

Reserve  
OPEN COURT S.B. mi

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 27<sup>th</sup> day of April, 2001

Original Application No. 281 of 1996.

CORAM :-

Hon'ble Mr. SKI Naqvi, J.M.

Hon'ble Mr. S.Biswas, A.M.

1. A.K. Singh S/o Late Dr.R. Singh,  
R/o 32, MIG, Kailashpuri,  
Mathura Road, Agra.
2. A.K. Goel, S/o Late R.S. Goyal  
R/o 3/174, Roshan Mohalla, Agra.
3. R.K. Vishnoi, S/o Shri Ram Nath Singh Vishnoi,  
R/o Vishnoi Nagar, Nagina (Bijnor)
4. M.P. Singh S/o Late Nand Ram,  
R/o Village Gadima, P.O. Hansola,  
Agra.

(Sri KK Mishra/Sri AK Goel/Sri R. Verma, Advocates)

Versus . . . . . Applicants

1. Union of India  
Ministry of Agriculture,  
Krish Bhawan,  
Dr. Rajendra Prasad Road,  
New Delhi.
2. State of U.P. through  
The Principal Secretary,  
Ministry of Higher Education,  
Lucknow.
3. The Secretary,  
Indian Council of Agricultural Research,  
Krishi Bhawan,  
Dr. Rajendra Prasad Road,  
New Delhi.
4. Raja Balwant Singh College,  
Agra,  
Through its Principal.
5. The Secretary,  
Committee of Management,  
Raja Balwant Singh College,  
Agra.
6. Dr. C.P. Singh, Soil Scientist,  
R/o 10, Gandhi Nagar, Agra.
7. Dr. R.B. Singh, Jr. Soil Scientist,  
C/o Saline Water Project,  
RBS College, Bichpuri, Agra.
8. Dr. Bhu Dayal, Jr. Soil Scientist  
C/o Saline Water Project,  
RBS College, Bichpuri, Agra.

(Sri R Tewari/Sri AK Gaur/Sri NP Singh/  
Sri KP Singh, Advocates)

. . . . . Respondents

S.D. mi

ORDER (Oral)

By Hon'ble Mr. S. Biswas, A.M.

By this application under Section 19 of the Administrative Tribunals Act, 1985, the applicants have sought the following reliefs :-

- (i) to quash <sup>A</sup>the letters dated 28-8-93 (Annexure-A-1) by which the services of the applicants were terminated.
- (ii) directions to respondents to reinstate the applicants with full back wages with 24% interest etc.
- (iii) to further direct the respondents to confer permanent status to the applicants and treat them as regular employees, and other appropriate directions with costs.

2. Applicants were statedly recruited in the ICAR sponsored and financed project, "use of Saline Water in Agriculture" through the grantee organisation, namely, respondent no.4 as per the sanction of personnel policy and rules as spelt by the ICAR from time to time in this behalf.

3. The applicants were recruited accordingly as on the dates, posts and scale of pay as under :-

	<u>Name</u>	<u>Date of Appointment</u>	<u>Posts and scale to which appointed.</u>
1.	Dr.A.K. Singh (Applicant No.1)	10-4-1976	Sr.Research Asst. (Botany) (Rs.550-900) plus usual allowances.
2.	Dr.A.K. Goyal (Applicant No.2)	27-5-1982	Sr.Research Asst. (Botany) Deptt of of Chemistry. (Rs.700-1600) plus allowances.
3.	Dr. R.K. Vishnoi (Applicant no.3)	14-7-1978 *(6-11-1978)	Sr.Research Asst. (Soil) (Rs.550-900) plus allowances.



<u>Name</u>	<u>Date of Appointment</u>	<u>Posts and scale to which appointed</u>
4. Mr. M.P. Singh	28-8-1973	Jr. Steno-Typist (Rs.130-300) plus DA and other allowances.

\*The date of issue of the appointment letter is  
6-11-1978.

4. Except in the appointment letter of applicant no.4, ~~in~~ the case of the remaining 3 applicants, the posts were indicated to be temporary but "likely to continue in the 5th Five Year Plan". Among the terms and conditions indicated in these letters, it was further provided that applicant nos.1 and 3 would be eligible for GPF, leave etc. as per rules. They were barred from appearing in any competitive examination without previous permission of the respondents. The jobs were offered subject to acceptance of these terms and conditions. The applicants submitted that further terms and conditions for their appointments were prescribed as per details mentioned in ICAR letter dated 3-7-1972 (Annexure-A-1).

5. Applicant no.4 is a handicapped person who made a representation to the DG ICAR for his absorption in the organisation. Applicant no.3 vide order dated 4-2-1991 was adjusted in the scale of Rs.700-1600 <sup>earlier</sup> (pre-revised) w.e.f. the date he was decided to be reverted to a lower scale so that there was no break in his service. This had approval of the ICAR. This post was specifically created to accommodate <sup>for</sup> applicant no.3 till his further promotion on 11-11-1992 to DG/ICAR. All the applicants made representations for absorption.

6. The applicants services were terminated by the impugned orders dated 28-8-1993 (Annexure-F collectively)



The applicants made representations to the Minister for Agriculture and the President ICAR and DG ICAR respectively on 16-5-1995 and 11-5-1995 (Annexure-H). The applicants inter alia submitted to the authorities that the respondents were continuing with similar project and posts in other areas and advertisements were being issued for filling up these very posts which the applicants held but were declared as surplus on the plea of restructuring. No opportunity for adjusting them as per policy pronouncement of ICAR was given. They were summarily terminated from the jobs. They also further drew<sup>6</sup> the notice of the authorities to the bye-laws No.35-38 of Chapter II for consideration of their case of reinstatement in the posts. The applicants went on W.P. (Civil Misc. Writ Petition No.5562 of 1993) before the Hon'ble High Court of Judicature at Allahabad seeking similar remedies. The case was transferred by the Hon'ble High Court on 19-5-1995 to the Tribunal. This order was contested by an SLP Before the Apex Court (SLP No.13612 of 1995). The SLP was dismissed on 28-8-1995 confirming the High Court's order dated 19-5-1995 as correct in law. In the aftermath of the Hon'ble Apex Court's order dt.28-8-1995, the present OA was filed before the Tribunal on the following stated grounds:-

S. B. 20  
6. The applicants served in the Project under the ICAR for 15 to 20 years at a stretch. They were stopped from taking any other competitive examination without prior permission of the respondents and thereby they were practically bonded to the job. They all were sacked without observing the principles of natural justice. The applicants have, therefore, lost valuable time and eligibility by way of age for any



other job or livelihood. Even the condition of temporary nature of the job was not indicated in the letter of appointment of applicant no.4. In the letters of appointment of applicant nos.1 and 3, the facility of G.P.F. condition and leave as admissible to employees under the scheme was extended. The job was indicated for applicant nos.1 and 3 to be temporary but, "likely to continue in the 5th Five Year Plan Period". They in fact continued till the beginning of the 8th Five Year Plan. Only on 3-4-1993, on the eve of restructuring done under 8th Plan Period that the following five posts only were abolished :-

- |       |                        |      |
|-------|------------------------|------|
| (i)   | Jr. Soil Scientist     | : 1. |
| (ii)  | Jr. Plant Physiologist | : 1  |
| (iii) | Jr. Plant Breeder      | : 1  |
| (iv)  | Sr. Research Assistant | : 1  |
| (v)   | Jr. Steno-grapher      | : 1  |

Though the project-Coordinator Dr. Raj Kumar Gupta directed that the posts would, however, continue upto the end of September, 1993 (30-9-1993) for the purpose of adjustment of the applicants to other projects but this direction for adjustment was not complied with.

7. The project was mooted, sponsored, sanctioned, monitored and funded by ICAR. The policy guidelines issued by the ICAR showed that these were schemes under planned expenditure group and all appointments, personnel policy, qualifications and other crucial terms under the schemes were doctored and directed ~~by~~ through the Coordinator ICR. These rules particularly Rule 7 of the ARS was grossly violated in the termination orders in as much as juniors were retained in preference to seniors.

S. Dine -



This rule provides for a notice of three months which stipulation was not observed.

8. The applicants contributed to GPF even Gratuity under Clause 32(b) Chapter 3(service conditions) as contained in the ICAR Society Rules. The respondents overlooked the adjustment guidelines whereby their services could have been adjusted. By issuing advertisement (Annexure-JJ) inviting applications for similar jobs in <sup>same or</sup> other projects the respondents have allegedly bracketed the applicants as a specially discriminated group.

9. The applicants have taken shelter of the judgement dated 23-3-1990 in 1990(3) SCC 38 in case titled, "VL Chandra and Others Vs. AIIMS" where the Hon'ble Apex Court took note of similar problems under Indian Council for Medical Research in AIIMS from the angle of human deprivation and gave direction to AIIMS for evolving a policy of employment for the research recruits in consultation with the Health Ministry so that suitable jobs are offered to such <sup>retrenched</sup> researchers.

10. The applicants were promoted <sup>while</sup> in service to higher grades after initial recruitment. Thus, applicant no.1 was initially appointed as SRA (Botany) but on 22-12-1981 he was promoted as Junior Plant Breeder after regular selection and approval of ICAR. Applicant no.2 was appointed as SRA (Botany) on 27-5-1982 but later on he was promoted as Jr. Plant Physiologist after selection and approval of ICAR. The applicant no.3, as already observed, was also appointed as SRA (Soil) on 14-7-1978, but promoted as Junior Soil Scientist by adjustment vide letter of approval dated 4-2-1991 of ICAR.

11. The respondent nos.6 and 8 did not respond despite notice but ~~to~~ the remaining respondents legally and



factually have controverted the submissions of the applicants.

12. The OA impugning the order of the ICAR dated 3-4-1993 in 1996 is repudiated as not maintainable and is hit by limitation. The pay scales of ICAR are not applicable to the staff of the project but the pay scales of grantee institution are required to be applied to the project employees as per Clause 11 and 12(i) governing the grant aid. Similarly, Rule 7(1) of ARS handbook is applicable to ARS Scientists, who are employees of the ICAR. These rules are not applicable to grantee projects. The appointing authority for project is the grantee College and the staff are parts of the grantee institute for all practical purposes. The coordination aspect of their responsibility is a temporary feature and it is usually limited <sup>to</sup> ~~for~~ 5 years period. The coordination by ICAR and its spawning responsibility ends on review of the project, its restructuring <sup>or</sup> ~~and~~ modification. It then becomes <sup>an</sup> ~~the~~ exclusive responsibility of the grantee college to absorb them or do otherwise. The posts which were temporary and later on found surplus <sup>in</sup> ~~the~~ projects were admittedly abolished. The ICAR were not responsible for their continuation and adjustment nor the works done by them in various projects confer them any right for absorption by ICAR. Even the Hon'ble Apex Court's direction in VL Chandra case was on the College i.e. AIIMS, not on Indian Council of Medical Research (ICMR). The applicants were rendered surplus with the completion of the project, hence, it was the responsibility of the grantee College to take up the question of their absorption not the ICAR.

50 Ans.

13. In their counter to the OA, the respondent no.2 have been represented by Dy. Director Higher Education



(Statistics) in the Directorate of Higher Education U.P., Allahabad. It is admitted that in the ICAR sponsored and funded project under the caption "Use of Saline Water in Agriculture in 1972", the applicants were recruited by ICAR. These projects, 5 in all, were wholly controlled by the Ministry of Agriculture, Government of India. The recruitment or services were not governed by the State Universities Act, 1973 but by rules and guidelines, qualifications and eligibilities etc. as outlined by the ICAR, not by the College. They were not College employees or teachers to be eligible for pay and allowances under the provision of Section 60A(iii)(vi) of the Universities Act, 1973. The respondent no.2 disowned all responsibilities with regard to recruitment or termination of the applicants.

14. A counter has been filed for and on behalf of respondent nos.4 and 5 denying any role in appointment of the applicants. The respondents, however, admitted that the project was, sanctioned, sponsored and funded by ICAR on five yearly term and the applicants were appointed on contractual basis in accordance with the directions of the ICAR. They only executed the orders of the ICAR in appointing them. They received the over all project grants containing the intents and purpose, on 14-4-1972 for the 4th Plan period, on 22-4-1975 for the 5th Plan Period, on 20-3-1980 for the 6th and on 28-3-1980 for the 7th Plan Period and on 31-5-1993 for the 8th Plan Period (CA-2, 3, 4 and 5).

