

Devi Dutt Sharma and ors. Vs. H.P. University and ors.

Devi Dutt Sharma and ors. Vs. H.P. University and ors.

SooperKanoon Citation : sooperkanoon.com/919363

Court : Himachal Pradesh

Decided On : May-25-2011

Judge : Rajiv Sharma, J.

Acts : [Constitution of India](#) - Article 12

Appeal No. : CWP (T) No. 1033/2008

Appellant : Devi Dutt Sharma and ors.

Respondent : H.P. University and ors.

Advocate for Def. : Mr. Vinod Thakur; Mr. Sandeep Sharma; Mr. Vikas Rathore, Adv.

Advocate for Pet/Ap. : Mr. Bhuvnesh Sharma, Adv.

Judgement :

1. Petitioners are working in the Agro-Economic Research Centre, Himachal Pradesh University. The Government of India, Ministry of Agriculture, Department of Agriculture and Cooperation has set up Agro-Economic Research Centre under the Himachal Pradesh University vide communication No.2/48/72/Econ.PY dated 28.12.1972. The expenditure of the Centre is borne by the Department of Agriculture and Cooperation, Government of India, Ministry of Agriculture. Initially, four Agro-Economic Research Centres were established under the Central Sector Scheme by the Ministry of Agriculture in the year 1954 at Visva Bharati,

Santiniketan (West Bengal), Gokhale Institute of Politics and Economics, Pune (Maharashtra), Delhi University, Delhi and Madras University, Chennai (Tamil Nadu). Presently, there are 12 Agro Economic Research Centres and 3 Agro Economic Research Units situated in different States. Primarily, these institutions conduct agro economic research studies on various issues/topics as may be entrusted to them by the Ministry of Agriculture. These institutions are funded by way of grants-in-aid provided by the Government of India.

2. A Memorandum of Understanding was executed between the Union of India through its Joint Secretary, Ministry of Agriculture, Department of Agriculture and Cooperation and Registrar of the respondent-University vide Annexure A-2. The Memorandum of Understanding has come into force with effect from 1.4.1995. According to the terms and conditions incorporated in the Memorandum of Understanding, the staff of the Centre was to be considered at par with regular employees of the University for all the privileges enjoyed by the regular staff of the University, i.e. pension, gratuity, provident fund, allotment of quarters, as per the existing rules, medical benefits, all other benefits etc., as applicable to the staff of the University.

3. Mr. Bhuvnesh Sharma has strenuously argued that the respondents have not implemented the Memorandum of Understanding, Annexure A-2 in letter and spirit. He further submitted that the respondent-University is not treating the employees of the Centre at par with its own employees.

4. Mr. Vinod Thakur has vehemently argued that since the Memorandum of Understanding was not ratified by the University under the Act, Statute and Ordinances, the same cannot be given effect in its entirety.

5. Mr. Sandeep Sharma, learned Assistant Solicitor General of India, has argued that as far as the Union of India is concerned, its role after signing the Memorandum of Understanding, which has come into force on 1.4.1995, is only to provide grant-in-aid on year to year basis. He has also submitted that it is for the University to provide the service benefits to the employees after signing the Memorandum of Understanding.

6. Mr. Vikas Rathore, learned Deputy Advocate General has argued that the employees of Agro Economic Research Centre cannot be treated at par with the employees of the respondent-University.

7. I have heard the learned counsel for the parties and have perused the pleadings meticulously.

8. Agro Economic Research Centre was established in the Himachal Pradesh University in the year 1972. It was declared permanent with effect from 21.5.1990. Agro Economic Research Centre was set up to achieve the following objects: i. create a network for applied research on continuous basis on specified agro-economic problems which are of the interest to the Government of India and State Governments, ii. to have constant interaction with the Ministry of Agriculture, Department of Agriculture and Cooperation, Government of India and State Governments for identifying and undertaking research studies on emerging problem areas, and iii. to study the impact of various programmes for the development of Agriculture and Allied Sectors.

