

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

**Present:**

**The Hon'ble Justice Jay Sengupta**

**WPA 14600 of 2024  
Dilip Kumar Sharma  
Vs.  
The State of West Bengal & Ors.**

|                            |   |                                                                              |
|----------------------------|---|------------------------------------------------------------------------------|
| <b>For the petitioners</b> | : | Mr. Victor Chatterjee<br><br>.....Advocate                                   |
| <b>For the State</b>       | : | Mr. Swapan Kr. Datta Id. AGP<br>Mr. Dipankar Das Gupta<br><br>.....Advocates |
| <b>For the UOI</b>         | : | Mr. Dwijadas Chakraborty<br>Mr. Subit Majumdar...<br><br>.....Advocates      |
| <b>For the University</b>  | : | Ms. Lina Majumder<br><br>.....Advocate                                       |
| <b>Heard lastly on</b>     | : | 25.09.2024                                                                   |
| <b>Judgment on</b>         | : | 23.12.2024                                                                   |

**Jay Sengupta, J:**

1. This is an application under Section 226 of the Constitution of India praying for direction upon the respondent authorities to rescind, recall, revoke and withdraw the proceedings of the meeting held on 17.05.2023, the memorandum dated 01.06.2023 and the further order dated 14.08.2023 and to treat the petitioner as a permanent employee of the respondent University and grant all benefits as applicable to every permanent staff including pension upon retirement.

2. Learned counsel for the petitioner submitted as follows. The writ petitioner was aggrieved by the proceedings of the meeting held on 17.05.2023, the memo dated 01.06.2023 and the order dated 14.08.2023. The writ petitioner was reverted back to the Comprehensive Scheme on “Cost of Cultivation of Principal Crops in India” from the substantive Department of the University. The effect of such reversion was that the petitioner would not be eligible for any benefit available to a regular permanent staff of the University, including pensionary benefits. By an order dated 20.04.2010 the petitioner along with others was “absorbed against vacant post of Field Assistant” in BCKV, as per the decision taken by the Executive Council. By a further order dated 29.05.2014 the petitioner was placed in the “vacant post of Field Assistant” along with six others. In fact, by a memo dated 29.04.2005 the Executive Council of the University decided that the service rendered by the employees in the Comprehensive Scheme should be recognised as approved qualifying service for the purpose of determination of retirement benefits. In the initial appointment letter of the petitioner on

12.01.1984, it had been stated in Clause (d) that the terms and condition of his appointment would be governed by the provisions of the BCKV Act, Ordinance, Statutes, Regulations and Rules framed by the BCKV. The BCKV Act or the Statutes did not differentiate between a Comprehensive Scheme employee and an employee employed in the substantive Department of the University. The petitioner was initially appointed from a common merit list of candidates. Some of the candidates were appointed in the Comprehensive Scheme and some were appointed in the Departments of the University. The petitioner after being “absorbed against vacant post of Field Assistant” had all along been treated at par with the other regular permanent employees of the University, for instance, a) the petitioner had been granted benefits of Pay Commissions like other staffs of BCKV, b) The petitioner became member of the West Bengal State Aided Universities (Death Cum Retirement Benefits) Scheme, 1996, c) The petitioner received salary from the grant in aid received by the University from the State, d) The petitioner was brought within the purview of General Provident Fund from Contributory Provident Fund, e) The petitioner was granted voting rights like other regular permanent staff. The respondents having been placed and absorbed the petitioner in a vacant post and further after treating the petitioner at par with other regular permanent staff of the University, was now being stopped to be treated in the same way, so as to deny the service benefits including pension. The petitioner was “absorbed against vacant post of Field Assistant” in BCKV. Therefore, the post was already sanctioned and was lying vacant. The provisions of Section 33A of the BCKV Act, 1974 was attracted in case of creation of a new post

