

161,
162&
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07-03-2024
AKG
Ct. 238

WPA 25958 of 2022
Pradip Kumar Das
Vs.
The State of West Bengal & Ors.
With
WPA 25959 of 2022
Mukul Chandra Kar
Vs.
The State of West Bengal & Ors.
With
WPA 27275 of 2022
Golam Mohiuddin Mondal
Vs.
The State of West Bengal & Ors.

Mr. Partha Sarathi Bhattacharyya,
Mr. Arindam Sen,
Mr. Raju Bhattacharyya,
Mr. Arunava Maiti

...for the Petitioners

Mr. Tapan Kr. Mukherjee,
Mr. Somnath Naskar

...for the State in WPA 25959/2022

Ms. Sayantanee Bhattacharjee

...for the State in WPA 27275/2022

Mr. Pinaki Bhattacharyya

...for the State in WPA 25958/2022

Mr. Prabir Dasgupta,
Mr. Suman Dey

...for B.C.K.V.

In view of the shared facts and legal issues, these three writ petitions are consolidated for joint hearing and disposed of by this common judgment and order. The petitioners in all three cases were appointed to the temporary post of "Field Man" under the "Comprehensive Scheme on Cost of Cultivation of Principal Crops," West Bengal. This scheme is a project funded by the Ministry of Agriculture, Government of India, and it is not a permanent programme. The continuation of the scheme depends on its periodic evaluation.

The petitioners were appointed without any assurance of continuation for the period for which the scheme had been sanctioned.

Pursuant to a resolution passed by the Executive Council of the university in its 213th (adjourned) meeting held on March 8, 2010, the petitioners were absorbed in the university's establishment to the post of "Field Assistant" from the post of "Field Man". An order to that effect was issued on April 20, 2010. Simultaneously, by the same order, they were released from the post of "Field Assistant" with effect from the same date and "deputed back" to their former post of "Field Man" and in the comprehensive scheme "on an officiating basis without deputation allowances."

Subsequently, the petitioners were once again assigned to the posts of "Field Assistant" by an order dated February 24, 2014, and were "deputed" to the comprehensive scheme from March 1, 2014, "without any deputation allowance." On April 20, 2023, the Directorate of Farms, Bidhan Chandra Krishi Viswavidyalaya, placed the petitioners as "Field Assistant". The petitioners retired from the university service after reaching the age of superannuation while serving as Field Assistants from the Office of Directorate of Farms, Bidhan Chandra Krishi Viswavidyalaya.

Mr. Partha Sarathi Bhattacharyya, learned senior advocate representing the petitioners, argues that since

the petitioners were absorbed into permanent posts in the university establishment and received salaries from the State, they are entitled to receive a pension similar to regular university employees. The university also submitted necessary papers for the release of their pension, but the State Government has arbitrarily declined to grant the pensionary benefits.

Mr. Bhattacharyya relies on a judgment by a co-ordinate Bench of this Court in W.P. No. 4483 (W) of 2016 (*Asit Kumar Bera Vs. The State of West Bengal & Ors.*), wherein a single Bench of this Court directed the State to process the pension papers and ensure the disbursement of pensionary benefits to a project employee. He adds that this order has not been appealed against by either the university or the State. In fact, after this order, several similarly circumstanced employees were granted pensionary benefits by the State. Therefore, the petitioners should not be treated differently, and the State should release their pensionary benefits.

During the hearing of this case, this Court, by an order dated April 10, 2023, asked the State and the university to provide specific instructions on the exact number of employees appointed under the scheme who are currently receiving pensions from the State.

In response, the university filed an affidavit clarifying that about 69 pensioners of Bidhan Chandra Krishi Viswavidyalaya were appointed under the scheme

and are presently receiving pensions from the State Government.

Mr. Bhattacharyya argues that considering these facts, the petitioners cannot be discriminated against and denied their right to receive a pension from the State.

The university states that although the petitioners were appointed as Field Assistant in the University establishment without the approval of the State Government, their appointments were approved by the executive council of the university, which includes several State officials.

The university also contends that since the State has granted pensions to similarly circumstanced individuals, it cannot treat the petitioners differently. Therefore, the State is obligated to grant pensionary benefits to the petitioners.

Mr. Tapan Kr. Mukherjee, learned senior advocate representing the State, argues that Section 33A of the Bidhan Chandra Krishi Viswavidyalaya Act, 1974, provides that no appointment to a permanent post under the university can be made without the State's approval. Since the petitioners were appointed without any approval from the State, the State cannot be held liable to release pensionary benefits to the petitioners. Mr. Mukherjee also cites Section 3 of The West Bengal Universities (Control of Expenditure) Act, 1976, which prohibits the university from appointing anyone without

the State's approval.

Mr. Mukherjee refers to the affidavit filed by the State to suggest that the State allocates funds for university employees based on claims submitted without examining the justification for admissibility, entitlement, etc., on the understanding that such demands are raised only for employees appointed following due process against substantively sanctioned posts. The university is not expected to disburse allowances to employees who are appointed without the State's approval. The State has never allocated funds specifically for the salary of "Field Assistants," nor has there been any verification that such funds were used to pay the petitioners, who were allegedly appointed without following due process and without State approval.

The State only became aware of these irregularities during the procedure related to the petitioners' superannuation and release of all service emoluments, when it received information from the university and had the opportunity to scrutinise the documents related to the petitioners' service. It was then realised that their appointments had been made by the university without the State's approval.

Mr. Mukherjee also argues that the scheme in question is fully funded by the Union and Bidhan Chandra Krishi Viswavidyalaya. Since the petitioners were under this scheme from the beginning, they cannot

be considered regular employees of the university for the purpose of granting pensionary benefits.