9. A conscious decision had been taken by the Union of India and respondent-University to integrate the economic centre at Shimla with the Himachal Pradesh University. Thereafter, Memorandum of Understanding was entered into between the Union of India and respondent-University for integrating the Agro Economic Research Centre. The Memorandum of Understanding, as noticed above, has been signed by the Joint Secretary, Government of India, Department of Agriculture and Cooperation and the Registrar of the respondent-University. The Memorandum of Understanding has come into force with effect from 1.4.1995.

It will be apt at this stage to reproduce important conditions incorporated in the Memorandum of Understanding:

i) "The Centre will be integrated to the University and shall function as a separate department/section in the University as a Centre for Agro-Economic Research.

ii) The Ministry will release the grants-in-aid according to the approved budget provisions every year. The powers of drawing and disbursing authority will rest with the University which will keep a separate account for the Centre. Periodical expenditure statement, in the prescribed format will be furnished to the Ministry of Agriculture. Annual Audit Statement of Accounts alongwith the Utilization on Certification will be furnished by the Centre to the Ministry by 30th September of every year for the previous year ending 31st March.

iii) The staff of the Centre will have claim to residential accommodation according to the existing rules and regulations as applicable to other regular employees of the Centre.

iv) The Staff of the Centre would be considered at par with regular employees of the University for all the privileges enjoyed by the regular staff of the University, i.e. pension, gratuity, provident fund allotment of quarters as per the existing rules, medical benefits all other benefits etc. as applicable to the staff of the University. They will also be considered for such advances and loans as may be extended by the University to its staff.

v) Posts of the rank of Director, Deputy Director and Research Officer in the Centre will correspondent to Professor, Associate Professor or Reader and Asstt. Professor of Lecturer respectively in the University. The scale of pay will also be identical to the corresponding posts in the University.

vi) The non-technical staff of the Centre will have the same scales of pay and allowances as applicable to equivalent posts in the University. They will have a common seniority and will, therefore, be eligible for transfers/promotions across various Divisions/Departments in the University as per rules prevailing in University. They will also be eligible for all facilities available to similar categories of staff in the other Departments of the University.

vii) Future revisions in the scale of pay and allowances in the posts in the Centre will be as per provisions effective for similar posts in the University.

viii) There will be no change in the pay structure of any post without the concurrence of the ministry.

ix) The staffing pattern of the Agro-Economic Research Centre shall not be altered/changed without prior approval of the Ministry. Posts held in abeyance or recommended for abolition shall not be filled up and their continuance or otherwise shall be subject to the approval of the Ministry. The Ministry will have no financial obligation for funding the staff employed by the Centre in excess of the approved strength.

x) For selection to the posts of Research Officers and above, there would a representative of the Ministry on the selection committee constituted for the purpose.

xi) The foregoing terms and conditions of the Memorandum of Understanding will come into force with effect from 1.4.1995.”

10. It is evident from the perusal of the conditions enumerated hereinabove that the Centre was to be integrated under the University and was to function as a separate Department/Section in the University as a Centre for AgroEconomic Research. The Ministry is only required to release the grant-in-aid according to the approved budget provisions every year. The staff of the Centre is to be considered at par with the regular employees of the University for all the privileges enjoyed by the regular staff of the University. Posts of the rank of Director, Deputy Director and Research Officer in the Centre are to correspond to Professor, Associate Professor or Reader and Assistant Professor or Lecturer respectively in the University. The non-technical staff of the Centre is required to be paid the same scales of pay and allowances as applicable to equivalent posts in the University.

The respondentUniversity is required to maintain a common seniority and the employees of the Agro-Economic Research Centre are also eligible for promotions and transfers across various Divisions/Departments in the University as per rules prevailing in the University. They are also eligible for all facilities available to similar categories of staff in the other Departments of the University. The future revisions of the scale of pay and allowances in the posts

in the Centre are to be as per provisions effective for similar posts in the University. University cannot change the pay structure of any post without the concurrence of the Ministry.

