is governed by the TS Rules. However, in looking to the appointment order, it is plain that there was no mention therein of the Petitioner being governed by the TS Rules.

Secondly, in the TS Rules as they stood no post of TA is mentioned. It is perhaps an acknowledgement of this that the order dated 19th August, 2002 had to be issued redesignating the post of the Petitioner as Senior Training Assistant (STA) in order to bring him under the TS Rules. All of these are a clear acknowledgement that to begin with the Petitioner's post was not governed under the TS Rules.

16. The Opposite Parties do not dispute that TOs and TAs belong to ARS whereas there are separate TS Rules with categories of posts mentioned in the Appendix thereto, which did not include STA, which was the Petitioner's designation. The plea that CAU, CU and NGO are separate entities not directly under the administrative control of the ICAR appears not to present the correct picture as pointed out by the Petitioner. It appears that ICAR is in fact the funding agency and determines the service conditions and pay scales of the personnel of SAUs, CAUs and CUs. There is no denial of the fact that the UGC pay scales were extended to employees of the SAU, CAU including the staff posted at the KVK corresponding to the teaching staff of SAU.

17. It is strange that as far as the similarity in the duties performed is concerned, the CAT has itself concluded in para 8 of the impugned order that "notwithstanding the fact that their nature of duties in so far as KVK is concerned are one and the same." With there being already empirical data on the similarity of the nature of the functions of both TOs and TAs in KVKs run by the ICAR, SAU, CU and NGOs and in the KVK to which the Petitioner is

attached, there is no need for any expert body to now undertake to perform that exercise. This is further strengthened by the admission by the Opposite Parties in para 4.7 of their reply, where they stated as under:

“UGC pay scale was extended to the Training Organiser of KVK excluding Training Associates even though they perform the job/work exactly of similar nature as that of SAU, CU and NGO in fulfillment of uniform mandate of KVK throughout the country.”

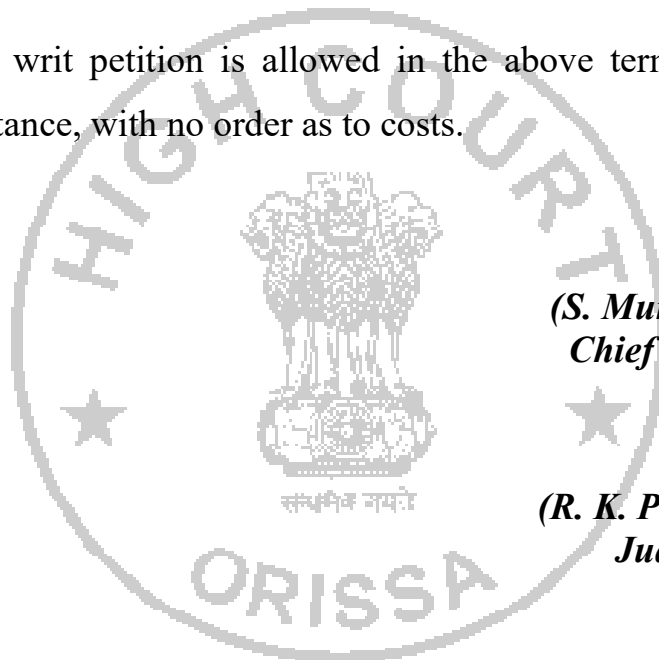
18. Consequently, the Court is of the considered view that the decision in ***J.P. Charuasia*** (*supra*) will not apply in the facts of the present case. If the amendment to the TS Rules made on 19th August, 2002 was only to somehow bring the Petitioner's post under the TS Rules, then that attempt must be held to be impermissible for the simple reason that the net effect of such redesignating of the Petitioner's post is to deprive the Petitioner of a benefit, which he is otherwise entitled to. There appears to be no rational basis for differentiating between the Petitioner's post of TA and its counterpart in the KVKs of the SAUs, CAUs, CUs and NGOs. The difference in the source of recruitment should not be a ground of discrimination since the qualifications, functions and duties performed by the TA of SAUs, CUs, CAUs and NGOs are not different from the duties and tasks performed by the Petitioner.

19. Finally, the declaration of TA as SMS by the order dated 29th May, 2006 of the Opposite Parties is a clear acknowledgment that the Petitioner is a part of the Training and Teaching staff and not governed by the TS Rules. There is indeed no rational basis to

continue to differentiate between the other teaching and training staff and the Petitioner.

20. For all of the aforementioned reasons, the impugned order of the CAT is set aside and a direction is issued to the Opposite Parties to issue consequential directions granting the UGC pay scale to the Petitioner and reversing the order dated 19th August, 2002 to redesignate the Petitioner's post as Senior Training Assistant.

21. The writ petition is allowed in the above terms, but in the circumstance, with no order as to costs.



(S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda