

04.04.2024
Item No. 152
Ct. No. 238
AKG

WPA 25962 of 2022
Sri Surya Kanta Dutta
Vs.
State of West Bengal & Ors.

Mr. Ranajit Chatterjee,
Mr. Aniruddha Mitra

...for the Petitioner

Mr. Prabir Dasgupta,
Mr. Suman Dey

...for the University

Mr. Rajarshi Basu,
Mr. Anirban Datta

...for the State

The petitioner was initially appointed as a Fieldman in a Comprehensive Scheme project under Bidhan Chandra Krishi Viswavidyalaya by a letter dated January 9, 1984.

Following a resolution of executive council of Bidhan Chandra Krishi Viswavidyalaya adopted in 116th meeting held on May 8, 1993, the petitioner was reappointed in the Department of Horticulture as Field Assistant by an order dated May 11, 1993. The relevant part of the said order is quoted below :

“In consideration of retention of services of some Non-teaching Staff who are out of employment for termination of Research Projects where they are attached to an in consideration of giving placement priority as per adopted policy vis-à-vis giving placement facility against available vacancies in regular establishment as far as practicable, the Executive Council at the 116th meeting held on 8.5.1993, on the recommendation of the placement

committee constituted for the purpose approved the following deployment / placements / reshuffles subject to the condition that nature of service of the staff will be guided by the terms and conditions inserted in the first offer of appointment except to those who have been newly placed against regular establishments (the asteric mark below indicates the regular vacancy) whose confirmation in the service will be guided by the university Rules:-."

It is not in dispute that since then the petitioner continued in the Department of Horticulture of the university till his retirement. It is also important to note that the petitioner was promoted to the post of Fieldman to Fieldman Grade-I by the order dated March 17, 1998 issued by the university. Subsequently, again he was promoted to the post of Field Assistant Grade-I to Senior Field Assistant by an order dated August 19, 2014. The petitioner was served with a superannuation notice dated April 21, 2022, following which he retired on August 31, 2022.

It is the grievance of the petitioner that he has not been paid his retiral dues including pension after his retirement.

Mr. Chatterjee, learned advocate appearing for the petitioner submits that the order dated May 11, 1993, makes it clear that the petitioner was appointed against a regular vacancy under the regular establishment of the university. He continued in the

regular establishment of the university for about twenty nine years receiving his salary from the State fund treating him to be a regular employee of the university. Therefore, after retirement, the petitioner cannot be denied his retiral dues including pension.

The aforesaid facts as noted above have not been disputed by the university. The university admits that salary of the petitioner since May 11, 1993 was paid from the State exchequer. The university further submits that it is not in a position to clarify as to whether the appointment of the petitioner in the Department of Horticulture was against a sanctioned post or not. The affidavit used by the university states that it could not ascertain such facts even after vigorous search for the relevant records.

On behalf of the State, it has been submitted that the appointment of the petitioner in the regular establishment of the university was not made with the approval of the State. Such appointment is violative of Section 33A of the Bidhan Chandra Krishi Viswavidyalaya Act, 1974.

State suggests that the State allocates funds for university employees 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 the grant to an employee who is appointed

without the State's approval. The State has never allocated funds specifically for the salary of the petitioner to pay the petitioner who has been appointed without following due process and without State approval.

I am of the view that in the facts of the case, the State cannot deny the retiral dues including pension to the petitioner and decline to treat him as a regular employee of the university.

The order dated May 11, 1993 goes to show that an asterik mark was assigned against the appointment of the petitioner. According to the clarification given in the preamble of the said order, such appointment was made against a regular vacancy.

I also cannot accept the submission of the State that the salary of the petitioner has been paid from the state exchequer without ascertaining as to whether the petitioner was a regular employee of the university.

The affidavit filed by the university suggests that Directorate of Farms of the university used to raise demand before the State for disbursement of staff salary. The name of the petitioner featured every time in the list attached to the demand letter.

In that view of the matter, the State cannot be heard to say that for about twenty nine years, it paid the salary of the petitioner without its knowledge.

In the above facts, the State also cannot decline to provide the retiral dues including pension after treating the petitioner as a regular employee of the university for all practical purposes regardless of the absence of approval in terms of Section 33A of Bidhan Chandra Krishi Viswavidyalaya Act, 1974.

The petitioner shall be paid his retiral dues including pension along with arrears within a period of one month from the date of communication of this order by the respondents in accordance with law.

Accordingly, **WPA 25962 of 2022** is allowed.

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.)