IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 14.02.2017

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THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.17989 of 2016

M.G.Prabhakaran ... Petitioner

Versus

1. Union of India,
   represented by the Chairman,
   Coconut Development Board,
   Government of India,
   Ministry of Agriculture,
   Kochi-682 011

2. The Director,
   Coconut Development Board,
   Regional Office,
   No.14/20, 24th Street,
   Thillai Ganga Nagar,Nanganallur,
   Chennai-600 061

3. The Registrar,
   Central Administrative Tribunal,
   Chennai-600 104 ... Respondents

Prayer: This Writ Petition is filed under Article 227 of the Constitution of India, praying for issuance Writ of Certiorari, to call for the records relating to order dated 10.04.2015 passed by the third Respondent in Original Application No.583 of 2012 and quash the same by allowing the original Application.

For Petitioner : Mr.Y.Kavitha

For Respondents 1 & 2 : Mr.Siby J.Monippally

ORDER
(Order of the Court was delivered by V.PARTHIBAN, J.)

This Writ Petition has been filed against the order passed by the Central Administrative Tribunal (in short, 'the Tribunal'), Madras Bench in O.A.No.583 of 2012 dated 10.04.2015 dismissing the original application, filed by the petitioner herein.

2. The petitioner herein approached the Tribunal, seeking the following relief:

> "To direct the respondents to grant to the Applicant first financial upgradation under the ACP Scheme to the scale of Rs.4000-6000 w.e.f. 03.12.2002 with arrears of pay and other consequential benefits arising thereof;

3. According to the petitioner, he was originally appointed as Assistant on daily wage basis with effect from 15.6.1989 and though his initial period of his engagement was only for three months, the same was extended from time to time. Thereafter, the petitioner came to be appointed on regular pay scale of Rs.950-1500 (pre-revised) on purely ad hoc basis with effect from 3.12.1990 vide Office order dated 5.12.1990 along with two other persons. The appointment made in 1990 was on ad hoc basis as Recruitment Regulations for the post of Sales Assistant were pending finalization by the competent authority. When the order was issued, it was made clear that the appointment was purely on ad hoc basis and terminable at any time without notice and without assigning any reasons. It was also made clear that such appointment would not bestow over the petitioner to claim for regular appointment for the post of Sales Assistant and the service rendered on ad hoc basis would not count for the purpose of seniority in the grade or promotion to the next higher grade.

4. While the matters stood thus, subsequently, Recruitment Regulations for the post of Sales Assistant were published in the Official Gazettee on 19.5.1995 and one essential qualification prescribed for Sales Assistant was proficiency in the Typewriting. The petitioner qualified in the Typing Test on 12.12.1996 and accordingly, he was regularized in the post of Sales Assistant with effect from 12.12.1996. The petitioner, during the course of his service, was granted first financial upgradation under ACP Scheme with effect from 1.9.2008 and the second financial upgradation with effect from 3.12.2010 by calculating his ad hoc service rendered prior to his regular service. In the circumstances, the petitioner submitted his representation, seeking for grant of first financial upgradation under the erstwhile MACP Scheme with effect from 3.12.2002 by counting his ad hoc service as was done in the case of grant of first and second financial upgradations under ACP Scheme. Since there was no response to his representation, the petitioner was constrained to approach the Tribunal in O.A.No.583 of 2012.

5. Before the Tribunal, on behalf of the petitioner, it was contended that once ad hoc service was admittedly counted for the purpose of grant of financial benefits under MACP Scheme, there was no justification for not counting the same service for the purpose of grant of first financial upgradation under ACP Scheme on completion of 12 years of service.

6. A reply statement was filed on behalf of the respondents, stoutly refuting the contentions raised on behalf of the petitioner that at the time when the petitioner was initially appointed, there were no Recruitment Rules in force and later, the Rules were framed only in the year 1995 and thereafter, after the petitioner passed Typewriting Test, which was one of the essential criteria for appointment to the post of Assistant Salesman, his service came to be regularized. Therefore, the claim of the petitioner for regularization of his ad hoc service, was not considered as he was admittedly not qualified for regular service in 1990. It was also contended on behalf of the official respondents before the Tribunal that as far as the benefit under ACP Scheme was concerned, regular service alone would be taken into consideration and in the instant case, admittedly, there was no regular service put in by the petitioner from December, 1990. The provision of ACP Scheme was very clear that only the regular service had to be taken into consideration for the purpose of grant of benefits under the Scheme. But as far as the benefit under MACP Scheme was concerned, the date of entry into the initial post was the criteria to be adopted for counting of service for the purpose of grant of benefits under MACP Scheme. Therefore, the service rendered by the petitioner from 1990 were taken for the purpose of grant of MACP Scheme benefits and not ACP Scheme benefits.