15. The appointments of the applicants were made strictly in accordance with the instructions received from the ICAR and within the prescribed norms and fund grants of ICAR. The appointments were made through



advertisements (Annexures-CA, 8, 9 and 10). Apart from these grantee duties which the respondents fulfilled they had no authority or right or scope to appoint the applicants under the U.P. Universities Act, 1973 and thereby, the question of treating them as Universities employees did not arise. No such appointment could be made by the committee of management of the College (Respondent no.5). Following the letter dated 31-5-1993 (Annexure-CA-5) of ICAR where a number of posts were curtailed in the 8th Plan Period as a measure of restructuring in the Saline Water <sup>Project</sup> from 1994-95 as shown in the outlay and sanction of posts chart, the respondents (4 and 5) merely implemented the same in letter and spirit and enforced the termination of the applicants vide their letters dated 28-8-1993. Therefore, the applicants can only proceed against ICAR for reliefs. The projects were sponsored by ICAR on 5 yearly basis and the requisite funds were also provided by them. The applicants were not appointed for and on behalf of RBS College, Agra University. Nor did they become the staff of the College. The termination was an outcome of an exercise <sup>or</sup> winding up a part of the project <sup>ordered</sup> by ICAR vide their letter dated 31-5-1993.

16. Respondent no.7 also filed a counter inter alia confirming that applicant no.1 was initially recruited as SRA but he faced a selection committee in which expert from ICAR took part and applicant no.7 was given the grade of Junior Plant Breeder. There was only selection involved. It was not a promotion. The so-called promotion of applicant no.2, (Dr. AK Goyal) as Junior Plant Physiologist on 31-3-1989 was disputed, as the said applicant was also appointed as Junior Plant Physiologist on 31-3-1989 under similar situation from SRA. There was no policy of promotion in the Project's policy input.

S. B. Singh



17. The respondents, however, conceded that applicant no.3 managed/or manipulated to get his appointment changed from the scale of Rs.550-900 to Rs.700-1600 as per clarification given by ICAR (Annexure-CA-3 P.53). Respondent no.7 himself was recruited directly in the pay scale of Rs.700-1600/- as Junior Soil Scientist. Therefore, respondent no.7's case stands on a different footing. Respondent no.8 unlike him but like applicant nos.1 and 2 faced selection committee for getting the Grade of Junior Soil Scientist. It is further clarified that posts of SRA and Junior Soil Scientists are different having different scales. The latter post requires higher qualification i.e. a Master Degree, 3 years experience/and teaching experience at a Post Graduate level. The RBS College never issued any letter of promotion to applicant no.3 or others.

18. We have heard the learned counsels for the the parties on facts and law points involved and have carefully gone through the relevant records and submissions. No counters were filed by Respondent nos. 6 and 8, nor they appeared in response to notices.

19. The applicants submitted a series of RAs and also a supplementary affidavit to by and large agree with the contentions of the respondent nos.4 and 5 that the latter acted only as agents of respondent nos.1 and 3 specially, respondent no.3. The College had no authority to recruit or terminate the applicants. The <sup>relevant</sup> guidelines came from ICAR. They were recruited on the project as per directions of ICAR which sanctioned sponsored and funded the Project. They further gave guidelines on recruitment qualifications, restructuring

S. B. B. B.



and terminations, which the respondents scrupulously implemented. To that extent applicant's ~~came up~~ disputed the submissions of respondent no.3 as evasive. The respondents' counsel submitted a supplementary affidavit inter alia quoting the observations of the Hon'ble Supreme Court in V.L. Chandra Case as under :-

".....the ICMR shall take appropriate steps to offer adequate employment to 3 petitioners within 2 months hence. If the question of fundings became necessary, we direct the Ministry of Health to cooperate and place adequate funds at the disposal of ICMR".

By this the learned counsel drives home the point that it was ICMAR who received the directions and self-same directions may be issued to ICAR.

