

15.03.2023

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WPA 27655 of 2022

Bikash Kumar Bhattacharyya
Vs.
The State of West Bengal & Ors.

Mr. Partha Banerjee
Mr. Dibyendu Raha
... For the petitioner.

Mr. Prabir Dasgupta
Mr. Suman Dey
... For BCKV

Mr. Swapan Kr. Datta, AGP,
Mr. Dipankar Das Gupta
... For the State.

The petitioner was appointed as a Technical Assistant (Grade III) under a project, namely All India Co-ordinated Research Projects.

The Executive Council of the Bidhan Chandra Krishi Viswavidyalaya in its 143rd meeting held on July 27 and 28, 1998 decided that the service rendered by the personnel from time to time at the university under the said All India Co-ordinated Research Projects should be considered as approved service like service rendered by employees serving in the Government created posts at the University. It was further resolved that the personnel under the said project would be entitled to get all of the retiral benefits that are provided to other employees of the University.

The petitioner retired as a Technical Assistant (I) on August 31, 2020.

After his retirement by an Office Order dated December 30, 2020, the retiral dues of the petitioner were directed to be released by the university which included pension, family pension, gratuity and cash equivalent to leave salary.

It is the grievance of the petitioner that though he has been receiving pension in terms of the said office order of the university dated December 30, 2020, the benefits of gratuity and leave encashment have not been provided to him till date.

By filing this writ petition the petitioner has prayed for release of his gratuity and leave encashment benefit.

Learned advocate appearing for the university submits unless the State Government releases the necessary funds, the gratuity and leave encashment benefit cannot be paid to the petitioner.

The State, however, opposes the prayer of the University.

It has been submitted on behalf of the State that by a letter dated July 10, 2015, the State only approved the Memorandum of Understanding between the University and Indian Council of Agricultural Research whereby both the University and Indian Council of

Agricultural Research agreed to cooperate in conducting research sanctioned by the Council.

State in its affidavit contends that posts under the project were not sanctioned by the State Government and appointment to such posts were not approved by the State Government. Only the Memorandum of Understanding was approved which provided for pay and allowances of the employees of the project on the basis of 25% from the State fund and 75% from the ICAR fund. The appointment letter of the petitioner clearly stipulated that it was purely on temporary basis and could be terminated by one-month notice. It was also specifically indicated in the letter of appointment of the petitioner that no assurance was given regarding continuation of the appointment beyond the period for which the project was sanctioned by the authority or absorption in any permanent for temporary posts at the University.

Mr. Swapan Kumar Datta, learned senior advocate appearing for the State submits that the queries raised by the State regarding the service of the petitioner have not been answered by the University. The appointment of the petitioner was in violation of Section 33 (A) of Bidhan Chandra Krishi Viswavidyalaya Act. The petitioner is not entitled to any retirement benefit from the State fund.

It is true that the petitioner was not appointed against any post sanctioned by the State. The Executive Council of the University treated the petitioner to be a permanent employee without any sanction from the State Government.

For running the said project, the financial liability of the State was limited to the extent of 25%. The State at no point of time had agreed to take the financial liability of the project employees towards their retiral dues.

Learned advocate for the petitioner, however, has drawn attention of this Court to a resolution adopted by the Executive Council of the University. The relevant part of the said resolution is quoted below: -

“The Executive Council accepted the report dated 13.02.2023 of the Committee, constituted vide Notification No. VC/BCKV/66/990 dated 06.02.2023, prepared in support of eligibility of BCKV employees posted in AICRPs/AINPs in respect of getting all service benefits, pension and retirement benefits, as well as in support of extension of superannuation age of teachers engaged in AICRPs/AINPs.

It was resolved that based on the above report, a detailed proposal would be sent to

the State Government, seeking kind approval in respect of all service benefits, pension and retirement benefits already provided or to be provided in coming days to the BCKV employees posted in AICRPs/AINPs, which were sanctioned by ICAR from time to time since the inception of the University and till date.

The proposal should mention a cut-off date, for the purpose of resolving all related issues in order to make the BCKV employees (teaching and non-teaching) posted in AICRPs and AINPs eligible for all service benefits, pension and retirement benefits, including extension of superannuation age of teachers engaged/posted in AICRPs and AINPs, from 62 years to 65 years. The related issues include seeking approval for parallel transfer of staff (teaching and non-teaching) between AICRPs and AINPs and the University mainstream, in respect of transfers already made at University level.

Specifically drawing the attention of Shri Avijit Kumar Mitra, Special Secretary, Department of Agriculture, Govt. of West Bengal, the Hon'ble Vice-Chancellor, BCKV,

took the responsibility of the mistakes committed by the University administration in the past in managing the affairs of AICRPs and AINPs implemented in the University, by not seeking State Government approval on key issues. The Hon'ble Vice-Chancellor urged upon the State Government to pardon the past mistakes of the University and reconsider the matter for the sake of the employees (teaching and non-teaching) who had served in these AICRPs and AINPs for more than 20 years. He assured the State Government that in future, appointments of scientific, technical and non-technical staff in AICRPs and AINPs would be made separately, not merging the same with the main stream of the University, and that also after seeking approval from the State Government on the terms of such future appointments in AICRPs and AINPs or any other similar permanent project.

In this respect, Dr. Bijay Kumar Mohapatra, the Chancellor's Nominee informed the house that similar issues concerning the staffs engaged under AICRPs and AINPs in Odisha University of Agriculture & Technology (OUAT), Odisha, have been

amicably sorted out following similar lines of approach considering a cut-off date with co-operation of the Odisha State Government.”

The said resolution of the Executive Council adopted on February 16, 2023, admits the irregularities of the University in treating the petitioner as a permanent employee of the University without any sanction from the State Government.

Learned advocate appearing for the petitioner submits that since the University has taken a resolution to take up the issue with the State Government, a direction should be given upon the State to consider the case of the petitioner along with the similar circumstanced staff of the All India Co-ordinated Research Project who have been given permanent appointment by the University.

In that view of the matter, I am not inclined to keep this writ petition pending.

This writ petition is disposed of with a direction upon the University to approach the State with all relevant documents so that the issue of granting retiral dues to the petitioner is resolved in a fair and equitable manner.

The University will submit all relevant documents to the State within 15 days from date. The State will take a decision after hearing all concerned parties

within a period of two months from the date of submission of documents by the University.

Accordingly, **WPA 27655 of 2022** is disposed of.

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

(Kausik Chanda, J.)