

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

Present:

The Hon'ble Justice Jay Sengupta

**WPA 16980 of 2024
Dr. Sanmoy Kumar Patra
Vs
The State of West Bengal and Ors.**

For the petitioner : Mr. Ranajit Chatterjee
Mr. Aniruddha Mitra
.....Advocates

For the State : Mr. Susanta Pal
Mr. Prabir Kumar Ray
.....Advocates

For the University : Ms. Luna Majumder
.....Advocate

Heard lastly on : 21.02.2025

Judgment on : 16.05.2025

Jay Sengupta, J:

1. This is an application praying for payment of retiral benefits like pension (current and arrear), gratuity and leave salary in terms of pension order dated 19.02.2024 along with interest.

2. Learned counsel for the petitioner submitted as follows. The writ petitioner was appointed as Lecturer (Research), Department of Agriculture, Chemistry and Soil Science pursuant to an advertisement issued by the respondent University (BCKV). The order of appointment, describing the petitioner as a “whole time salaried teacher” of the University, was issued by the Vice-Chancellor and provided that he would normally be required to discharge at least two functions of research, extension and teaching. The terms and conditions of his service were to be governed by provisions of the BCKV Act, 1974, the Statutes and resolutions of the appropriate authority (Executive Council) of the University. After his appointment under the Directorate of Research, the petitioner was placed in the All India Coordinated Research Project (AICRP) on Agricultural Drainage (a project, of the Indian Council of Agricultural Research [ICAR]) jointly funded by the Central and State Governments in the ratio of 75:25. A resolution was adopted by the Executive Council of the University that service rendered by personnel of the University deployed under the AICRP shall, inter alia, be treated as approved service and such personnel would be entitled to get all retiral benefits allowed to University employees. An order to this effect was issued by the Registrar of the University on 24.11.1998. The petitioner was promoted to Lecturer (Research) in Senior Scale, thereafter as Reader (Research), and eventually, he retired as Professor (Research) on 31.01.2021,

whereupon after more than three years, a pension order was issued by the University on 19.02.2024, whereunder he was entitled to pension, gratuity and leave salary. All along, the writ petitioner was sanctioned and paid salary in the government sanctioned pay-scales applicable to the said posts held by him. Upon termination of AICRP on Agricultural Drainage, the petitioner was transferred to the Department of Biotechnology, Instrumentation and Environmental Science w.e.f. 01.04.2002 vide order dated 10/12.07.2002 and subsequent order dated 16.07.2002 of the Director of Research, BCKV, and he served there up to 31.07.2006. Thereafter, by an order dated 07.07.2006, the petitioner was placed in the AICRP on Water Management in Gayespur, Nadia, which he joined on 17.08.2006. The petitioner was finally promoted to the post of Professor (Research), AICRP on Water Management, Department of Agricultural Chemistry and Soil Science, BCKV with scale of pay Rs. 16400/--22400/- vide order dated 05.11.2009 of the Registrar, BCKV. The State Government contested the entitlement of the writ petitioner to retirement benefits on the plea that in case of AICRP employees, no prior approval of the State Government under Section 33A of BCKV Act, 1974, was obtained by the University. The said plea was misconceived as prior State Government approval under Section 33A was contemplated only for appointments in unsanctioned posts. The process adopted for recruitment under AICRP had been stated in paras 4(i) to 4(iv) of the writ petition and was uncontroverted by the State respondents in their affidavit. The petitioner was even otherwise eligible to retirement benefits under the applicable State Government Memorandum on Death-cum-Retirement-Benefits (DCRB) dated

31.01.2000. In Clause 6 of the said Government order, “service qualifying for pension” was described, inter alia, as continuous service of a whole time employee enjoying approved scale of pay would qualify for pension and the petitioner was squarely covered under this provision. Further and most importantly, vide Clause (5) of the said Government Order, such willing employees compulsorily had to refund the entire amount of employer’s own share of CPF with interest accrued thereon on the date of exercising option to shift to GPF to the Directorate of Pension, Department of Finance, Government of West Bengal. The University authority was instructed by the State Government to deposit the employer's share of CPF contribution with interest into the State Government's Fund and employee's share with interest to his newly opened "General Provident Fund" account and this was done in case of the petitioner as well. Being an AICRP scientist, the petitioner was covered under 'General Provident Fund (GPF)', in terms of the DCRB Rules applicable to the University, as framed by the State Government, that was adopted by BCKV and notified by the Registrar, BCKV on 24.11.1998, and consequently, the petitioner was entitled to all retiral benefits, including pension. The Statute of the University also provided for Provident Fund, pension and gratuity to teaching and non-teaching staff of the University while separate orders were issued by the State Government for leave salary and in terms of the appointment letter of the petitioner, he was therefore, in any event, entitled to the same. Finally, State had no answer as to why the writ petitioner was being discriminated when similarly placed retired teachers of BCKV deployed under AICRP had been routinely granted all

