
(2004) 12 AHC CK 0113
In the Allahabad High Court
Case No : C.M.W.P. No. 345 of 2004

J.A. Chisti

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-12-2004

Acts Referred:

Uttar Pradesh State Universities Act, 1973 — Section 21(3), 21(4)

Citation : (2005) 2 ESC 1453

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Advocate : Shailendra, for the Appellant; M.K. Singh, for the Respondent

Final Decision : Allowed

Judgement

V.K. Shukla, J.—Present writ petition has been filed by the petitioner for issuing a writ in the nature of mandamus directing the authorities to prepare pension papers of petitioner and pay pension in the way and manner as has been directed vide judgment dated 3.1.2003 delivered by this Court in the case of Smt. Pratibha Bose v. Union of India and Ors..

2. Agro Economic Research Centres have been established in different regions of country, including State of U.P. in pursuance of Government of India policy of promotion and conducting research in Agro Economics problem. By means of Notification dated 28.10.1963 issued by Ministry of Food and Agriculture, Government of India (Department of Agriculture), New Delhi, one such centre was set up in the University of Allahabad known as Agro Economic Research Centre (AERC), University of Allahabad. Petitioner was initially appointed as Office Assistant on 11.6.1965, and thereafter on 20.1.1998 was appointed/adjusted as Office Superintendent, and said appointment of petitioner was made on the basis of new staffing pattern, and ultimately, petitioner retired on 30.6.1998.

3. At this stage service conditions of employees of Centre, is also to be seen. On

the recommendations made by Ministry of Agriculture and Irrigation (Department of Agriculture), Union of India, Executive Council in its meeting dated 13.7.1978 resolved to apply same service conditions to employees of Centre as was applicable to employees of University in respect to Pay Scale ; Provident Fund ; Salaries and allowances; Residential Accommodation and House Rent Allowance; Medical Aid ; Leave Rules; Disciplinary action. Earlier there was no provision for providing pension to the employees of AERC. In this regard clarification was issued by the Directorate of Economics and Statistics (Department of Agriculture and Cooperative), Ministry of Agriculture and Research Development, Government of India dated 27.2.1986, and in paragraph 1 (b) thereof, it was made clear that staff of AERC would be considered at par with regular employees of the University and would be entitled to pension and gratuity etc. Along with same, staffing pattern of the Centre as well as number of approved posts of teaching staff as well as non-teaching staff was also appended. Executive Council of Allahabad University in pursuance of letter dated 20.4.1994 for integration of Centre with University on 10.4.1996 accorded approval and permission for integration of AERC as part of Allahabad University. On 21.5.1996 Memorandum of Understanding was signed between Government of India and University of Allahabad for integration of AERC with the University and the same was signed by the Vice-Chancellor of Allahabad University and the Joint Secretary, Ministry of Agriculture, Government of India, and therein it was specifically provided that employees of Centre would be considered at par with regular employees, and entitled to privileges enjoyed by regular staff of the University such as pension, gratuity, provident fund and others and further Ministry will have no financial obligation, in respect to staff, employed in the Centre, in excess of approved strength. After said Memorandum of Understanding was signed, letter dated 23.3.1988/6.4.1998 was sent mentioning therein that Orders/Notification be sent in reference to integration of Centre with University.

4. Petitioner after being superannuated was claiming pension, and as nothing was being done in that direction and benefit of pension was not being extended. In between one of the employees of AERC preferred Writ Petition No. 44050 of 2000 and this Court on 3.1.2003 allowed the writ petition and directed the respondents to pay pension and other post retiral benefits equivalent to similarly situated employees of University including arrears of pension and further mentioned that amount paid by University, shall be reimbursed by the Government of India to the University of Allahabad. Claiming parity, petitioner has also approached this Court.

5. Counter-affidavit has been filed by Government of India, and it has been contended therein that CPF facility has been extended, in lieu of pension. University may in case it desires, work out annuity scheme, through LIC based on voluntary contribution from the employees, and further as per Memorandum of Understanding, which has been entered into financial liability of the Central Government is limited to the budget which is earmarked and not beyond the same and obligation of the Central Government cannot be extended beyond the

reserved grant.