7. After taking note of the rival submissions of the parties, the learned Tribunal accepted the contentions submitted on behalf of the official respondents and dismissed the Original Application. In fact, the learned Tribunal in extenso, extracted the several judgments of various High Courts and the Supreme Court in support of its conclusion. In fact, the reasons given, as found in para 7 of the order, would support the case of the official respondent, which is extracted below:

> "7. The Respondents have submitted that the Assured Career Progression (ACP) Scheme provides that only when a Government servant completes 12 years of regular service in the entry grade without any promotions, he will be granted financial upgradation to the next higher post in the line promotion. The Applicant completed 12 years of regular service in the grade only on 12.12.2008 and not on 03.12.2002. The two Machine Operators and one Chemist who were initially appointed on ad hos basis were regularized with effect from the date of initial appointment, as they possessed all the qualifications prescribed in the RRs notified later. However, all the Lower Division Clerks were not regularized with effect from the date of their initial appointment. Some of these LDCs were not qualified in the typing test at the first chance. So they were not

regularized with effect from their initial appointment, but regularized only with effect from the date of their passing the typing test. In the case of the Modified Assured Career Progression (MACP) Scheme, when a doubt arose as to whether financial upgradation is to be granted from the date of entry grade or from the date of regular service, it was clarified by DoPT vide OM dated 09.09.2010 (Annexure R/4) that the benefits under MACPS would be available from the date of actual joining of the post in the entry grade. In the MACP Scheme, the actual joining date is taken into account for financial upgradation whereas only regular service is counted in ACP Scheme."

8. In such view of the matter, the learned Tribunal dismissed the Original Application. The Tribunal reasoned that the petitioner had not sought for regularization of his ad hoc service for counting the period for the purpose of extension of benefits under ACP Scheme. The learned Tribunal, further reasoned that unless, the ad hoc services were regularized, the period of service put in on ad hoc service cannot be counted in terms of instructions relating to ACP Scheme. As against the above order passed by the learned Tribunal, the present Writ Petition has been filed.

9. Shri P.V.S.Giridhar, learned counsel appearing for the petitioner, strenuously contended that once the petitioner's ad hoc services were counted for the purpose of MACP Scheme, the same yardstick needed to be applied for the purpose of grant of ACP Scheme as well. The learned counsel, while making the said submission, has lost sight the fact that there is difference between the provisions of the MACP Scheme and erstwhile ACP Scheme. As stated supra, as far as ACP Scheme was concerned, only regular service can be considered for the purpose of grant of ACP benefits. On the other hand, as far as MACP Scheme was concerned, the date of entry in the post was to be considered for the purpose of granting benefits. Therefore, the official respondents correctly counted the ad hoc services for the purpose of grant of benefits under the MACP Scheme and not counted the same for the purpose of ACP scheme. Since the action of the official respondents was perfectly in order, the learned Tribunal discountenanced the claim of the petitioner.

10. We also gave our anxious consideration to the submissions made on behalf of the learned counsel appearing for the parties. But we do not find any scope to interfere with the order passed by the learned Tribunal as the same does not suffer from any infirmity.

Accordingly, the Writ Petition fails and it is dismissed as devoid of merits. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
   Union of India,
   Coconut Development Board,
   Government of India,
   Ministry of Agriculture,
   Kochi-682 011

2. The Director,
   Coconut Development Board,
   Regional Office,
   No.14/20, 24th Street,
   Thillai Ganga Nagar,Nanganallur,
   Chennai-600 061

3. The Registrar,
   Central Administrative Tribunal,
   Chennai-600 104

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GJ II(CO)
CA(13/04/2017)