

01.04.2024
Court No.13
Item No.54
pk

WPA 8329 of 2024

**Dr. Samsiddhi Bhattacharjee and another
Vs.
Union of India and Ors.**

Mr. Victor Chatterjee,
Mr. Abhishek Banerjee,
... for the petitioners.

Mr. Goutam Kumar Das,
Ms. Subrata Santra
... for the respondents.

Facts of the Case

1. The petitioners are the scientists/employees of the National Institute of Biomedical Genomics, Kalyani, West Bengal (in short "NIBMG"). The said institute is an autonomous body under the control and supervision of the Department of Biotechnology (DBT), Ministry of Science and Technology, Government of India.

2. Upon being offered the post of Assistant Professor with the NIBMG sometime in 2011 and 2012 the petitioners joined as such and relocated themselves to Kalyani, West Bengal, from Canada and USA. Immediately after joining both the petitioners were reimbursed the relocation costs to India by the NIBMG of approximately Rs.1,00,000/- each.

3. They are continuing to work in the NIBMG and conducting and/or involved in vital research in Biotechnology in India till date.

4. Sometime in March 2024, the Ministry of Science and Technology, Government of India pursuant directed recovery of relocation costs that was given to all Scientists who joined in as many as eight Institutes across the country from the year 1999 till 2017.

5. Consequent thereupon, the NIBMG called upon the petitioners to reimburse the said relocation expenditure and informed that the Institute would recover the same from their salaries and emoluments. The petitioners are aggrieved by the same.

Arguments of the Petitioners

6. The petitioners relied upon SR 105 of the Rules applicable to the Central Government servants which entitled the Scientists and Technical Officers working abroad to on being appointed under the Government of India to relocation allowances. It is further relied upon on the decision of the Hon'ble Supreme Court of India in the case of **State of Punjab & others - Vs. - Rafiq Masih (White Washer) and others** reported in **(2015) 4 SCC 334** on the proposition that any allowance and amounts paid and obtained even contrary to law by an employee without any fraud or overt action in obtaining the same from the State cannot be recovered specially after twelve years.

Arguments of the Union of India

7. Learned Counsel for the Union of India submits that autonomous bodies are governed by their own Rules and cannot rely upon the Rules applicable to the Central Government. It is next argued that the demand on the petitioners, inter alia, and 76 other employees of DBT Institute across the country has been objected to by the Comptroller and Auditor General of India (CAG) in paragraph 3 at Chapter 3 of report No.24 of the year 2023. The Institute is, therefore, bound by the order of the CAG as is the Central Government.

8. On the proposition that the Rules of the Central Government are not applicable to autonomous bodies. Reliance is first placed on a decision in the case of **T.M. Sampat & others – Vs. – Secretary, Ministry of Water Resources and Others** reported in **(2015) 5 SCC 333**, particularly paragraphs 3 and 15 thereof. Further reliance is placed on a recent decision of the Hon'ble Supreme Court of India in the case of **Central Council for Research in Ayurvedic Sciences & others – Vs. – Bikartan Das** reported in **2023 SCC OnLine (SC) 996**.

9. In the **T.M. Sampat case (supra)** the employees of autonomous body were seeking benefit of the Central Government pension scheme despite their employer, an autonomous body having its own independent scheme. It is in that light that the Supreme Court held the Rules of the Central Government cannot be applied to

autonomous bodies. The said decision does not apply here.

10. It appears to this Court that in the case of **Bikartan Das (supra)**, Ayush Doctors were claiming parity with Central Government employees and seeking the benefit of FR 56 particularly with regard to the age of retirement. Rejecting such contention the Hon'ble Supreme Court of India held that the autonomous bodies like the appellant therein, namely, the Central Council for Research in Ayurvedic Sciences are governed by its own Service Rules and FR 56 will not apply to them.

11. By reference to several other earlier decisions, and paragraphs 3 and 26 of the T.M. Sampat decision (supra) that has been quoted with approval, the Supreme Court held that the employees of autonomous bodies cannot claim parity and equal benefits as that of Central Government employees, who are normally governed by the CCS and CCA and Central Government Pension Rules.

12. This Court has very carefully noted the arguments advanced by the Counsel for the Union of India and the petitioners. While indeed it is true that the NIBMG is governed by its own Rules and the petitioners cannot fall back in SR 105 for claiming any relocation allowances, the facts of the instant case stand on a slightly different footing.

13. The letters of appointment of the petitioners indicate that the employees of the NIBMG would be entitled to all benefits attached to the post of Assistant Professors as approved by the Governing Board of NIBG and by the Government of India Rules as applicable to the NIBMG.

14. It must, therefore, be presumed that when relocation allowance was given to the petitioners in the years 2011 and 2012 respectively, it was done with the approval of the Governing Body of NIBMG. When an autonomous body under a Central Government Ministry adopts a benefit specially in the nature of relocation allowance to a scientist, this Court is of the view that the same has been done in accordance with law and it would be inappropriate to recover the same from the petitioners much less than 14 years after the same was given to them.

15. Yet another distinguishable factor from the case of **T.M. Sampat (supra)** as well as **Central Council for Research in Ayurvedic Sciences and others (supra)** is that the age of superannuation and Central Government pension, which are far more higher claims that were the subject matter of the said two decisions. Indeed the employees of NIBMG cannot claim the parity in the age of superannuation or other major Service and Terminal benefits payable to Central Government employees. They are essentially governed their own Rules and bye-laws.

Such Rules and bye-laws are in the ordinary course of business adopted by the Board of Governance and/or the Governing Body of autonomous bodies under the Central Government across the country.

16. In the instant case, this Court sees the relocation allowance paid to the NRI's like petitioners as an small incentive to come back to India and serve their mother land and consequently contribute to the nations development and research in science.

17. The Institute has not chosen to revoke for refund or seek refund of the said amounts of its own accord. The Institute has not even found or communicated to the petitioners that relocation allowance given was in any way illegal or contrary to law or its own Rules and bye laws. Recovery is sought to be made at the instance of CAG and Central Government. Autonomous bodies as opposed to Central Government bodies have a greater degree of leverage in their operations and benefits given to their employees, which is Institute specific.

18. Reliance is placed by the petitioners on the Rafiq Masih decision (supra) may also not be completely misplaced as the e-mail communication from the NIBMG to the petitioners of the year 2011 clearly indicates a voluntary and suo motu act on the part of the Institute to allow and pay the relocation allowance to India from the USA and Canada to the two petitioners. The

petitioners really had no role to play in obtaining the same or making any demand in that regard.

19. In the backdrop of the above discussions, this Court is of the view that the above two decisions (supra) are distinguishable in the facts of the case. It is held that the governing body of the NIBMG was entitled to take an independent decision of its own to confer relocation benefit to the petitioners irrespective and without placing reliance of SR 105 above.

Conclusion

20. For the reasons stated herein above, the writ petition succeeds. The impugned order dated 13.03.2024 issued to the two petitioners shall stand quashed and set aside.

21. The NIBMG is restrained from effecting any recovery of any relocation allowance paid to the petitioners in the year 2011 and 2012 respectively. The Central Government shall not insist or take any steps against the NIBMG for not effecting any recovery from the petitioners in this regard.

22. The writ petition is allowed and disposed of.

23. There will be no order as to costs.

24. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court

(Rajasekhar Mantha, J.)