

(2023) 07 GAU CK 0017

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3964, 3974 Of 2022

Sabina Ahmed And 225 Ors.

APPELLANT

Vs

Director General And 5 Ors

RESPONDENT

Date of Decision : 27-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2023) 07 GAU CK 0017

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : U K Nair

Final Decision : Disposed Of

Judgement

1. Heard Mr. U. K. Nair, learned senior counsel assisted by Mr. H. K. Das, learned counsel appearing for the petitioners in both the writ petitions. Also heard Ms. Jupitora Das, learned Standing Counsel, ICAR appearing for the respondent Nos.1, 2 and 3 and Mr. I. Kalita, learned Standing Counsel, Assam Agricultural University appearing for the respondent Nos.4, 5 and 6 in both the writ petitions.

2. The writ petition registered and numbered as WP(C) 3974/2022 has been preferred by the technical staff working in the Krishi Vigyan Kendras (KVKs) whereas WP(C) 3964/2022 has been preferred by some of the non-technical staff working in the KVKs under the Assam Agricultural University (AAU), Jorhat being aggrieved by the order dated 02.05.2022 issued by the Under Secretary, Indian Council of Agricultural Research (ICAR) suspending the payment of Non-Practicing Allowance (NPA), Special Duty Allowance (SDA), Special Compensatory Allowance (SPA) and Travelling Allowance (TA) earlier paid to the employees of the KVKs under the aegis of the AAU, Jorhat from the ICAR funds. The impugned order was apparently passed based on a complaint filed by the President of Hindu Yova Chatra Parishad, Asom. The case of the petitioners, briefly stated, is that they are all engaged in various KVKs coming under the administrative control of the AAU, Jorhat. Pursuant to the Central Pay Revision

recommendations, which came into effect from 01.01.2016, the petitioners were given the option to either opt for the pay-scale applicable to the Assam Agricultural University or the one applicable in case of employees coming under the ICAR. Accordingly, the petitioners had opted for the pay scale of ICAR by taking note of the fact that although the Grade Pay was less in this Pay Scale, yet, the employees would be entitled to certain additional allowances such as NPA, SDA, SCA and therefore, the gross emolument of the employees would be higher than that receivable under the pay scale of the AAU. The contention of the petitioners is that the funds for release of salary and allowances payable to the petitioners are consistently being released by the ICAR and accordingly they have been receiving ICAR pay scale along with the aforesaid allowances since 01.01.2016. However, with effect from the month of May, 2022, the component of NPA, SDA, SCA and TA payable to the petitioners have been abruptly suspended vide order dated 02.05.2022. In view of the instructions issued by the ICAR authorities vide sanction order dated 31.05.2022 those allowances have been stopped only in case of those employees of the KVKs coming under the AAU. Aggrieved thereby, the writ petitions have been filed.

3. The essence of arguments of Mr. Nair, learned senior counsel appearing for the writ petitioners is primarily two fold. Firstly, that the aforesaid decision of the ICAR authorities communicated vide order dated 02.05.2022 is wholly arbitrary, discriminatory and violative of the principles of equality as enshrined in Articles 14 and 16 of the Constitution of India in as much as the ICAR is continuing with payment of such allowances in case of employees of all other KVKs coming under various host institutions including the Government of Arunachal Pradesh, District authorities of Papumpare, East Siang and Goalpara, Government of Sikkim as well as an NGO in Dima Hasao while suspending payment of such allowances only in respect of the KVKs coming under the aegis of the AAU, Jorhat. Secondly, the respondents had issued the impugned notification dated 02.05.2022 merely acting on the basis of a complaint made by the President of Hindu Yuvo Chatra Parishad, Asom, who had nothing to do with the KVKs and that too, without serving any prior notice either upon the AAU, Jorhat or the beneficiaries of such allowances. As such, the impugned order is hit by violation of the principles of natural justice and administrative fair play.

4. In support of his above arguments Mr. Nair has placed reliance on the communication dated 02.05.2022 (Annexure-P/16), response of the AAU, Jorhat dated 26.05.2022 (Annexure-P/17) and the sanction order dated 31.05.2022 (Annexure- P/18) of the ICAR annexed to the writ petition being WP(C) No.3974/2022 to contend that but for the instructions issued by the Director of ICAR, there was no justifiable ground for the authorities to suspend the payment of the allowances to the petitioners. Mr. Nair has emphatically argued that due to the withdrawal/suspension of the allowances payable to the petitioners, their gross emoluments got drastically reduced thereby causing serious prejudice to the rights and interest of the petitioners and their family members.