20. It is an undisputed fact that the applicants were recruited in different posts advertised by the Principal of Raja Balwant Singh College between 1973 and 1982. These were a few of those posts which were sponsored and funded by the ICAR in order to implement a project, which ran under the caption of "A coordinated Scheme of Research on Use of Saline Water in Agriculture", in the 4th Plan Period vide ICAR letter dated 14-4-1972 (Annexure-CA-1). In some other correspondence the project has been described as "All India Coordinated Research Project on Saline Water". The RBS College was by and large adopted by ICAR as a surrogate Institute for undertaking the said coordinated Research Project on saline water, described the project in their various correspondence and letters of appointment as Project/Scheme, "Use of Saline Water in Agriculture" or "Management of Salt affected soils and use of Saline

S. B. S. S.



Water in Agriculture".(hereinafter, it would be referred as Saline Water Project of ICAR).

21. The saline water project was initiated in 1972 during the 4th Five Plan Period though extension was being granted to it by ICAR plan by plan upto the 8th Five Year Plan when in 1994-95 the said ICAR decided in their letter dated 31-5-1993 to curtail certain posts from the Saline Water Project of RBS College under Agra University. Precisely against these very curtailed posts the services of the applicants were terminated by the respondent no.4 giving rise to the cause of action in the present OA.

22. There is no dispute on the question that the Saline Project in RBS College Agra was one of the five (two other remaining vacant) chosen fields of research activities in saline water application in agriculture by ICAR. In other words, RBS College was chosen and covered within the network of saline water project sponsored by ICAR.

23. The project set out with a grant of Rs.27 lakhs + in 1972 which was then estimated as adequate to cover 100% expenditure requirement of Saline Water Project in RBS College segment of the network. The fund so required for meeting the total expenditure on account of project inputs and personnel, was not only phased plan by plan, the ICAR also ensured that the fund requirement was appropriately enhanced and accordingly sanctions for revised wage and salary in the existing scales were also provided in every renewal orders as a scrutiny of the expenditure budgets would show.

*S. B. S.*



Consequently, the applicants also continued upto May, 1993 of the 8th Plan Period receiving revised salary/wage unhampered. It is observed that though they were recruited in the project, as Senior Research Assistant (Botany), (Soil) etc, they were further selected or adjusted ~~for~~<sup>in</sup> higher scales after interview with the assistance of ICAR experts as Junior Plant Breeder (Applicant No.1), Junior Plant Physiologist (Applicant No.2) or Junior Soil Scientist (Applicant No.3) and they were placed in a higher scale of pay (Rs.700-1600). The respondents, however, have disputed this as a promotion, for, ICAR field projects do not have any personnel management scheme or promotion.

24. The ICAR respondent no.3 have particularly disowned the applicants as their employees, pointing out that they are not ICAR employees and their employment was not made by them. These recruitments were not made by ICAR as per the RRs which are applicable to the ICAR employees or in the projects, which are directly run and administered by ICAR. The Saline Water Project comes under Coordinated Research Project of ICAR. Both management of project and recruitment of the personnel were independent responsibility of the grantee organisation viz. RBS College in this case. These recruitments were made by the grantee institute, namely, RBS College. On the question of who would provide the facility for contributory GPF, the Institute (RBS College) was merely asked to follow the University rules prevailing for the purpose - meaning thereby, the applicants were not ICAR employees, but employees of the Institute. However, both respondents no.4 and 5 have equally and forcefully controverted the suggestions of ICAR that the retrenched applicants were employees of R.B.S. College. These respondents further disowned all responsibility with regard to their recruitment.

S. Anwar



promotion, or termination. For all these actions on their parts, they only clarified that they acted as agents of the ICAR who allegedly gave each and every direction and guidelines on project and personnel matters relating to the Saline Water works, the latter (ICAR) being 100% grantor of the fund and idea input of the scheme. These respondents only lent their infrastructure yard and help in the larger interest of an anticipated forward effect of the project on the locality. The logistics including the requisite personnel were part of a package which ICAR were contract bound to provide them as per their initial letter dated 14-4-1972 (Annexure-CA-1). The whole controversy and course of action has seemingly sprung up in the twilight of these two very strong and mutual denial and disowning of responsibilities whereas, both have shared roles. The issue at hand to be determined is who is whose employees and who are whose employees.