11. The Government of India, Ministry of Agriculture has sent a communication to the Director of Agro-Economic Research Centre in the month of June, 1974. The text of the same reads thus:

“I am directed to refer to your letter No. nil dated the 23rd November, 1973, on the subject mentioned above and to convey the approval of the Government of India to the grant of administrative facilities like C.P. Fund, Medical, liveries, Gratuity, GPF-cum-gratuity-cum-pension etc., to the members of the staff of the AER Centre, Shimla on the same conditions as applicable to the staff of the Himachal Pradesh University, Shimla. The expenditure involved on account of the above facilities granted to the staff of the AER Centre, Shimla should be met from within the allotted Grant-in-Aid of the AER Centre, University of Himachal Pradesh, Shimla.”

12. The matter for integration of the Agro-Economic Research Centre, as per the reply, was also placed before the Executive Council of the University. The same was deferred on 6.7.1998. The Advisor of Directorate of Economics and Statistics has informed the Commissioner-cum-Secretary (Education) to the Government of Himachal Pradesh in the month of July, 1998 that the integration of the Agro-Economic Research Centre with the University was full and final. The text of letter dated July, 1998 reads thus:

“Kindly refer to your letter No. EDN-A(Cha)-1/98 dated 26.6.1998 on the above subject. The matter has been examined in depth by the Ministry. In this connection it may be mentioned that the M.O.U. has already been signed by the Vice-Chancellor, H.P. University, Shimla and the Ministry of Agriculture for integrating

the AERC Shimla with H.P. University. The Centre's integration with H.P. University Shimla, is full and final. The Centre is functioning quite satisfactorily and has acquired the necessary infrastructure essential for the research activities. It has not been found feasible to accede to your request in this regard."

13. The Advisor, Government of India, Ministry of Agriculture, Department of Agriculture and Cooperation, Directorate of Economics and Statistics, New Delhi has sent a communication to the Secretary, Ministry of Education, Government of Himachal Pradesh on 20.10.1998 regarding shifting of Agro-Economic Research Centre for Himachal Pradesh from H.P. University, Shimla. He has brought to the notice of the Secretary (Education) that the Centre was fully funded by the Government of India and attached to the H.P. University and was carrying mandate of the Government of India without any interference and the same was working satisfactorily. The staff of the Centre was availing all kinds of service benefits at par with the H.P. University, Shimla. It has also been highlighted that there should not be any frequent interference from the State Government or any other quarters as far as the functioning of Agro-Economic Research Centre was concerned.

14. The Commissioner-cum-Secretary (Education) to the Government of Himachal Pradesh has sent a communication to the Registrar of the respondent-University on 15.6.1999. The text of letter dated 15.6.1999 reads as under:

"I am directed to invite your attention to letter No.2-2/93- RCS-ES dated nil received from the Adviser, Economic and Statistics (A.E.R. Division), New Delhi on the subject cited above and to say that the Government of India has agreed to merge the Agro Economic Research Centre, Shimla with the H.P. University, Shimla. You are, therefore, requested to take further necessary action in the matter as per M.O.U. signed by the vice Chancellor, H.P. University, Shimla and the Ministry of Agriculture for integrating the AERC Shimla with H.P. University, the Centre's integration with H.P. University, Shimla, is full and final."

15. Since the petitioners were not treated at par with the employees of the University, they were constrained to file an original application bearing O.A. No. 1306/2007 before the erstwhile Himachal Pradesh Administrative Tribunal. The same was disposed of by the Tribunal on 15.6.2007 by directing the Registrar of the respondent-University to take a final decision. The matter was considered by the Registrar and he passed order on 28.7.2007 vide Annexure A-4. According to the Registrar no fresh proposal has come to sign Memorandum of Understanding with the University from the Government of India nor any commitment has been made to provide specific funds for the creation and discharging of pensionary liabilities in respect of employees of AERC.

According to him, the matter was required to be taken up again with the Government of India, Ministry of Agriculture before arriving at final decision for integration of Agro-Economic Research Centre with University for conferring benefits to the employees of the Centre. Petitioners made fresh representation on 7.8.2007 for the redressal of their grievance.