retirement benefits and are regularly getting pension. In the Report on affidavit filed by the State Government in terms of order of this Hon'ble Court dated 19.11.2024, this factual position had been admitted and instead, a communication dated 05.10.2015, requiring the University to be vigilant in disbursing retiral benefits out of grant-in-aid received from State Government, had been relied upon. In the exception to the said affidavit, the writ petitioner disclosed the requisition made by the University to the State Government in September 2024, revealing that 27 teachers deployed in various AICRPs and other centrally funded projects, all retiring on or after 2015, were receiving pension. This factual position had not been denied by the State in its report affirmed on 24.01.2025 and had instead been brushed aside as 'misleading' reference to cases where entitlement to retiral benefits of retirees in recent years (all except one of January, 2025) could not improve the case of the State Government. There could, therefore, be no doubt that the stand of the State Government to deprive the writ petitioner of his legitimate retirement benefits was illegal, arbitrary, reeked of hostile discrimination and frustrated the legitimate expectation of the petitioner. The University, in its report on affidavit, had disclosed that on 13.03.2024, it had submitted requisition to the State Government for necessary funds for payment of retirement benefits, including monthly pension, to the petitioner, in terms of his pension order dated 19.02.2024. Accordingly, the writ petition should be allowed and the State Government directed to release all retirement benefits of the writ petitioner (in terms of the said Pension Order dated 19.02.2024) with interest, (from the date following his retirement till

date of payment), as prayed for by him. Reliance was placed on (2003) 10 SCC 253, (2022) 4 SCC 404, the unreported decision in WPA 14600 of 2024, 2014 SCC Online SC 592, 2022 (4) SCC 627.

3. Leaned counsel for the State submitted as follows. The petitioner was appointed as the Lecturer (Research) under All India Co-Ordinate Research Projects (AICRP) and retired as Professor under All India Co-Ordinate Research Projects (AICRP). The posts of All India Co-Ordinate Research Projects (AICRP) were not created in terms of Section 33A of the Bidhan Chandra Krishi Viswavidyalaya (BCKV) and Indian Council of Agriculture Research (ICAR). The State Government bore 25% of the project cost on behalf of the Bidhan Chandra Krishi Viswavidyalaya. The service benefits including posting of the petitioner to the substantive post were awarded to the petitioner by the University without prior approval of the State Government. From the appointment letter of the writ petitioner it appeared that he was appointed as Lecturer (Research) under All India Coordinate Research Projects (AICRP) and performed duties as whole time salaried teacher of the University as well as his appointment was temporary in nature. The State Government paid recurring and non-recurring grants to the University for proper functioning of the University and for carrying out its objectives as envisaged in this Act. As such, the State Government allotted fund (in the form of grant in aid) for meeting expenses towards pay and allowances for the employees of the Bidhan Chandra Krishi Viswavidyalaya (BCKV) only in respect of those employees who were appointed following due process of law and only against substantive sanctioned posts. Such release

of grant-in-aid was always attributed to the condition and understanding that the said University would disburse the pay and allowances in conformity with the guidelines as issued from this Department vide No. 3777-edn dated 05.10.2015. It was the understanding of the respondent authority that the said University was disbursing the pay and allowances to the Employees who were appointed with prior approval of the State Government. It was revealed from record that Professor Harisadhan Sen retired on 2004, Dr. Amritlal Kundu and Dr. Anil Chandra Pradhan retired on 2005, Dr. Dilip Kumar De retired on 2010, Dr. Biswanath Bandopadhyay retired on 2012 and Dr. Dalim Kumar Sengupta and Dr. Sushil Kumar Rana (wife Dr. Smt. Rina Rana) retired on 2013 and the pension order was issued to them by the appointing authority i.e., the respondent University. The respondent University had issued pension order without approval and sanction of the State Government. As revealed in all the above cases the respondent University disbursed pensionary benefits. It was the understanding of the respondent No. 1 that the said University was disbursing the pay and allowances and pensionary benefits to the employees who were appointed with prior approval of the State Government. In all the above cases the respondent University did not incur expenses following provisions as laid down in Section 33A of the Bidhan Chandra Krishi Viswavidyalaya Act, 1974. Finding anomaly in expenditure while disbursing pensionary benefits, the respondent no.1 again issued direction in the form of Memo No. 3777-Ed dated 05.10.2015 reiterating the guidelines as mentioned in Section 33A of the Bidhan Chandra Krishi Viswavidyalaya Act, 1974 for compliance