Mr. Mukherjee contends that Article 14 of the Constitution is not meant to perpetuate illegality and does not provide for negative equality. Even if other similarly situated persons have been granted benefits inadvertently or by mistake, such orders do not confer any legal right on the petitioners to receive the same relief. He cites a judgment of the Supreme Court reported at **(2011) 3 SCC 436 (State of Orissa v. Mamata Mohanty)** in support of his argument.

Before delving into the conflicting arguments advanced by the parties, it is essential to examine the affidavit submitted by the University in compliance with the direction issued by this Court on July 20, 2023, pertaining to this petition. The University was asked to file an affidavit disclosing the following:

- “(a) Whether the posts mentioned on page 55 of the writ petition where the petitioner and similar circumstanced project employees were sought to be transferred are sanctioned posts;
- (b) From which fund the petitioner’s salary has been released by the University till his retirement.”

The pertinent section of the affidavit submitted by the University in response to the July 20, 2023 order is quoted below:

“7. The University administration has total 63 numbers of sanctioned Field Assistant posts. Which was duly created upon approval

of the Government.

Leave is craved to rely on the relevant Government Order at the time of hearing.

8. However, as on 20.04.2010 as per the office record it is found that there were total 112 employees who were working in Fieldman/ Field Assistant under the University.

Therefore it cannot be said that the posts mentioned on page 55 of the writ petition where the petitioner and similar circumstanced project employees were sought to be transferred were sanctioned posts.

9. The petitioner retired from the service after attaining the age of superannuation (i.e. 60 years) on 30.09.2022 as Field Assistant, office of director of Farms, BCKV. The Government also specifically refused to sanction pension in favour of the petitioner.”

With regard to the query “b”, the University affidavit discloses that in their entire service life, the petitioners were provided salary from the State fund only for about four months. For the remaining service period, they received salary from the project fund.

I am of the clear opinion that the University has not acted, bona fide, in issuing the purported order of placement dated April 20, 2010. It is quite astonishing to note that the University, along with some other employees, designated the petitioners as Field Assistants under the University through the aforementioned order and after releasing the petitioners from their existing post of Field Man. Again, the petitioners were released from the post of Field Assistant on the same date and were

deputed to their original positions of Field Man under the scheme “on an officiating basis without deputation allowances.” There is no doubt that the order dated April 20, 2010, was a fraudulent placement order intended to portray the petitioners as regular employees of the University. Again, towards the end of the petitioners' service, the University, by an order dated February 24, 2014, 'finally placed' them in the regular establishment of the University.

I agree with the State's argument that the aforementioned orders were issued by the University without regard to the fact that there were no sanctioned posts for 'Field Assistant.' These purported appointments were made without seeking the State's approval, and therefore, the State cannot be held responsible for granting pensionary benefits in their favour.

The University, in its affidavit filed before this Court, has clearly admitted that the petitioners received salary from the State Government only for the last 4 months of their service, while they received the salary from the project fund for their remaining service life.

Therefore, it is evident that the State never took any responsibility towards the payment of the petitioners' salary, and in fact, the State was under no such obligation under the scheme.

I am of view that the petitioners were, in fact, never appointed under the University establishment. They were

the project employees throughout their service career.

Regrettably, during the hearing before the learned Judge in W.P. No. 4483 (W) of 2016 (Asit Kumar Bera Vs. The State of West Bengal & Ors.), no mention was made regarding the aforementioned illegalities.

I am also of the view that since some other employees of the scheme were granted pensionary benefits inadvertently, the petitioners cannot take advantage of such illegality claiming equality.

The purported appointment of the petitioners as employees of the University and to claim pensionary benefits from such an illegal act cannot be accepted. The University, while discharging its statutory obligation, ought not to have undertaken such an exercise to confer benefits to which the petitioners are not entitled.

Having said all this, I notice that there is a different avenue for providing pensionary benefits to the petitioners in contemplation.

By an order dated September 4, 2013, passed in W.P. (C) No. 5384 of 2008, the Guwahati High Court directed the union to constitute a committee to examine the claim of the scheme employees for payment of pension. In compliance with the said order, the Department of Agriculture of the Union has constituted a committee to examine the claim of the employees appointed under the said scheme for payment of pension. The committee submitted its report with the

recommendation that Comprehensive Scheme for Studying the Cost of Cultivation Scheme in Assam Agricultural University, who joined on or after January 1, 2004 may be covered in a new pension scheme and the Directorate of Economic and Statistics may make a matching grant accordingly. Employees who joined before January 1, 2004, and are currently employed and covered under the Contributory Provident Fund scheme may be eligible to transition to a new pension scheme.

Bidhan Chandra Krishi Viswavidyalaya also received a communication from the Ministry of Agriculture requesting suggestions on the model memorandum of understanding, which was prepared based on various recommendations of the committee. It appears that the university has communicated with the State to finalise the memorandum of understanding. However, the State has not yet responded.

The university's eagerness to provide pensionary benefits to the petitioners and similarly situated project employees has been noted in this judgment. However, it is surprising that despite a legitimate path outlined by the Guwahati High Court's order to provide such benefits, the university has not taken the initiative for such a proposed pension scheme. The State Government is not involved in this matter, and it is not financially responsible. The university should have responded to the queries from the Ministry of Agriculture of the Union

without waiting for the State Government's approval. It is 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.

With the aforesaid observations, **WPA 25958/2022, WPA 25959/2022** and **WPA 27275/2022** are disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Kausik Chanda, J.)