16. It will be apt at this stage to take note of communication dated 20.7.2007 sent by the Government of India, Ministry of Agriculture to the vice Chancellor of the respondent-University to look into the matter and take necessary steps towards the implementation of Memorandum of Understanding. The Ministry of Agriculture, Department of Agriculture and Cooperation has sent a communication to the Registrar of the respondent-University on 8.1.2008 whereby it was highlighted that the liability of the Government was limited to fund annually in terms of grants-in-aid provided to the Centre. It was also highlighted in communication dated 7.4.2008 sent by the Ministry of Agriculture, Department of Agriculture and Cooperation to the Officer Incharge, AgroEconomic Research Centre that the Centre shall continue to receive annual grant-in-aid as in the past. It appears that the respondent-University has entered into correspondent with the Ministry of Agriculture and Cooperation regarding pensionary benefits to the employees of the Agro-Economic Research Centre, Shimla. The Ministry has shown its inability to agree with the proposal of the University.

17. Now, the Court will advert to the submission made by Mr. Vinod Thakur. According to him, Memorandum of Understanding was required to be ratified by the Executive Council of the Himachal Pradesh University. It is absolutely clear from A-2 that the Memorandum of Understanding was signed by the Joint Secretary, Ministry of Agriculture and Cooperation and the Registrar of the respondent-University. The Registrar of the respondent-University is competent authority, according to Statute 4 (e), to enter into agreements or contracts, and very, revoke or cancel them for and on behalf of the University. Thus, the document signed by the Registrar of the University and the Joint Secretary, Government of India, Ministry of Agriculture and Cooperation, is a legally binding document. The terms and conditions enumerated therein are required to be implemented in letter and spirit.

18. The Court is of the considered view that once a document, i.e. Memorandum of Understanding has been signed by the Registrar of the University, it was merely a codal formality to get it ratified by the Executive Council of the University. The Executive Council of the University should have given due consideration to the Memorandum of Understanding signed between the Joint Secretary of the Government of India, Ministry of Agriculture and Cooperation and its Registrar instead of deferring the decision on 6.7.1998.

19. The decision of the Registrar of the respondentUniversity, taken in sequel to the direction of the Tribunal in O.A. No.1306/2007 is also contrary to record. There was no requirement of signing a fresh Memorandum of Understanding since the earlier Memorandum of Understanding was binding between the parties. It has come in the affidavit filed by respondent No.3 that the Government of India shall keep on releasing the grant-in-aid on year to year basis. This is the commitment made by the Government of India, which could not be ignored by the Registrar of the respondent-University.

20. The Centre, as per the terms and conditions enumerated in the Memorandum of Understanding, stood integrated in the University and started functioning as a separate Department/Section in the University as AgroEconomic Research Centre. The expression used in condition No. (iii) of the Memorandum of

Understanding makes it explicitly clear that as far as the releasing of grant-in-aid is concerned, it is mandatory.

The expression used is “the Ministry will release the Grants-in-aid according to the approved budget provisions every year”. The condition for releasing grant-in-aid is on annual basis and it also finds mention in the reply as well. The staff of the Agro-Economic Research Centre is required to be considered at par with the regular employees of the University. Once this condition has been reduced into writing and has been signed by the Registrar of the respondent-University and the respondent-University being State within the meaning of Article 12 of the [Constitution of India](#), the service conditions of the employees of the AgroEconomic Research Centre were required to be treated at par with the employees of the respondent-University for all the service benefits, including retiral benefits etc. The nontechnical staff of the Centre is required to be paid the same pay scales as applicable to equivalent posts in the University.

The language employed in condition No. (xi) of the Memorandum of Understanding imposes the condition that there shall be a common seniority of the employees of the Agro-Economic Research Centre and respondent-University and they will be eligible for transfers/promotions across various Divisions/Departments in the University, as per University Act, Statute and the Rules framed there-under. The conditions of service as far as the release of pay scales etc. are concerned, including pay structure; this could not be changed to the detriment of the employees without the concurrence of the Ministry. Similarly, staffing pattern of the Agro-Economic Research Centre could not be changed without the prior approval of the Ministry.

