

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Md. Shabbar Rashidi

W.P.A. 3306 of 2023

**Professor Nilotpall Ghosh And Another
Vs.
State of West Bengal And Others**

For the Petitioners : Mr. Ranajit Chatterjee, Adv.
Mr. Aniruddha Mitra, Adv.

For the University : Mr. Prabir Dasgupta, Adv.
Mr. Suman Dey, Adv.

For the State : Mr. Rajen Dutta, Adv.
Ms. Suva Gayen, Adv.

Heard on : 27.08.2026

Judgment on : 17.09.2026

Md. Shabbar Rashidi, J.:-

1. The instant writ petition has been filed in assailment of a reasoned order dated September 13, 2022 passed by the Senior Special Secretary to the Government of West Bengal, Department of Agriculture.

2. By the impugned reasoned order, prayer of the writ petitioners for grant of Non-Practicing allowances (NPA) was rejected. It was

contended in the impugned reasoned order that the Finance Department, Government of West Bengal had opined that the facility of NPA may not be extended to the teachers of Bidhan Chandra Krishi Vidyalaya (BCKV). As a proposal to that effect was earlier rejected by the Agriculture Department, Government of West Bengal, in respect of extending the facility of NPA to the teachers of Uttar Banga Krishi Vidyalaya (UBKV) or any other similarly circumstanced teachers.

3. Learned advocate for the petitioners submitted that the reasoned order dated September 13, 2022 passed by the authorities are arbitrary, illegal and violative of Articles 14 and 16 of the Constitution of India. It was submitted that it was specifically directed in deciding the representation of the writ petitioners, the concerned authorities would take into consideration the order passed on December 15, 2005 in WP 239(W) of 2023. However, the authorities passed the reasoned order without adverting to such directions by a Coordinate Bench of this Court. In that view of the facts, according to learned advocate for the petitioners, the reasoned order dated September 13, 2022 is manifestly illegal and liable to be set aside.

4. Learned advocate for the writ petitioners further submitted that the order dated December 15, 2005 in WP 239(W) of 2023 had already decided that teachers employed in State aided Universities having BVSc & AH degrees were entitled for NPA. The respondent authorities could not have sit in appeal over the judgment and order passed by

the High Court. Such an order passed by the authorities, is absolutely illegal. To such proposition, learned advocate for the writ petitioners relied upon an unreported decision of a Coordinate Bench rendered in **2015 SCC OnLine Cal 2685 (Smt. Sabita Roy vs. State of West Bengal and Others)**.

5. Learned advocate for the writ petitioners also submitted that since the facility of NPA was extended to some veterinary teachers of UBKV and appropriate orders in this regard were issued, the writ petitioners being similarly placed, having similar qualifications, could not have been denied the benefits of NPA on the anvil of Article 14 of the Constitution of India.

6. Learned advocate for the writ petitioners further submitted that while deciding on the matter, the concerned authorities were not justified in relegating the grievances of the petitioner to the decision of Pay Commission. Learned advocate for the petitioner also contended that the impugned reasoned order is an outcome of bias based on the propensity to justify its earlier decisions.

7. In support of his contentions, learned advocate for the writ petitioners relied upon **(1987) 4 SCC 431 (K.I. Shephard and Others vs. Union of India and Others)**, **2024 SCC OnLine Cal 7706 (Union of India and Others vs. Anupam Biswas)**.

8. Learned advocate for the writ petitioners also submitted that it is wrong to say that the Government of West Bengal has adopted a policy

decision not to extend the benefit of NPA to the employees of BCKV and UBKV inasmuch as at least two employees of BCKV were extended such benefits of NPA following the ICAR norms. Writ petitioner no. 1 joined BCKV and served between May 18, 1995 and September 20, 2016 before joining WBUAFS on December 21, 2016 where he is already receiving NPA since November 2017. Writ petitioner no. 2 is still serving in BCKV and is placed in similar circumstances having the requisite qualification.