25. In this connection the applicants have drawn our pointed notice to the Rules and Bye-laws of ICAR. Under Rule 2(k) thereof, "The constituent units <sup>/of</sup> the Society" have been defined there as;

"The constituent units of the Society means the Indian Council of Agricultural Research Headquarters, its research Institutions, regional and sub-stations, research laboratories etc. and co-ordinated projects managed and administered by the Society".

The applicants have further placed before us the bye-laws of ICAR as contained in Chapter IV, Rule 35 to 38 thereof.

26. We have looked into these provisions as found in the ICAR Rules and bye-laws. The applicants by taking shelter of definition of Rule 2(k) has tried to suggest that the Saline Water Project under the auspices of

S. Das,



RBS College is actually a constituent unit of ICAR on the impressed understanding that coordinated projects managed and administered by the Societies (ICAR) include all project sites as ICAR business, and constituent of ICAR. The "coordinated Scheme for Research on use of Saline Water in Agriculture" in the auspices of RBS College is also a "Coordinate Project Managed and administered by the Society". We are not able to <sup>fully</sup> agree with this view of the applicants which is merely on impression. The saline water project in the auspices of RBS College was merely sponsored and funded by the ICAR. It was not directly managed or administered by ICAR. The administration was vested with the grantee institute. Evidently before us the employees were recruited by the grantee institution (RBS College). It is, however, a different question who provided the fund and the project logistics. It is not the case of the applicants or respondent nos.4 and 5 that responsibilities regarding such employees taken on the project with the logistic supports of fund and idea inputs from ICAR were precluded from being borne by the respdt nos.4 or 5. No such document or contract except the letter dated 14-4-1972 of ICAR are placed on records.

27. Going through the provisions of ICAR bye-laws in Chapter-IV (Rules 35-38) we further find that these are bye-laws of ICAR by which the latter govern a totally separate area of ICAR operation. In Chapter IV, the bye-laws of ICAR were specially formulated to regulate scholarship, fellowship, grants-in-aid and certain special programmes and Recognised Institutions etc. The following bye-laws need special mention which we reproduce below:-

S. B. Min  
"35. In order to carry out the objects of the society as set forth in the Memorandum of Association, the Governing Body may institute scholarships and fellowships, sponsor and finance deputations within the country and abroad, give grants-in-aids and employ Emeritus scientists, establish research



schemes, and projects and special research centres in which its own establishment or Research Institution Universities, Technical and Technological Colleges and Institutional Establishments.

36. The terms and conditions governing such activities shall be laid down by the governing body....

38. The Institutions engaged in research and education work in the sphere of agriculture, animal husbandry, forestry, fisheries and allied subjects and maintained by the State Governments or affiliated to any of the recognised Indian Universities for post graduate research and/or education shall be "Recognised Institution" for purposes of the Society."

28. The above quoted bye-laws clearly cover RBS College under Agra University as an affiliated institute, which acted as a surrogate field for extending the research activities of ICAR in use of Saline Water in Agriculture and, therefore, it can be rightly called a "Recognised Institution" under ICAR bye-laws. The activities of such recognised institutions for promotion of special research programmes are, as per the bye-laws, to be directed by the Governing Body.

29. We ~~have~~, however, find that in their moot paper dated 14-4-1972, the respondent no.3 have used the term "Coordinated Scheme for Research" on use of Saline Water in Agriculture and not Governing Body. The coordinator is the main person.

30. Further, the scope and nature of help, coordination and logistics supports for such recognised institution have been defined in bye-laws no.39 which is also relevant to be reproduced below :-

"39. The Governing Body may give to the Recognised Institutions such Technical and/or financial assistance from the Society as it may think proper and on such conditions as it may impose".

31. In our understanding as well as consideration, a simple reading of this provision ( 35-39) above only reveals that respondent no.4 (RBS College) held the status of a ICAR sponsored "Recognised Institutions" with the limited facility of fund and technical inputs for successful

5 B.S.W.C.



completion of the targetted project. They only lent the infrastructure of the College for carrying out the project activities. As no other special contract than these rules were executed or brought on records to say or suggest that there existed an enforceable understanding between the grantor and grantee on the question of recruitment and termination of the applicants, we do not see much legal force in the argument of the applicants that they are direct employees of the sponsoring council. In the aftermath of above facts, it is not wholly established that they were employees of the University/or the College.