21. There cannot be any interference as far as the integration of the Agro-Economic Research Centre with Himachal Pradesh University is concerned by the State. The respondent-University is a separate entity. The University has been established by the Act. The affairs of the University have to be run as per the Act, Statute and the Rules framed thereunder. The Advisor to the Government of India, Ministry of Agriculture and Cooperation has also highlighted in its communication addressed to the Secretary (Education) that there is no need of change of

administrative control and there should not be any inference in the affairs of the Agro-Economic Research Centre. It is apparent that on the basis of the communication received from the Government of India, Ministry of Agriculture and Cooperation, the Commissionercum-Secretary (Education) has also called upon the respondent-University to take effective steps for the integration of the Research Centre with the University as per communication dated 15.6.1999. The Government of India, Ministry of Agriculture, Department of Agriculture and Cooperation has also reiterated the release of grant-in-aid on year to year basis as per contents of Annexures R-3 and R-4 dated 8.1.2008 and 7.4.2008, respectively.

22. The Agro-Economic Research Centre, Shimla has come into existence in the year 1972 and was made permanent in the year 1990. A conscious decision had been taken to integrate the Centre with the Himachal Pradesh University. The same has been given effect to by signing Memorandum of Understanding by the Ministry of Agriculture and Cooperation and the Registrar of the respondent-University. The terms and conditions enumerated therein are required to be implemented in letter and spirit. The employees had been working in the Research Centre since 1972 and their conditions of service cannot remain undetermined. A promise has been held out to the employees of the Agro-Economic Research Centre that they shall be treated at par with the employees of the respondent-University for all intents and purposes. Their seniority has to be combined to enable them to seek transfer and earn promotion etc. Their pay scales cannot be altered to their detriment without the prior approval of the Government of India. The funds are being received by the respondentUniversity by way of grant-in-aid on year to year basis. There is a clear-cut commitment by the Government of India that it will keep on releasing the funds on year to year basis.

Once the Memorandum of Understanding has been signed, the AgroEconomic Research Centre stood integrated to respondentUniversity for all intents and purposes. There was no need to enter into fresh Memorandum of Understanding as held by the Registrar of the respondent-University. There has to be certainty in the conditions of service of the employees of Centre to improve their efficiency in public service. It is not a case of the respondent-University that the employees of the Agro-Economic Research Centre do not

fulfill essential qualifications and other eligibility criteria. Inaction on the part of the respondents to get the terms and conditions of the Memorandum of Understanding implemented has caused agony and hardships to the employees of the Centre.

23. It is clear from the language employed in Annexures A-7, A-8, R-3 and R-4 that the integration of the Agro-Economic Research Centre with the respondent-University was full and final and there was no proposal to revise the Memorandum of Understanding, which had already been signed and came into force with effect from 1.4.1995. The Advisor to the Ministry of Agriculture and Cooperation has even directed the Vice Chancellor of the respondent-University to issue necessary notification towards the implementation of Memorandum of Understanding as per Annexure A-6 dated 20.7.2007. It was also reiterated as per Annexure R-3 that the Centre has already been integrated with the respondent University and the earlier Memorandum of Understanding was still in force.

24. Accordingly, in view of the observations and discussions made hereinabove, the present petition is allowed. Annexure A-4 dated 28.7.2007 is quashed and set aside and the following mandatory directions are issued:

- i) It is declared that the Agro-Economic Research Centre, Shimla has integrated with the respondent University on the basis of Memorandum of Understanding with effect from 1.4.1995 for all intents and purposes;
- ii) The employees of the Agro-Economic Research Centre are to be treated at par with the employees of the respondent-University for the release of all service benefits, including pensionary/retiral benefits etc.
- iii) Respondent-University is directed to prepare a common seniority list of the employees of the AgroEconomic Research Centre with the employees of the University to enable them to get pay scales and to earn promotions etc.
- iv) Respondent No.3 is directed to keep on releasing the grant-in-aid to the Agro-Economic Research Centre towards payment of salary, including pensionary/retiral benefits etc.

25. Needful be done within a period of 8 weeks after the production of certified copy of this judgment by the petitioners. There shall, however, be no order to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com