9. Learned advocate for respondent no. 3 & 4 submitted that the Executive Council, Bidhan Chandra Krishi Viswavidyalaya had earlier taken a decision to place the matter before the State of West Bengal for sanction of funds for paying NPA to employees of University possessing the requisite qualification i.e. Bachelor of Veterinary Science & Animal Husbandry (BVSc & AH) at the rates sanctioned by the State Government. He further submitted that the Council had decided that NPA would be paid to the employees of University on receipt of funds from the State Government.

10. Learned advocate for respondent no. 3 & 4 further submitted that Krishi Vigyan Kendra (KVK) scheme is fully financed by the Government of India and are sanctioned only to Agricultural Universities, ICAR institutes, related Government Departments and NGOs working in the field of Agriculture. The KVKs are governed by the rules and regulations by the ICAR from time to time. He also

submitted that regulations of ICAR approves grant of NPA to the employees of KVKs having veterinary background. In consideration of the aforesaid facts and circumstances, the University Administration issued an order on August 27, 2010. However, according to learned advocate for respondent nos. 3 & 4, BCKV is State Government aided University and the university administration cannot provide for any allowance to its employees without approval from the State Government. Learned advocate also submitted that the university made various correspondences with the State Government however, the university administration is unable to provide NPA to its employees without a sanction from the State Government.

11. Learned advocate representing the State respondent, submitted that the instant writ petition filed by the petitioners i.e. some employees of BCKV is not maintainable in so far as there is no jural relationship between the writ petitioners and the State of West Bengal. Moreover, the two writ petitioners are employed in two separate autonomous organizations holding different posts and one cannot authorize the other to make statement on behalf of each other in a single writ petition.

12. Learned advocate for the State respondent further submitted that the proposal for grant of NPA to the teachers of BCKV and UBKV having a Bachelor degree of veterinary (B. V. Sc.) & Animal Husbandry (AH) was forwarded to the Finance Department. In reply, the Finance

Department had informed that since the teachers of West Bengal University of Animal and Fishery Science were granted NPA under order of Hon'ble Court, the same cannot be extended to the employees of BCKV. Such decision of the Finance Department was duly communicated to the Registrar of BCKV.

13. Learned advocate for the State respondent further contended that the teachers working under BCKV are governed by Bidhan Chandra Krishi Vishwavidyalaya Act, 1974 and the statutes and ordinances therein. Whereas, the veterinary doctors attached with Animal Resource Development Department, State of West Bengal as well as Krishi Vigyan Kendra are governed under separate rules. Therefore, the financial benefits sanctioned to the employees/staff of such dispensations, cannot be extended to the employees of BCKV.

14. Learned advocate for the State respondent further argued that the issues involved in WP 239(W) of 2003 were altogether different and has no semblance with the issues involved in the present writ petition and therefore, the petitioners cannot get any benefit out of the order passed on December 15, 2005 in WP 239(W) of 2003. Moreover, in terms of order passed in WPA 14532 of 2016, a hearing was conducted on August 29, 2022 and the prayer of the petitioners was rejected by a reasoned order dated September 13, 2022.

15. Learned advocate for the State respondent also contended that the UBKV never obtained any administrative consent from the State of

West Bengal with regard to extending the benefits of NPA to its employee Sri Dilip Kumar Hazra. State of West Bengal has taken a policy decision of not extending the benefits of NPA to the employees of BCKV and UBKV which should not be interfered in a writ petition.