32. Chapter IV is for regulating fixed scholarships and fellowships which are not salary. Salary is linked ~~with~~ various other <sup>official</sup> ~~flexible~~ terms, like promotions, gratuity, pensions and scales of pay and the like. The candidates are subjected to CCS (CCA) Rules, 1965. Their upper age, qualification and retirements and hierarchy are stated in the R.R.s. Scholarships are fixed grants and none of the other terms and conditions are addressed in case of scholarship or fellowship grants. Even if Recognised Institution status is to be considered for the respondent no.4 in order to thrust upon them the responsibility of the applicants, ~~it~~ serves only a limited purpose and it definitely does not award them the status of ICAR employees. They were only given one <sup>graduate</sup> ~~flexible~~ scale, unlike fixed scholarship, but their recruitments were not subjected to age, retirement age, or the question of other benefits like pension etc. were not considered to them. In our view they were not employed according to any RRs of the grantor organisation or according to the RR of the grantee Institute/University. Except applicant no.4, the remaining applicants accepted temporary and terminable terms. It was expressly provided in the letter of appointment that their jobs were likely to be continued in the Fifth Five Year Plan. These

S. B. B.



were otherwise temporary.

33. Rule 7 which has been cited by the applicant has been controverted by the respondents stating that the same relates to Agricultural Research Service of Scientists I and Scientists II etc. and it has nothing to do with the applicants' case. The applicants' case all the same remains that though they were seniors to those who were retained, they were done with injustice and discrimination.

34. We have further gone through the moot sponsoring letter dated 14-4-1972 of ICAR for the 4th Five Year Plan Period by virtue of which respondent no.4, the Principal of RBS College of Agriculture, Agra proceeded with the appointment of the applicants. Encl.I to the said letter gives details of planned grants for first two years of 4th Five Year Plan. The expenditure sanctions clearly indicate the posts with scales of pay for which the grants were extended. In the IIInd enclosure, the terms and conditions of the grant-in-aid have been laid down in exhaustive details. Before we shift on to the IIInd enclosure, it is observed that by providing the particulars of posts and scales, the sponsoring Institute left very little option or scope to the grantee to recruit the employees as per University RR Rules.

35. One of the conditions imposed by ICAR on the grantee with regard to deployment of project logistics and suggesting staff is as follows :-

".... The grantee institution shall not withdraw partly or wholly or deploy elsewhere the scientific and supporting staff".

36. In this paper, the ICAR had inter alia washed off its hands from providing any contributory GPF facility to the "staff employed on the schemes financed by ICAR", who wish to join (contributory GPF) but held that they can do so in accordance with the rules of the grantee institution. This

S. B. B. B.



we have observed earlier also.

37. In Para 11 of this moot paper, it was specifically provided :-

"The members of staff on research project/schemes will for all practical purposes be treated as employees of the grantee institution, form part of the approved cadres thereof, and will be subject to administrative control of that institution."

It was further clarified in this paragraph stating , "In case of a coordinated research project, the project coordinator and other staff of the coordinating unit of the project will be recruited by the Council, while the other staff of employed in the project centre in a grantee institution shall be appointed by the institution according to the respective R.R. but conforming to the minimum qualifications laid down by the institution." The area of operation and personnel policy thereby stood clearly demarcated.

38. The respondent no.4, therefore, wrongly disputed that they were not responsible for recruitment and personnel administration. They visibly failed to observe the RRs of the institutions as it was required and the plea of acting as agents of ICAR also does not prima facie convince us. It was clearly specified that ICAR was responsible only to the extent of appointing the project coordinator and the staff of the coordinating unit. As regards the staff of the project the grantee institution was made incharge of appointment as per the RRs of their own institution.

39. In ~~our~~ understanding of the paradoxical situation created by both organisations, namely, the ICAR who sponsored the scheme, gave fund support, and direction

S. D. S.



regarding posts, scales of pay, that no appointment should be made in higher scales than in the way they themselves prescribed without their prior permission, that the staff so engaged should not be deployed or withdrawn, on the one hand and the RBS College, Agra, on the other, who appointed them as per simple directions of ICAR and failed to follow the the RRs of the University, both are responsible for their appointment and termination. The ICAR, we have earlier observed in the submissions of the applicants, had given detailed post by post particulars, scales of pay, adjustment order for respondent no.3 to a higher scale of pay, they had participated in selection of the applicants for granting them higher scales, as discussed. They also prescribed the eligibility, qualification and experiences for the staff. It is not understandable in the situation what was left out to be done for direct recruitment excepting age limit and retirement and terminal facilities.