accordingly. It was reiterated that the respondent no. 1 provided lump sum grant in aid to the respondent University with exception that the respondent University being the PPO sanctioning authority should exercise checks and balance in ensuring retirement benefits to any employees as per their eligibility in terms of DCRB Scheme, 1986 and would place as whole time employees. The respondent University authorities in their demand had shown designation of the employees as mentioned in exception filed by the petitioner as belonging to the Department of Agriculture, Chemistry, Social Science. Whereas record from the respondent University showed that their appointment and first place of posting was in AICRP and later posted a sanctioned post by decision in Executive Council without any prior approval of the State Government in accordance with Section 33A read with Section 11(1)(s) of the BCKV Act, 1974. The submission of demand list, it appeared that the designation given are misleading and the Government was not inclined to bear such expenses which did not have sanction of the Department. All decisions of the Executive Council Meeting for giving any monetary benefit to employees need prior approval and sanction of the Department. Section 3(1)(i-iv) of the West Bengal University (Central of Expenditure) Act, 1976 which prohibited the University from appointing anyone or incurring any expenses without State's approval. It was stated that the Department was scrutinising every entry in pension list and grants are sanctioned only after verification of antecedent papers and orders of appointment in their first places of posting after receiving the same from the respondent Universities, by whom they are appointed and who were also the

custodian of their Officer record. In the circumstances, it was submitted that the petitioner could not claim his benefit of pension from the State.

4. Learned counsel for the BCKV submitted as follows. Advertisement were made for filling up the posts of Teaching/Scientist and non-Teaching employees in a normal way i.e., together with the posts of Central Administration of the University and with the posts of the AICRPS and recruitments were also made following the provision of the Bidhan Chandra Krishi Viswavidyalaya statute i.e., following the selection procedure of the BCKV Statute in a sanctioned post. Among the selected/recruited Teaching and non-teaching, candidates some were placed in the AICRPS/AINPS. All India Co-ordinated research Project. All India Net Work Project for smooth functioning with the contemplation of the advertisement of agriculture research later on time to time the said Teaching and non-teaching employees were again taken back to difference Academic department from the Project considering the need of the students, from the very beginning, this system had been follows in the University. The petitioner was an employee of similar nature. Therefore, the post was already sanctioned and was lying vacant. So, the provisions of 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. All those actions were approved by the Executive Council of the University in its meetings held time to time in presence of the State Government members. In this context, it might be mentioned that in the Bidhan Chandra Krishi Viswavidyalaya Act, 1974, there were provisions of

members from different State Government authorities and Chancellor's Nominees in formulation of the Executive Council. All decisions were taken by the Executive Council in their presence. But, at that time, the State Government Members did not raise any question on the said issues. The G.O. No. 85-Edn(U)/1U-26/99 dated 31.01.2000 issued by the Higher Education Department, Government of West Bengal clearly mentioned- "Continuous service rendered by an employee in an approved whole time post in any State Government establishment, Colleges affiliated to the State-aided Universities in West Bengal and other Research Institute of repute run fully or partly with the financial assistance of the State Government and within the administrative jurisdiction of the Government of West Bengal will count towards the qualifying service". In this connection, it might be mentioned that all the AICRPs were approved by the Finance Department's U.O. No. and the Department of Agriculture, Government of West Bengal provided the proportionate fund for the salaries of the all staff of the AICRPs. In the instant issue, the AICRPs were run under a grant-in-aid institution of repute (i.e., BCKV) partly (25%) with the financial assistance of the State Government. The State Department of Agriculture in its Report referred the Communication No. 3777-Edn dated 05.10.2015. In this connection, it may be mentioned that even after issuing the said communication, the State Government released the pensions and pensionary benefits towards the employees of similar nature, those who retired from their service after the year 2015. Now, all on a sudden after the lapse of a long period i.e., after 50

years, all the similar actions of the University administration were being objected to by the Department of Agriculture, Government of West Bengal.