16. The petitioners were appointed as lecturers in the department of Animal Sciences, Faculty of Agriculture under BCKV by separate appointment letters issued on April 7, 1995 in pursuance to an advertisement issued by the University on August 12, 1994. The posts were advertised for the department of Animal Production and Management under the faculty of Veterinary and Animal Sciences of BCKV. Subsequently, with the establishment of WBUAFS with the faculty of Veterinary and Animal Sciences, upon bifurcation of BCKV, the advertised posts were retained by BCKV. According to the advertisement dated August 12, 1994, the minimum educational qualification for the post of Lecturer in Animal Production and Management as prescribed in the advertisement was:

- i. "A 1st or high 2nd class Master's Degree in the relevant subject or an equivalent Degree of a foreign university following a good B.V.Sc & AH Degree recognized by BCKV*
- ii. Constantly good academic record with a Doctoral Degree in the subject or equivalent published work of an equally high standard."*

17. Petitioner no. 2 is still serving in BCKV as a professor. Petitioner no. 2 served in BCKV since his appointment on May 18, 1995 till

September 20, 2016. Subsequently, petitioner no. 2 joined West Bengal University of Animal and Fishery Sciences (WBUAFS) after resigning from BCKV. The Executive Council of BCKV in its 127th meeting held on August 16, 1994 had decided to recommend grant of NPA to the teachers of BCKV holding a Degree in B. V. Sc. & AH. Likewise, the Executive Council of West Bengal University of Animal and Fishery Sciences (WBUAFS) also adopted a resolution on April 23, 2002 recommending grant of non-practicing allowance (NPA) to its teachers. Many of the teachers of WBUAFS were initially appointed to BCKV prior to formation of WBUAFS upon bifurcation of BCKV under relevant Ordinance dated December 30, 1994 and WBUAFS Act, 1995.

18. In terms of a notification issued by Animal Resource Department, Government of West Bengal bearing No. 2037/1(24) MC dated July 1, 1994, Government of West Bengal sanctioned grant of NPA to the veterinary graduates who were recognized with the West Bengal Veterinary Council and holding posts for which one of the various alternative essential qualifications for recruitment was a degree in Veterinary Science.

19. Holding the requisite qualification, the writ petitioners submitted their representation to the University for grant of NPA, following the recommendations of the Executive Council, on July 29, 1997 followed by several reminders. Upon refusal of the State Government to grant NPA to the teachers of WBUAFS, some of the teachers approached the

High Court by way of a writ petition being WP 239 (W) of 2003. The said writ petition was disposed of by an order passed on December 15, 2005 directing the State Government to extend the benefit of NPA to the teachers of WBUAFS with effect from the date of resolution of the Executive Council i.e. April 23, 2002. Consequently, the Department of Animal Resource Development, State of West Bengal, issued orders in this regard.

20. Not only that, Department of Animal Resource Development, State of West Bengal also issued orders on January 25, 2010 for revision of pay structure of the teachers of WBUAFS. Such order also recommended that the teachers having veterinary degree would be entitled for NPA at the rates stipulated in such order. The university authorities also approached Department of Animal Resource Development, State of West Bengal seeking grant of NPA to its teachers having B.V.Sc. & AH degree. There were several correspondences over the issue and the university responded to the queries raised by the department. From the internal communications in the department, obtained by the writ petitioners under Right to Information Act, it is evident that the department is agreeable to extend the benefits of NPA to the teachers having B. V. Sc. & AH degree.

21. In May 2016 the petitioner received a communication from the registrar, BCKV dated May 20, 2016 enclosing the observation of the

finance department which stated that the government has constituted 6th pay commission for revision of pay of the employees of the State Government. By such communication, the issue with regard to NPA was relegated to the administrative department for taking up the same with the pay commission. According to the petitioners, the salary and allowances to the teachers of BCKV is made in terms of orders issued by the concerned department of the State Government on the basis of recommendations of UGC/ICAR. A pay commission constituted for revision of pay structure of the employees of the State Government is not authorised to look into the salary and allowances of the teachers of BCKV.

