

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

Present:

The Hon'ble Justice Jay Sengupta

**WPA 14603 of 2024
Pradip Kumar Deb @ Pradip Deb
Vs.
The State of West Bengal and others**

For the petitioners	:	Mr. Victor Chatterjee	Advocate
For the State	:	Mr. Sirsanya Bandopadhyay Mr. Debopriyo Karan	Advocates
For the Union of India	:	Mr. Dwijadas Chakraborty Mr. Subit Majumdar	Advocates
For the University	:	Ms. Lina Majumder	Advocate
Heard lastly on	:	20.11.2024	
Judgment on	:	13.02.2025	

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 with 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 conditions 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 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, were now stopping them 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. 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, merely to frustrate the instant writ petition.

3. Learned counsel representing the State submitted as follows. The petitioner was initially appointed as Lab Attendant under the National Project on Bio Fertiliser under the Chemistry Department of the University. The petitioner underwent a one year integrated training, course for recruitment Assistant. The petitioner thereafter was appointed as a Fieldman

by an order dated 15.09.1990 under the Comprehensive Scheme: Cost of Cultivation of Principal Corps West Bengal under the Bidhan Chandra Krishi Viswavidyalaya (in short, BCKV/University). The said Scheme was fully funded by the Government of India. The University vide Notification dated 20.04.2010 had placed the petitioner, amongst others, to the post of 'Field Assistant' under the University from the post of Fieldman under the Comprehensive Scheme fraudulently on the same date by the same Notification, the petitioner along with others were released from the post of Field Assistant and were deputed to their original positions of Field Man under the Scheme "on an officiating basis without deputation allowances". The petitioner's salary was paid out of the Project fund. The petitioner was again placed against the vacant post of Field Assistant with effect from 01.06.2014 pursuant to the order dated 29.05.2014 of the BCKV. The BCKV again placed and deputed the petitioner to the Comprehensive Scheme with effect from 01.07.2014 without any deputation allowances. The salary of the petitioner was booked from the Head of Comprehensive Scheme with effect from 01.07.2014. The BCKV placed the petitioner under Directorate of Farms, BCKV on 31.03.2022 as Field Assistant vide Order dated 31.03.2022. The salary of the petitioner was booked from the Directorate of Farms, BCKV with effect from 01.04.2022. The BCKV again on 01.06.2023 returned the petitioner back to the Scheme: Cost of Cultivation from the Directorate of Farms with effect from 01.06.2023 vide order dated 01.06.2023 on the basis of the State Government's communication vide no. 33/JS dated 12.12.2013 where the State Government debarred the University to change the

employment status of the employees through transfer. Since the Comprehensive Scheme was 100% funded by the Central Government, the State Government could not be burdened/entangled with any sort of financial liability in any manner whatsoever in connection with the expenses of the said Scheme including the payment of salary and/or pensionary benefits of the staff thereof. The recruitment procedures for the regular employees of the BCKV and the staff under a Scheme, were entirely different. The attempts of the BCKV authority to give the Project staff, the status of regular employee in order to entitle them the pensionary benefits from the State exchequer, without adhering to the provisions of section-33A of the BCKV Act, 1974, was totally malafide, illegal and without jurisdiction. In the instant case, the alleged absorption of the petitioner in the post of 'Field Assistant' was made without the prior approval of the State Government in violation of Section 33A of the BCKV Act, 1974 rendering it illegal. Further, Section 3 of the West Bengal Universities (Control of Expenditure) Act, 1976 also prohibited the University from appointing anyone without the State's approval. To transfer of the petitioner from the Project to the Regular Roll of the BCKV and on the same date release him from the transferred post and depute him to the original post under the Scheme time and again established the unholy nexus between the Project staff and the BCKV with a view to shifting the burden of payment of pensionary benefits of such employees on the State Government. The post of 'Fieldman' was a post under the Comprehensive Scheme and the post of Field Assistant' was a post under the University/BCKV. The appointment to the post of Field Assistant under the