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

6. It appears that the writ petitioner was appointed as a Lecturer (Research), Department of Agriculture, Chemistry and Soil Science pursuant to an advertisement issued by the BCKV. The order of appointment, purportedly describing the petitioner as a whole time salaried teacher of the University, was issued by the Vice-Chancellor. It provided that the petitioner would normally be required to discharge at least two functions out of research, extension and teaching. The terms and conditions were to be governed by provisions of the BCKV Act, 1974, the Statutes and the resolutions of the appropriate authority i.e., the Executive Council of the University. The petitioner was placed in the All India Coordinated Research Project (AICRP) on Agricultural Drainage (a project, of the ICAR) jointly funded by the Central and State Governments in the ratio of 75:25. A resolution was adopted by the Executive Council of the University that service rendered by personnel of the University deployed under the AICRP would, among other things, be treated as approved service and such personnel would be entitled to get all the retiral benefits allowed to University employees. An order to this effect was issued by the Registrar of the University on 24.11.1998. Thereafter, the petitioner was promoted to Lecturer (Research) in Senior Scale, then as Reader (Research) and eventually he retired as Professor (Research) on 31.01.2021. After more than

three years, a pension order was issued by the University on 19.02.2024 under which he was entitled to pension, gratuity and leave salary.

7. Upon termination of AICRP on Agricultural Drainage, the petitioner was transferred to the Department of Biotechnology, Instrumentation and Environmental Science with effect from 01.04.2022 vide order dated 10/12.07.2002 and subsequent order dated 16.07.2002 of the Director of Research, BCKV and he served there up to 31.07.2006. Thereafter, by an order dated 07.07.2006, he was placed in the AICRP on Water Management, which he joined on 17.08.2006.

8. The petitioner's prime contention is that he was absorbed against a sanctioned post by the BCKV. Therefore, the provisions of the Section 33A of the Act would not be attracted. Such contention is supported by the BCKV.

9. So far as the provision of Section 33A of the BCKV Act, 1974 is concerned, the same appears to apply in a case of creation of 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.

10. As required, the petitioner performed at least two functions out of research, extension and teaching.

11. During his employment, the present petitioner was allowed promotions and after his retirement, the University issued a pension order as well.

12. In fact, as has been contended on behalf of the BCKV, all these actions were approved by the Executive Council of the University in its meetings held

from time to time in presence of the State Government nominees. At that time, the State Government members did not raise any question or objection.

13. Moreover, G.O. No. 85-Edn(U)/1U-26/99 dated 31.01.2000 issued by the Higher Education Department, Government of West Bengal clearly mentioned that continuous service rendered by an employee in an approved whole time post in any State Government establishment, Colleges affiliated to the Stated aided Universities in West Bengal and other Research Institute of repute run fully or partly with the financial assistance of the State Government and within the administrative jurisdiction of the Government of West Bengal would count towards the qualifying service.

14. Incidentally, as contended on behalf of the BCKV, all the AICRPs were approved by the Finance Department's order and the Department of Agriculture provided the proportionate fund for the salaries of all the staff of the AICRPs.

15. Being an AICRP scientist, the petitioner was covered under the GPF, as per the DCRB Rules applicable to the University, as framed by the State Government and adopted by the BCKV. Therefore, the petitioner is entitled to all retirement benefits including pension.

16. As has been further contended on behalf of the University, even after issuing the communication of 2015, the State Government released the pensions and pensionary benefits towards the employees of similar nature, those who retired from service after the year 2015. According to the BCKV, all of a sudden and after the lapse of a long period about 50 years, similar

actions of the University Administration are now being objected to by the Department of Agriculture, Government of West Bengal.

17. There is not an iota of doubt that the decisions taken by the University were in the presence of Government members.

18. A case of legitimate expectations would be clearly established by such acquiescence by the State and by payment of retiral benefits to similarly circumstanced individuals.

19. Had the State made it clear that they would turn a volte face and try to deny the petitioner his legitimate claims to retiral benefits at a reasonably earlier date, the petitioner would have thought of taking appropriate action including moving out to a proper organisation providing for such retiral benefits. It is not open to the State now, after issuance of pension order by the University in 2024, to contest the same and to deny retiral benefits to the writ petitioner.

20. In view of the above discussions, the respondent authorities of the State are directed to sanction, release and pay retiral benefits to the writ petitioner including pension (both, current and arrear), gratuity and leave salary to the petitioner in terms of the pension order dated 19.02.2024 within six weeks from the date of communication of this order.

21. As the writ petitioner has been needlessly denied his retiral benefits by the State in respect of an order of pension issued by the respondent University, the State respondents shall pay simple interest @ 6% per annum

upon the arrear pension that have fallen due, payable from the date of filing of the writ petition till the date of payment.

22. With these observations, the writ petition is disposed of.

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

(Jay Sengupta, J.)