22. Apparently, there is no difference in the functioning of the teachers of animal science in BCKV and WBUAFS. Teachers of both the universities having B. V. Sc. & AH degree are professionally qualified to practice as veterinary doctors. WBUAFS and BCKV are listed amongst agricultural universities under Indian Council of Agricultural Research (ICAR). Moreover, ICAR has also allowed NPA to scientists holding veterinary qualifications (B. V. Sc. & AH/M.V. Sc.). Apart from that, the Ministry of Finance, Government of India has also directed payment of NPA for veterinary posts for which the minimum qualification is B. V. Sc. & AH coupled with a registration with veterinary Council of India.

23. It also transpires from the materials placed that being aggrieved with the communication sent by the Registrar, BCKV on the basis of the observations made by the Finance Department, government of West Bengal, the petitioners moved a writ petition being WPA14532 of 2016 which was disposed of by an order passed on June 7, 2022 directing the authorities to take a decision on the entitlement of the petitioners to receive NPA. In pursuance of such order, the hearing was conducted by the authorities, which resulted in the impugned reasoned order refusing the entitlement of the petitioners for NPA. Such decision of the concerned department was based on the views of Finance Department Government of West Bengal. According to the petitioner, the impugned reasoned order is based on wrong facts. The teachers of UBKV having B. V. Sc. & AH degree were being paid with NPA. The benefit of NPA was also extended to the teachers of WBUAFS with the concurrence of Finance Department, Government of West Bengal.

24. By filing the instant writ application, the petitioners have prayed for the following substantive reliefs, amongst others, namely,

- A. *“Writ of and/or in the nature of Mandamus directing the respondents to recall, cancel, rescind the impugned order dated 13.9. 2022 passed by respondent No. 2.*
- B. *Writ of and/or in the nature of Mandamus directing the respondents to sanction and pay non-practising allowance (NPA) to the petitioner no. 2 w. e. f. 20. 04. 1995 (the date of joining the respondent BCKV), with interest @ 12% p.a. and*

continue paying such NPA so long as the petitioner no. 2 is in employment of BC KV;

C. Writ of and/or in the nature of Mandamus directing the respondents to sanction and pay non-practising allowance to the petitioner no. 1 from 18. 05. 1995 till 20. 09. 2016 the period of his employment under the respondent BC KV, with interest @ 12% p. a.

D. Writ of and/or in the nature of certiorari directing the respondents to certify and transmit the records of the case before this Hon'ble Court so that any decision/order, adverse to the interest of the petitioners, including the order dated 13.09.2022 may be quashed and conscionable justice done to the parties."

25. As noted above, the writ petitioners were appointed in the Department of animal sciences under BCKV to the post of lecturer in animal sciences in the year 1995. The executive Council of the University adopted a resolution on August 16, 1994, to grant NPA to its teachers having veterinary background (B. V. Sc. & A. H). Upon bifurcations of BCKV and establishment of WBUAFS, petitioner no. 1 joined West Bengal University of animal and fishery sciences.

26. The petitioners applied for grant of NPA which was duly forwarded by the University to the state government. The state government refused to grant NPA to the teachers of WBUAFS. Following such development, some of the teachers of WBUAFS approached the honourable High Court by way of a writ petition being W.P. 239 (W) of 2003. The said writ petition was disposed of by an

order passed on December 15, 2005 directing the state government to extend the benefit of NPA to the teachers of WBUAFS.

27. Subsequently, the writ petitioners also filed representations for grant of NPA as the writ petitioners also had veterinary background and requisite qualification for their entitlement to NPA. The representation was submitted to the University and in turn, the University forwarded the same to the state government. After prolonged correspondences and queries, the state government refused the prayer of the writ petitioners for grant of NPA which was duly communicated to the petitioners by the registrar of the University.