6. Counter-affidavit has been filed on behalf of University of Allahabad, and it has been asserted that till date AERC has not been integrated, and this fact is fully reflected from the copy of the letter dated 23.3.1998/6.4.1998, which clearly asks the university to send Order/Notification with regard to integration of Centre with University, and thereafter, as no orders have been passed by the University, as such by no stretch of imagination, it could be treated as integrated and, as such, no such direction can be issued. Alternatively, it has been contended that as no orders have been passed in terms of Section 21(3) and 21(4) of U.P. State Universities Act, 1973, as such there is no fund in the University, from which payment can be made.

7. Rejoinder affidavits have also been filed, and therein statement of fact mentioned in the counter-affidavit has been rebutted and that of writ petition has been reiterated.

8. After pleadings inter se parties have been exchanged, present writ petition has been taken up for hearing and final disposal with the consent of the parties.

9. Sri Shailendra, learned Counsel for the petitioner contended that facts of present writ petition is identical to Writ Petition No. 44050 of 2000, decided on 3.1.2003, as such similar direction be issued. Sri P.S. Baghel countered the said submission by mentioning that AERC has not been integrated, and further no funds are available with the University, as no grant has been released for the aforementioned purpose, and, as such, no financial liability even temporarily be fastened on the University, and similar order be not passed.

10. Sri M.K. Singh, representing Union of India, contended that there is limited budget, and petitioner is already covered by CPF scheme and, as such, no pension is admissible, and further as petitioner has already accepted the CPF amount, no directives are required to be issued by this Court.

11. After the respective arguments have been advanced, factual position, which is emerging, is to the effect that issue which has been sought to be raised in the present writ petition has been answered by this Court on 3.1.2003, and therein, it has been observed that AERC has been absorbed and integrated in the University by resolution of Executive Council, and the petitioner of the said writ petition would be entitled to pension, which would be reimbursed by Ministry of Agriculture, Government of India, and further directives have been issued that University shall make payment and thereafter the amount so paid by University shall be reimbursed by Central Government.

12. As far as case in hand is concerned, petitioner has undertaken benefit of CPF, and one of the objections taken for not ensuring payment of pension is that incumbent has availed the benefit of CPF as such is not entitled to the benefits. Petitioner has made statement that amount which has been paid to the petitioner ; the same may be adjusted while computing pension in terms of the

judgment of this Court.

13. As to whether department in question has been integrated or not, in this respect Single Judge of this Court has already mentioned that AERC has been absorbed and integrated. The said observation cannot be termed to be incorrect observation. Pursuant to letter dated 20.5.1994 sent by Ministry of Agriculture, integration of Centre with University was suggested. Executive Council accorded permission to the same on 10.4.1996, and same was followed by Memorandum of Understanding dated 21.5.1996, signed by Vice-Chancellor of University and Joint Secretary, Ministry of Agriculture, and this Memorandum of Understanding was made effective w.e.f. 1.4.1995. After signing of Memorandum of Understanding, w.e.f. 1.4.1995, Centre stood integrated with the University, and letter dated 23.3.1998/6.4.1998, will in no way change the situation. Against judgment of learned single Judge Special Appeal Nos. 100 of 2003 and 102 of 2003 have been filed by Union of India and University respectively. These observations are subject to decision in Special Appeal. Once Centre has been integrated with University, rights of parties including its beneficiaries would flow from the Memorandum of Understanding, and as per the same. University is only drawing and disbursing authority and financial liability is to be borne by Central Government and employees of the Centre are to be treated at par with University employees with all benefits. It is true that Memorandum of Understanding clearly mentions that Ministry will release grant-in-aid according to the approved budget every year, and as such, in this respect Ministry has to take necessary steps. As far as University is concerned, by no stretch of imagination, any financial implication can be burdened on the shoulders of the University. As this fact is absolutely clear that no financial liability can be fastened upon the University and in respect of incumbents functioning against sanctioned post, Ministry would be responsible. In this view of the fact and background, as appointment of petitioner was against sanctioned post, as such, it is hereby directed that University of Allahabad within six weeks will transmit entire papers in respect of grant of post retiral benefits, including pension, to petitioner subject to adjustment of amount already received by petitioner and fulfilment of other terms and conditions to respondent No. 1, and thereafter respondent No. 1 will finalise the matter in respect to grant of pension and retiral benefits within next three months from the date of receipt of entire papers. Petitioner shall also co-operate with the University in fulfilling requisite formalities for the aforementioned purpose.

In view of the above observation and direction, writ petition stands allowed and disposed of.

No order as to costs.