BCKV was made with prior approval of the State Government following the provisions contained in Part-II of the First Statutes relating to designation, manner of appointment and terms and conditions of service non-teaching staff including field workers (hereinafter for short the First Statutes). The Executive Council determined the categories, grades and scales of pay, qualifications including professional qualifications. In case of creation of basic grade post and when vacancy arises, the same was advertised in two leading newspapers of the State. Reference was also made to the local Employment Exchange for obtaining names of duly qualified candidates. Then a Screening Committee screened the applications and thereafter a Selection Committee prepares a panel of candidates which was kept in a sealed cover in the custody of the Registrar. After the approval of the panel by the Executive Council, appointments were given from the said panel which remained valid for one year. The State Government sanctioned the post of Field Assistant/Worker for appointment in the regular establishment of the University in cases where the provisions of First Statutes were followed and not otherwise. There was no provision under the First Statutes to appoint or absorb any employee under any Scheme in the regular establishment of the University. No post of Field Assistant had been sanctioned by the State Government for appointment/absorption of an employee of the Project. In the present case 63 nos. of Field Assistants were sanctioned by the State Government for the regular establishment of the University. None of these sanctioned posts could be filled up by the BCKV by way of absorption through backdoor in the regular establishment of BCKV as

had been done in the present case. Admittedly, the absorption of the 'Fieldman' under the Comprehensive Scheme was made in the regular establishment of the University without the prior approval of the State without the prior approval of the State Government. No sanctioned post was there for appointment/absorption of any 'Fieldman' under the Comprehensive Scheme to the post of 'Field Assistant'/Worker in the regular establishment of BCKV. During the entire service period since 1984 the petitioner received his salary out of the fund provided by the Central Government for the Comprehensive Scheme. It was placed on record in this connection that State Government allotted fund (grant-in-aid) to meet the expenses towards pay and allowances for the BCKV against claim submitted by the said University without examining the justification i.e., admissibility, entitlement etc., but on a mutual understanding that such demand had been made by the BCKV in respect of those employees only who were appointed following due process of law and against substantive sanctioned posts. Further, such release of grant-in-aid was always attributable to the conditions and understanding that the said BCKV would disburse the pay and allowances in conformity with the guidelines as issued from the Department vide Memo No. 3777-Eden dated 05.10.2015. Since some other employees of the Scheme were granted pensionary benefits inadvertently, the petitioner could not take advantage of such illegality claiming equality. Article 14 of the Constitution of India was not meant to perpetuate illegality and did not provide for negative equality. Reliance was placed upon the decision in the case of State of Orissa versus Mamata Mohanty reported at

(2011) 3 SCC 436. The petitioner had along been an employee under the Comprehensive Scheme. His appointment under the Scheme was made following the recruitment procedures applicable for the said Project, but not the recruitment process applicable for appointment of the regular employees of the University. Further, the purported appointment of the petitioner was made without seeking the State's approval as required under Section-33A of the BCKV Act, 1974 and as such, the State Government had no financial liability in granting of pensionary benefit to the petitioner as the Government fund was never released for payment of salary to the employees under the said scheme. The mode of payment of salary to the petitioner booked from the Head of Comprehensive Scheme to that of the Directorate of Farms was wholly unauthorized and malafide. This was aimed at giving undue benefit to the petitioner.

4. Learned counsel representing the BCKV submitted that the petitioner was appointed to a temporary post of Field Man in the Cost of Cultivation Scheme. The appointment was temporary and without assurance of continuation beyond the period of the scheme. The Government of India all along had the administrative control of the scheme and financial responsibilities. The University was a State aided one. So, all its expenses came from the State Government. Therefore, it was unable to provide retirement benefits to the employees of the Comprehensive Scheme. It was obvious that all employees of Cost of Cultivation would be paid salaries from the Central Government fund while employees of the academic Departments

or Directorates in a Government sanctioned posts, were to be paid from the State Exchequer.

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

6. In the appointment letter of the petitioner of 28.02.1989, he was selected amongst others to the post of Field Man upon undertaking selection test and training. The Government of India had the administrative control of the Scheme and provided for financial grant in respect of the Scheme including all allowances. The BCKV claimed only 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. By an order dated 20.04.2010, the petitioner along with others were absorbed against vacant post of Field Assistant in BCKV, as per 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 memorandum dated 29.04.2005, the Executive Council of the University had decided that the service rendered by the employees in the Comprehensive Scheme shall be recognized as approved qualifying service for the purpose of determination of retirement benefits.

7. The petitioner's contention is that he was subsequently absorbed against the vacant post of the Filed Assistant of 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 in a similar matter being WPA 14600 of 2024 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 would 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 exercise and quite impermissible in the eye of law. Nor would the State be permitted to shirk its responsibility merely on pecuniary consideration.

17. The similarity of facts touching upon the question of law involved, especially with the ones in WPA 22046 of 2015 and WPA 14600 of 2024, 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 qua the present petitioner. 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.)