28. Upon such refusal by the state government, the writ petitioners moved a writ petition being WPA 14532 of 2016 which was disposed of by an order passed on June 7, 2022 which observed to the following:

“Considering the observations made by the coordinate bench wide order dated 15th December, 2005 this court finds it fit to direct the additional Secretary, government of West Bengal, being the respondent no. 5 to take a decision on entitlement of the petitioners to receive non-practising allowance. It appears to this court that till date no formal decision has been taken on the claim of the petitioners to receive nonpractising allowance. Respondent no. 5 before taking such decision shall give an opportunity of hearing to both the petitioners or their representatives and the representative of the Bithan Chandraa Krishi Viswavidyalaya and Bhaskar reasoned decision within a period of 8 weeks from the date of communication of this order. It is made clear that while taking such decision on the claim of the petitioners for sanction of

non-practising allowance respondent no. 5 shall take into consideration the decision of the coordinate bench as contained in order dated 15 December 2005 and also relevant facts that other similarly circumstance veterinary officers are receiving non-practising allowance while working in the universities under the state government”.

29. In pursuance of such order passed in WPA 14532 of 2016, the hearing was conducted by the respondents on August 29, 2022 which was followed by the impugned reasoned order. By the impugned reasoned order, the claim of the writ petitioners for grant of NPA was refused with the following observations-

“According to the valued view of Finance Department, GoWB, the Non-practicing allowance (NPA) may not be extended to the teachers of BCKV and earlier the Agriculture Department rejected the proposal of Uttar Banga Krishi Viswavidyalaya (UBKV) regarding NPA by informing that the NPA cannot be awarded to the teachers of UBKV or any such similarly circumstanced teachers.

Now, after hearing and careful consideration of the facts of the case, it is observed that the plea of the petitioners is non-considerable, the NPA to the petitioners cannot be awarded hence their claim is hereby rejected”.

30. From a bare perusal of the impugned reasoned order, it is evident that the decision of the authorities is based on the views expressed by the Finance Department. The other reason which has been assigned in the impugned order is that earlier, similar prayers of the teachers of UBKV were refused therefore, the petitioner’s prayer

could not be granted. The impugned reasoned order does not speak of the consideration of the prayer of the petitioners in the light of the order dated December 15, 2005 passed in W. P. 239 (W) of 2003, as directed in the order passed on June 7, 2022 in WPA 14532 of 2016, on the basis of which, the hearing was conducted.

31. Order dated December 15, 2005 passed in W. P. 239 (W) of 2003 read as follows:

“The petitioners are the teachers of the veterinary college. Veterinary doctors are being extended benefit of non-practicing allowance, as they are debarred from practicing. In other medical colleges the teachers in M.B.B.S. course and post graduate course are extended benefit of non-practicing allowance, as they are serving the hospital as well as medical colleges. In the instant case, the petitioners’ demand for non-practicing allowance has already been recommended by Bidhan Chandra Krishi Viswavidyalaya, under which university they are working. The state Government is, however, declined to extend such benefit. As according to the state, since it is not possible for them to extend monetary benefit, which would cause extra financial burden of the state, the teachers would be free to practice outside.

Ms. Gita Mukherjee, learned Counsel appearing for the state has drawn my attention to the memo dated June 11, 2002 addressed to the Vice-Chancellor of the University, where the government declined to extend such benefit. In the said memo it was pointed out that the university had no authority to take a resolution supporting the demand of the petitioners in pursuance of the government order dated July 1, 1994. According to the State Government, since the teachers were veterinary teachers, they were granted UGC scale and since

they are not debarred from practising, non-practising allowance could not be extended to them. It was clarified that the said circular referred by the University was applied only in case of veterinary doctors and not the teachers.

In my view, when veterinary doctors were extended such benefit, there is no earthly reason why the teachers would be debarred. The doctors were extended such benefit by the State, so that their services could be utilised by the hospital fully. Similarly if the teachers are not permitted to practice outside, the entire education system would suffer and that's a concept for which the teachers in other medical colleges are extended such benefit. In case, government takes of the policy to discontinue such practice of granting non-practising allowance to any of the stream, they would be free to deny the same to the petitioners. So long it is not done, the veterinary teachers, in my view, should be extended such allowance being similarly circumstanced not only with the veterinary doctors serving the hospitals along with the teachers but also the teachers working in various other medical colleges under the State.