and not for appointment in an already sanctioned post. The instant case was not a case attracting the provision of Section 33A of the BCKV Act, 1974. A matter fell for consideration before a Coordinate Bench of this Court. However, the petitioners in such matter were not reverted back to the Comprehensive Scheme from the substantive Department of BCKV. They retired from the Department of BCKV, yet were not paid pension. Therefore, the case was factually distinguishable. Furthermore, the Coordinate Bench had only observed that it was advisable for the University to take prompt action and collaborate with the Ministry of Agriculture of the Union to finalise the memorandum of Understanding for providing pensionary benefits to the project employees. The Bench by the order dated 07.03.2024 had not actually decided the matter on merits. Further appeals being MAT 1186 of 2024 and MAT 1187 of 2024 were pending from such order. On the contrary, another Coordinate Bench has passed order for grant of pension in i) WPA 22046 of 2015, order dated 25.02.2016, ii) WPA 4483 of 2016, order dated 22.03.2016. The same Co-ordinate Bench had also passed an order directing pension in WPA 25962 of 2022, by order dated 04.04.2024, which was a latter order than the one relied upon by the respondents. The so called step taken by the University was a letter issued to the Ministry only on 05.08.2024, only to frustrate the instant writ petition.

**3.** Learned counsel representing the BCKV submitted as follows. The petitioner was appointed to the temporary post of field man in the cost of Cultivation Scheme on 12.01.1984. The appointment was purely temporary and without assurance of continuation beyond the period for which the

scheme had been sanctioned by the appropriate authority or absorption in any permanent and temporary post in the Viswavidyalaya. The Government of India all long gave the administrative control of the comprehensive scheme only. Total financial grant inclusive of all kinds of allowances for the said Scheme came from the Government of India. It was also mentioned here that the University was a State aided University so all its expenses come from the State Government. So the University was unable to provide the retirement benefits of the employees as the comprehensive scheme. The Bidhan Chandra Krishi Viswavidyalaya inherited the comprehensive scheme, cost of cultivation project and the posts of the project was filled up by way of fresh appointment and/or transfer of regular employee to the project. The vacant posts of the comprehensive Scheme were filled up with other categories of vacancies of the University through a common advertisement and the selections were made by the selection committee in a common panel to fill up the vacancies of the main establishment, AICRPS and comprehensive scheme on cost of cultivation. The appointments were made by the University administration in different directorates/comprehensive scheme/AICRPS taking into account their qualification and experience and the employees of the project were granted University scale of pay as per the Memorandum of understanding. The petitioner was absorbed in the post of field assistant under directorate of Research Regional research station Kakdwip from the field man gr.1 under the comprehensive scheme in terms of the Resolution of the E.C. meeting on 08.03.2010 completely funded by Central Government. Moreover, the petitioner received his salary from the cost of cultivation

scheme for the period of service. Employees who were placed/posted in the academic departments and different directorates against the State Government sanctioned posts i.e., substantive posts all steps are taken by the Administration following the State Government notification orders issued time to time. So salary of the regular employees in the University (sanctioned post) was fully funded by the State Government where the salary of the scheme based employees were fully funded by the Government of India. The employees of the cost of cultivation Scheme were paid their salaries from the Central Government fund, but when they were transferred to the academic Departments or Directorates in a Government sanctioned posts, they were paid from the State Exchequer. Here the petitioner was appointed in the comprehensive scheme. He was not appointed in the State Government sanction post. Reliance was placed on the order passed by a Co-ordinate Bench of this Court in a similar matter on 07.03.2024 in a similarly situated Project employee. On the basis of the said order the University authority took steps to forward the matter to the Advisor, Department of Agriculture on 05.08.2024.

**4.** Learned senior counsel representing the State submitted as follows. The attempts of the BCKV authority to give the Project staff the status of regular employee in order to entitle him to get pensionary benefits from the State Exchequer, without adhering to the provisions of the Section 33A of the Act was absolutely illegal. The alleged absorption of the petitioner was made without prior approval of the State. The State, thus, had no financial liability

in granting pensionary benefit to the petitioner. Reliance was placed on a decision of the Hon'ble Apex Court in Mamata Mohanty, Civil Appeal No. 1272 of 2011.

