

Item-
28. 18-06-2025

MAT 2098 of 2024
CAN 2 of 2024

sg

Ct. 8

The State of West Bengal
Vs.
Asoke Kumar Maity & Ors.

Mr. Tapan Kumar Mukherjee, Id. AGP
Mr. Rajarshi Basu
...for the appellant/State
Mr. Ranajit Chatterjee
Mr. Aniruddha Mitra
Mr. Prasenjit De
...for the writ petitioner
Ms. Lina Majumder
...for the respondent nos. 2 & 3

Soumen Sen, J. (Oral)

1. This appeal is arising out of an order passed by the learned Single Judge dated 22nd April, 2024 in a writ petition in which the writ petitioner has complained that he was not receiving his other retiral dues like gratuity and leave salary.
2. Mr. Tapan Kumar Mukherjee, learned AGP, appearing for the appellant has submitted that the appointment of the writ petitioner is without prior approval and sanction of the State Government which is mandatory in terms of Section 33A of the Bidhan Chandra Krishi Viswavidyalaya Act, 1974 (hereinafter referred to as 'the BCKV Act, 1974').
3. It appears that the petitioner was initially appointed as Field Assistant, Grade-II under the Comprehensive

Scheme on Cost Cultivation from 1984. Subsequently, he was transferred to the Regional Research Station, Kakdwip with the same designation. The petitioner has disclosed the extract of the proceedings of the 186th meetings of the Executing Council held on 23rd March, 2005 and 24th March, 2005 in which following resolution was passed:

*“It is resolved that the service rendered under the ‘Comprehensive Scheme on Cost of Cultivation’ as funded by Ministry of Agriculture & Co-operation, Govt. of India, by any University employed staff shall be recognized as approved qualifying service for retiral benefits in all such cases.
This decision stands confirmed.”*

4. The University in its affidavit has submitted that each of such decisions where persons similarly placed as that of the writ petitioner were considered by the Executing Council consisting of a nominee of government.
5. All these decisions were either with regard to absorption or continuation of the petitioner in the said post with the approval of the Government. Hence, it cannot be contended and held that the State Government was not aware of the decision of the University or it is not on the State. There is nothing on record to show that subsequent to such decision being taken by the Executive Council in presence of the nominee of the Government any contrary view was communicated to the University, which would show that the State has accepted the appointment of the writ petitioner as a permanent post. Moreover, it cannot

be denied that the post from which the petitioner had retired was a sanctioned post and not a newly created post without the sanction of the State Government as alleged on behalf of the appellant. In the affidavit filed before the learned Trial Court, the University has also reiterated its stand as orally submitted in paragraphs 4, 5 and 6 of the said affidavit, which are reproduced as below:

“4. I submit that the issues regarding allowing the retirement benefits to the employees, who were initially posted to the Comprehensive Scheme on Cost of Cultivation of Principal Agriculture Crops and subsequently brought back to the regular establishment were discussed on several occasions in the Executive Council of the University [the Policy Making Body of the University as per the BCKV Act, 1974 (as amended upto till date)) in presence of the State Government Nominees, who were the members of the Executive Council as per the statutory provision. In the said meetings, it was resolved that the said employees would be allowed retirement benefits considering their approved service. At that time, the representatives of the State Government did not raise any question on the said issue.

5. I submit that the joint Secretary, Department of Agriculture, Government of West Bengal through his communication vide No 33-J.S. dated 12.12.2013 clearly granted permission to transfer employees and officers from one set up to another under the control of the University. The writ petitioner was transferred to the mainstream in the interest of the University administration following the Non-Teaching Placement Committee, which was constituted by the Executive Council of the Viswavidyalaya in presence of the State

Government Nominees, who were the members of the Executive Council as per the statutory provision.

6. I submit that the Department of Agriculture, Government of West Bengal did not raise any question on the appointments of the Fieldman/Field Assistants and their subsequent placements in the Comprehensive Scheme on Cost of Cultivation of Principal Agricultural Crops, the University administration was in the conception that the State Government was in agreement with the actions taken by the University in placing the employees to the Comprehensive Scheme on Cost of Cultivation of Principal Agricultural Crops and subsequently transferring them in regular establishment. Because of the reason, immediately after retirement of the writ petitioner, the amount of Provident Fund (Contributory Provident Fund) was released by the University administration But, after raising questions by the Department of Agriculture(vide Memo No. 150-AG-12019(13)/27/2020-EDU SEC-Dept. of AGRI dated 30.05.2023 issued by the Senior Special Secretary to the Government of West Bengal, Department of Agriculture) in case of the appointments of similar nature, the University administration compelled to withheld the amounts of other retirement benefits of the writ petitioner like a few others. Moreover it is to be pointed out here that without receiving the funds from the State Government the University administration is having no scope to make payment of the retirement benefits to the petitioner and other employees of the University.”

6. The contention of the University that the appointment of the petitioner is against a pre-existing sanctioned post stands vindicated from the Notification dated 28th March, 1996. The said Notification, inter alia, refers to sanctioned post at Regional Research Station of the

University and any appointment therein are to be treated as permanent and personal occupying such post are to be governed by BCKV Act, 1974 and the statute. The said notification read with the Resolution dated 23rd March, 2005 clearly show that the petitioner was appointed in a sanctioned post and hence, the question of further sanctioning for the post to which the petitioner served for almost 29 years could not and does not arise. Moreover, it is on record that persons similarly placed as that of the writ petitioner have been receiving pension and have received all other retiral benefits. The writ petition cannot be treated differently. In fact, the petitioner is receiving pension since March 31, 2020 when he retired from service and the said pension amount is released by the State. The assertion of the petitioner that since his transfer on 22nd March, 1991, he has served under the University's regular establishment and received his salary from the State exchequer stands established. In view thereof, we do not find any reason to interfere with the order passed by the learned Single Judge. However, we extend the time by four weeks to comply with the order passed by the learned Single Judge on 22nd April, 2024 with regard to release of gratuity and leave salary in favour of the writ petitioner.

7. The appeal and the applications are disposed of with the aforesaid direction. However, there shall be no order as to costs.

8. Urgent Photostat certified copy of this judgment, if applied for, be submitted to the parties upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Smita Das De, J.)