The writ petition succeeds.

State of West Bengal must extend such benefit to the teachers from the date of resolution taken by the University. State would, be permitted to pay a rear allowance in phases along with current salaries."

32. As evident, the ratio laid down in the order dated December 15, 2005 sets up in favour of extending the benefit of non-accessing allowance to the teachers on a consideration that such teachers were not allowed to practice as veterinary doctors. Their services were fully utilised by the University. The appointment letter of the petitioners,

placed before this court, clearly contains a condition that the incumbent shall not accept any other employment either full-time or part-time with or without remuneration except on prior permission of the competent authority of the University. Such condition, can surely be taken as a complete bar on the practice of the teacher having veterinary background. Moreover, as noted above, the state government was specifically directed by order passed on June 7, 2022 in WPA 14532 of 2016 to consider the prayer of the petitioners in line with the order passed on December 15, 2005 in WP 239 (W) of 2003. The impugned reasoned order is devoid of such consideration as directed. There is nothing in such order to demonstrate that order dated December 15, 2005 was taken into consideration at the time of consideration of the representation of the petitioners. In **Smt. Sabita Roy** (supra), it was held that any action in violation of an order of Court is a nullity. In the instant case, the impugned reasoned order dated September 13, 2022 seems to have been passed in clear violation of the order passed by a coordinate bench on June 7, 2022 in WPA 14532 of 2016.

33. Furthermore, the order dated December 15, 2005 was duly complied by the state government by issuing necessary orders granting non-practising allowance to the petitioner in WP 239 (W) of 2003. It was contended on behalf of the state that since such order was passed by the state government in compliance of an order passed

by the High Court, the same benefit cannot be extended to other teachers. Such contention on behalf of the state government, in my opinion, does not hold water. The state government chose not to assail the order passed in WP 239 (W) of 2003. The ratio laid down in the order dated December 15, 2005 passed in such writ petition is equally applicable to all the similarly circumstanced teachers.

34. Not only that, the pay structure and allowances of the agriculture universities are governed by the guidelines and orders passed by ICAR from time to time. ICAR has also allowed non-practising allowance to the scientists holding veterinary qualification. The memo issued by the Indian Council of agricultural research, Krishi Bhawan, New Delhi, being F. No. 1 (1)/2009 – Per. IV dated March 6, 2009 provided for non-practising allowances at the time of revision of pay of scientists. The relevant provision of such memo reads as follows:

“3. Non-practising allowance (NPA)

The ICAR scientists holding veterinary qualification (B.V.Sc. /M.V.Sc.) would be paid non-practising allowance in accordance with MOF, Dept. of Expr. OM no. 7 (19)/2008 – E. III (A) dated 30.8.2006.”

35. Such guidelines issued by ICAR bolsters the claim of the petitioner to their entitlement to non-practising allowance (NPA). At least one of the teachers of Uttar Banga Krishi Viswavidyalaya (UBKV) was extended the benefit of non-practicing allowance, as evident from

order issued by the Registrar of the said University vide Ref. 1301/UBKV/Est./ (P.F.-894) dated December 21, 2016. It said,

“ORDER

The competent authority has been pleased to sanction the benefit of Non-Practicing Allowance (NPA) @25% of the revised basic pay i.e. Band Pay plus Grade Pay to Dr. Dilip Kumar Hajra, Assistant Professor (Animal Science), Department of Agronomy w. e. f. 14/7/2014 in pursuance of notification no. Admn./UBKV/1380 dt. 17.02.2011.

Sd/-

Registrar (Actg.)