40. The ICAR also gave the plan for reduction of certain posts in the project during the 8th Plan period, which was also blindly implemented by the respondent no.4, leading to the impugned termination. The respondent no.4 has decisively failed to adjust them or send any proposal for adjustment of these senior staff, to other on-going projects through the coordinator. Only that part of the coordinators direction was overlooked. In the result, these appointees who were appointed in the ICAR sponsored and financed project and continued for 15 to 20 years at a stretch, were retrenched without giving them any notice to explain. Non-observance of the principles of natural justice has clearly vitiated the legality of the impugned termination order dated 28-8-1993. We cannot particularly help observing that the appointment order of the applicant no.4 is brief and had no precondition regarding whether it was temporary appointment or not. The term 'temporary' was

S. B. -



indicated in the appointment order is relative. Had ICAR not undertaken to suddenly abolish these posts, after 3 to 4 successive plan periods, they would have indefinitely continued.

41. Vide plan coordinator's letter dated 3-4-1993 (Annexure-D) it is clear that the Principal of RBS College (Respondent no.4) was directed to adjust the applicants who were rendered surplus for the 8th plan period, but they were terminated. Respondent no.4 has not cited any authority from ICAR to terminate them, though he statedly acted on the directions of the ICAR/Coordinator. ~~Not~~ the respondent no.4 acted in a circumspect manner when advertisement for such posts were issued by him. These lacunae in his action are not satisfactorily denied or clarified.

42. In view of the foregoing, we arrive at the conclusion that ICAR are directly responsible for sponsoring, creation, and financing of these posts with scales of pay which are peculiar to ICAR organisations only. The role of respondent no.4 is ~~indirect~~ as he implemented these directions, though always not after following all the directions. The appointments were as intended by ICAR was a consequence only. The applicants are not at fault. The ICAR had plenty of time to set things right if any of its directions were deviated. By merely wishing ~~any~~ that ICAR ~~had~~ <sup>is</sup> ~~not~~ <sup>the</sup> ~~responsibility~~ or thrusting agent or the recognised institution, whose existing infrastructure has only been lent to the sponsoring agency, <sup>had any responsibility</sup> we do not think that the legal responsibility of ICAR towards the created posts and personnel has in any way shifted to the grantee. A good deal of home work was necessary to be done in this behalf by ICAR than to leave the fate of these long standing employees in their project to the grantee institute. The

neither

S. B. M.



applicants had put in 15 to 20 years of continuous service in the project losing their prime of life in service of the project. They were specifically debarred from taking any competitive examination during the employment implying thereby their assignment in the project was under a bond/undertaking. They were sacked when they became overaged for any other job. Inhuman civil consequences have followed by the orders of their termination for which the sponsoring agency has no answer whereas similar recruitment leaving out the experienced staff were going on at the same time.

43. The applicant has cited the case of V.L. Chandra in which which under similar situation, the Hon'ble Supreme Court directed ICAR (para 19 *ibid*) to take appropriate steps to offer employment to 3 petitioners within 2 months. The Ministry of Health was also directed to cooperate for placement of Funds.

44. By applying the ratio of the above case, we allow the OA, quash the impugned orders (all four) dated 28-8-1993. We also quash the relevant portion of the letter dated 3-4-1993 (Annexure-D) which states that ~~the~~ one post each of Jr. Soil Scientist, Jr. Plant Physiologist, Jr. Plant Breeder, Sr. Research Assistant and Jr. Stenographer will stand abolished. We further direct the D.G. ICAR to take steps to reinstate the applicants in any similar or existing projects which are available and running under ICAR directly or indirectly within two months of the receipt of this order. The applicants were removed without observing the principles of natural justice. They are eligible for arrears unless it is proved that they were employed elsewhere. No costs.

S. B. Sin-  
Member (A)

*[Signature]*  
Member (J)

Dube/