**5.** I heard the learned counsels for the parties and perused the writ petition, the affidavits and the written notes of submissions.

**6.** The petitioner was initially appointed to the temporary post of field man in the cost of cultivation scheme on 12.01.1984. The appointment was purportedly temporary in nature. The Government of India had an administrative control of the scheme and provided for financial grant in respect of the scheme including all allowances. The BCKV claimed to inherit the comprehensive scheme, the cost of cultivation project and the posts of the project were filled up by fresh appointment or transfer of regular employee to the project. The petitioner was absorbed in the post of field assistant under the Directorate of Regional Research station Kakdwip from the Field Man Grade-I under the Comprehensive Scheme in terms of resolution of the Executive Committee meeting held on 08.03.2010. The petitioner received his salary from the cost of cultivation scheme for the said period of service.

**7.** The petitioner's prime contentions are that he was thereafter absorbed against a vacant post of field assistant by the BCKV and as the post had already been sanctioned and was lying vacant, therefore the provision of Section 33A of the Act would not be attracted.

**8.** So far as the provision of the Section 33A of the BCKV Act of 1974 is concerned, the same appears to apply in a case of creation of a new post and not for appointment in an already sanctioned post. Therefore, the said provision is not attracted in the facts of the present case.

**9.** The decision rendered by a Coordinate Bench of this Court in WPA 25958 of 2022 was factually distinguishable to a certain extent. There the petitioners retired from the University service while serving as Field Assistant. Moreover, the said Coordinate Bench also observed that it was advisable for the University to take prompt action and collaborate with the Ministry of Agriculture of Union to finalise the Memorandum of Understanding for providing pensionary benefits for the project employees. The order has reportedly been appealed against. The said Bench, however, on more similar facts, passed an order directing grant of pension on 04.04.2024 in WPA 25962 of 2022.

**10.** Earlier, another Coordinate Bench of this Court had passed a similar order granting pension on 25.02.2016 in WPA 22046 of 2015.

**11.** Here too, it appears that after getting attached to the University under a Comprehensive Scheme, the petitioner was absorbed against a vacant post as a non-teaching employee by an order dated 20.04.2010.

**12.** The decision in Mamata Mohanty (supra) was based on distinct facts. Among other things, there were deficiencies in the candidate therein regarding qualification. It was held that the power to grant relaxation in eligibility had not been conferred upon any authority, either the University or the State.

**13.** During his employment, the present petitioner was even allowed to opt for pension under West Bengal University (Death cum Retirement Benefit Scheme), 1996 as would appear from the notification dated 06.07.2010.

**14.** It was also admitted by the BCKV that while working for the Department of the said University upon transfer, the salary of an employee of the Scheme was borne by the State Government.

**15.** The above facts clearly indicate that the petitioner was not just treated as an employee of the University, but was actually appointed by way of absorption against a vacant post as a permanent employee of the University.

**16.** Therefore, it should not be open to the University to now go back on their actions and make a last ditch effort to avoid payment of retiral benefits including pension to the petitioner by transferring him back to the Scheme in question. Such action would indeed be a colourable one and quite impermissible in the eye of law.

**17.** The similarity of facts touching upon the question of law involved, especially with the ones in WPA 22046 of 2015, dissuades this Court from taking a different view.

**18.** In view of the above discussions, the relevant proceedings of the meeting held on 17.05.2023, the Memorandum dated 01.06.2023 and the further order dated 14.08.2023 are quashed and set aside. The respondent University shall treat the petitioner as a permanent employee of the University and grant all benefits as applicable to every permanent staff including pension upon retirement.

**19.** With these observations, the writ petition is disposed of.

**20.** Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

**(Jay Sengupta, J.)**