Dt. 21/12/2016”

36. In the same line, pursuant to a query under Right to Information Act, 2005, the Registrar (Actg.), WBUAFS, by its response dated March 30, 2015 informed to the following:

“It is to inform you that, as per G.O. No. 544-Uni/AD/O/U-14/95 Dated 27th March, 2008 from ARD Department (University Branch), Govt. of West Bengal, the benefits of NPA is extended to the teachers of this University. Prof. S.S. Dana, Professor, department of Fishery extension Education is a teacher of this University who has a B. V. Sc. & A.H degree as such it is in no way violation of existing G.O.”

37. On the ground of veterinary background and following ICAR guidelines, the teachers of the respondent BCKV were also granted Non-Practicing Allowance to the teachers of BCKV. It would be

apposite to set out the relevant extract of such orders, which are as follows:

“(I)

*DIRECTORATE OF EXTENSION EDUCATION
BIDHAN CHANDRA KRISHI VISWAVIDYALAYA
MOHANPUR, NADIA.*

ORDER

Non-practising Allowance @ 25% on basic pay + dearness pay is hereby sanctioned to Dr. Nirmal Kumar Tudu, Subject Matter Specialist (Animal Science) KVK Nadia, as per ICAR norms with effect from 31 August, 2006. Dr. Tudu is also entitled to get allowances as per prescribed norms on NPA as per rule. The procedure of calculation of NPA as envisaged in the G.I.M.F., O.M.F. no. 105/1/2004-IC dated 8th October, 2004 is enclosed in the annexure-I for ready reference
This order is issued with the approval of the Vice-Chancellor.
No. DEE/496/1(4)/P-5 *Dated 21.09.07*

*Director of Extension Education
BCKV*

“(II)

*BIDHAN CHANDRA KRISHI VISWAVIDYALAYA
Directorate of Extension Education*

ORDER

No.: DEE/925/P-5 *Date: 27.08.2010*

In due cognizance of the prevailing practice to provide NPA as per ICAR norm to the subject Matter Specialists of one of the KVKs of this Viswavidyalaya having veterinary background, the Hon'ble Vice-Chancellor has been pleased to sanction the

same NPA benefit to Dr. Ananta Kumar Das, SMS (Animal Science) of Howrah KVK @ 25% on Basic Pay + Dearness Pay.

This order retrospectively comes into force w.e.f. the date of joining of Dr. Das at Howrah KVK and shall remain valid until issuance of further order to this effect. The expenditure concerning payment of NPA shall be booked under the "Pay & Allowances" head of the KVK and shall be reflected in the salary bill of Dr. Das to be drawn for the month of September, 2010.

This is for your kind compliance by all concerned.

Sd/-

Director of Extension Education"

38. Therefore, in view of the materials placed before this court and in respectful agreement with the ratio laid down in the order dated December 15, 2005, it is evident that the teachers with veterinary background having degree in B. V. Sc. & A.H are entitled for Non-practicing Allowance as per the norms laid down by ICAR. It is apparent that such benefits were extended by different Agriculture Universities in West Bengal including the respondents, from time to time following the guidelines of ICAR. The writ petitioners are teachers in the respondent university having veterinary background holding a degree in B. V. Sc. & A.H. The terms and conditions of their employment do not permit them to pursue any other work for gain beyond their employment in the university. Their conditions of service are akin to the teachers of other universities who have been extended

with the benefits of NPA. Moreover, as per the norms of ICAR, the teachers holding B. V. Sc. & A.H have been held to be entitled to the benefits of NPA. In such view of the facts, there appears no reason why such benefits shall not be extended to the petitioners in view of Article 14 and 16 of the Constitution of India.

39. The respondents have come up with a case that the State has adopted a policy decision not to extend the benefits of NPA to the teachers of BCKV and that it will cause extra financial burden upon the State. There appears not much force in such contention. The State agreed to extend such benefit to a similarly circumstanced teacher apparently on the ground that it was done under the order of Court. However, the State never assailed such order of the Court and issued relevant orders accepting the same. In such view of the matter, State cannot be allowed now to turn around to discriminate against the similarly circumstanced citizens. It seems to be a futile attempt to stick to the earlier decision taken by the State Government.