5. Responding to the above argument, Ms. Jupitora Das, learned Standing Counsel, ICAR has contended that the allowances are applicable only in case of those employees of those KVKs which are directly operated by the ICAR and not in case of the KVKs which are the assets of the grantees like the AAU, Jorhat. As such, the benefit of such allowances would not be applicable to the petitioners in as much as they would only be entitled to receive pay scale and allowances applicable to the employees of AAU. According to Ms. Das, it was permissible for the President of Hindu Yuva Chatra Parishad to make a complaint highlighting the anomaly in disbursement of salary and allowances by the ICAR. Therefore, the ICAR authorities had rightly taken cognizance of the complaint and initiated action in the matter. The learned counsel for the respondent Nos.1, 2 and 3 has, therefore, prayed for dismissal of the writ petitions.

6. Mr. Kalita, learned Standing Counsel, AAU has submitted that the University is merely the implementing agency and if the funds are not released by the ICAR authorities, it has no means to disburse the allowances demanded by the petitioners.

7. I have considered the submissions made at the bar and have carefully examined the materials placed before the Court. There is no doubt or dispute about the fact that all the writ petitioners are working under different KVKs within the aegis of the AAU, Jorhat. It is also the admitted position of fact that the ICAR is the funding agency for operating the KVKs and during the previous years, the salary and allowances payable to the petitioners were disbursed from the funds released by the ICAR to the AAU, Jorhat. The respondents' counsel have also not disputed the fact that until May, 2022, the writ petitioners had been receiving the NPA, SDA, SCA and TA but in view of the instructions issued in the sanction order dated 31.05.2022 based on the order dated 02.05.2022 , payment of such allowances have been stopped.

8. The materials placed on record go to show that the impugned order dated 02.05.2022 has been issued without serving any prior notice upon the AAU, Jorhat authorities or the writ petitioners herein. As a matter of fact, from the communication dated 26.05.2022 issued by the Registrar, AAU, Jorhat it is apparent that the decision of the ICAR authorities, as conveyed by notification dated 02.05.2022, was a unilateral and the same was apparently contrary to the original decision of the authorities to grant allowances to the employees which comes within the ambit of the agreement signed by and between the parties. Materials on record further suggest that the ICAR authorities had continued to release funds for payment of salary and allowances including those allowances indicated herein above, even in case of employees of those KVKs which are not directly operated by the ICAR authorities. If that be so, there can be no doubt or dispute about the fact that, by the impugned order dated 02.05.2022, the respondent Nos.1, 2 and 3 have singled out the KVKs coming under the aegis of the AAU, Jorhat to suspend the release of NPA, SDA, SCA and TA as a result of which, the gross emolument of all these employees have drastically fallen and

have continued to remain so till today much to their discomfiture of those employees.

9. The learned counsel for the respondents have not been able to invite the attention of this Court to any material permitting such a discriminatory treatment to be meted out only to the employees of the KVKs coming within the aegis of the AAU, Jorhat to the exclusion of all others. On the contrary, it appears that the impugned action was initiated purely on the basis of a complaint lodged by the President of the Hindu Yuvo Chatra Parishad, Asom, who does not have any nexus with the operation of the KVKs. Therefore, it is evident that the impugned order dated 02.05.2022 issued by the ICAR was based on wholly extraneous consideration and therefore, the same cannot sustain the scrutiny of law. Once the respondents had permitted the petitioners to draw a particular pay scale along with allowances applicable therein and the amounts have been disbursed to them from time to time over several years, the same could have been abruptly stopped by the ICAR authorities by issuing the impugned communication dated 02.05.2022 without any justifiable ground.

10. As has been noted herein above, no legal justification is available before this Court to sustain the impugned order dated 02.05.2022. Consequently, both the writ petitions succeed and are hereby allowed. The impugned order dated 02.05.2022 is hereby set aside.

11. The respondents are directed to release the salary and allowances to the writ petitioners for the current month and continue to do so until the same is modified in accordance with law. In so far as the amount of arrear allowances is concerned, the same shall also be released to the writ petitioners in three installments within a period of six months from the date of receipt of a certified copy of this order.

12. It is, however, made clear that if for any valid reason, the respondent Nos.1, 2 and 3 seek to modify the pay-scale and/or allowances payable to the employees of the KVKs coming under the AAU, Jorhat, they will be entitled to do so only after serving prior notice upon the affected persons, to be routed through the competent authority in the AAU, Jorhat and after giving them proper opportunity of being heard in the matter.

With the above observation, both the writ petitions stand disposed of.

Parties to bear their own cost.