40. As noted hereinabove, the impugned reasoned order is solely based on the observation made by the Finance Department, Government of West Bengal which relegated the concerned department to take up the matter with the pay commission. The pay and allowances to the employees of the respondent university are governed by the norms laid down by the ICAR. The ICAR has approved

grant of Non-practicing Allowances to the veterinary teachers having a degree in B. V. Sc. & A.H, which the writ petitioner do hold.

41. In **K.I. Shephard** (supra) the Hon'ble Supreme Court noted that,

*“16. We may now point out that the learned Single Judge of the Kerala High Court had proposed a post-amalgamation hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated, there is no justification to think of a post-decisional hearing. On the other hand the normal rule should apply. It was also contended on behalf of the respondents that the excluded employees could now represent and their cases could be examined. We do not think that would meet the ends of justice. They have already been thrown out of employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of employment and then give them an opportunity of representation when the requirement is that they should have the opportunity referred to above as a condition precedent to action. **It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.**”*

(Emphasis supplied)

42. Similarly, in the case of **Anupam Biswas** (supra), a Coordinate Bench of this Court held to the following,

“19. Such conduct by the petitioners reminds one of an observation made by the Hon'ble Supreme Court in the judgment reported at (1987) 4 SCC 431 : AIR 1988 SC 686 (K.I. Shephard v. Union of India), where it was noted that once a decision has been taken, there is a tendency to uphold it. Our common experience also indicates that once an authority

takes a stand, it often persists with that stance, sometimes bypass the directions of the Tribunal or the Court by citing various reasons.

20. In a decision, reported at (2004) 8 SCC 683: AIR 2005 SC 115 (E.T. Sunup v. CANSS Employees' Association), the Hon'ble Supreme Court lamented that 'It has become a tendency with the Government officer to somehow or the other circumvent the orders of court and try to take recourse to one justification or other this shows complete lack of grace in accepting the orders of the court. This tendency of undermining the court's order cannot be countenanced. This Court time and again has emphasized that in democracy the role of the court cannot be subservient to the administrative fiat. The executive and legislature has to work within Constitutional frame work and the judiciary has been given a role of watch dog to keep the legislature and executive within check'.

21. A court or judicial institution refers an issue to the competent authority not because it is unable to determine the issue, but to avoid unwarranted encroachment into the domain of administration. It should be noted that everyone holding an office, especially a model employer, must conduct themselves with high probity and candor and cannot exercise their power arbitrarily or according to their own whims and choice. It is bound to act in accordance with the settled principle of law, reasonably and in conformity with constitutional morality."

43. Therefore, in view of the discussions made hereinbefore, I am of the view that the writ petitioners are entitled for the benefits of Non-practicing Allowance in accordance with the norms set forth by the Indian Council of Agricultural Research (ICAR) and extended by

several Agricultural universities in West Bengal, with effect from the respective date of their joining.

44. Accordingly, the impugned reasoned order dated September 13, 2022 is hereby set aside. The respondents are hereby directed to sanction and pay Non-practicing Allowance (NPA) to writ petitioner no. 2 with effect from the date of his joining in the Bidhan Chandra Krishi Viswavidyalaya (BCKV) i.e. April 4, 1995. Similarly, the respondents are hereby directed to sanction and pay Non-practicing Allowance (NPA) to writ petitioner no. 1 with effect from the date of his joining in the Bidhan Chandra Krishi Viswavidyalaya (BCKV) i.e. May 18, 1995 till September 20, 2016, when he left his employment in BCKV to join WBUAFS. The arrears shall carry an interest at the rate of 6% per annum until payment in full. The order passed hence, shall be carried out by the respondents within a period of 8 weeks from date.

45. With such observations and directions, the instant writ petition being **WPA 3306** of **2023** is disposed of. There will be no order as to costs.

46. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]