

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.27941 of 2015

K.Ekambaram

...Petitioner

vs.

1. Union of India, rep. By
Secretary to Government
Ministry of Agriculture
Department of Animal Husbandry,
Dairying and Fisheries
Krishi Bhavan,
New Delhi - 110 001.
2. The Director
Central Cattle Breeding Farm,
Alamathi, Chennai - 600 052.
- 3.The Registrar,
Central Administrative Tribunal Madras Bench
High Court Buildings,
Chennai - 600 104.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorarified mandamus, calling for the concerned records relating to the order dated 03.09.2014 in O.A.No.1290 of 2012 confirmed on 05.01.2015 in R.A.No.69 of 2014 in O.A.No.1290 of 2012 passed by the third respondent and quash the same and consequently direct the second respondent to grant ACP (Assured Career Programme) benefits by counting the service from the date of the petitioner's initial appointment on 02.05.1979 as agricultural fieldman and grant all consequential benefits by treating his initial appointment on 02.05.1979 as agricultural fieldman.

For Petitioner : Mr.M.Gnanasekar

For Respondents: Mr.B.Ramaratnam,
Central Govt. Standing Counsel
for R1 and R2

O R D E R

K.K. SASIDHARAN, J.

This writ petition is directed against the order dated 3 September 2014 in O.A.No.1290 of 2012 and the related order dated 5 January 2015 in Review Application in R.A.No.69 of 2014, dismissing the original application and the subsequent application to review the earlier order.

2. The petitioner filed the Original Application with a claim that he was appointed to the post of Agricultural Fieldman. According to the petitioner, the respondents erred in treating his appointment to the post of Agricultural Fieldman as promotion, in view of the service rendered by him prior to 28 April 1981 for the purpose of granting him the benefits of Assured Career Programme (ACP). In short, the petitioner wanted the Tribunal to count his service from the date of his initial appointment on 2 May 1979 as Agricultural Fieldman for granting him the benefits of ACP.

3. Before the Central Administrative Tribunal, the Director of Central Cattle Breeding Farm contended that the petitioner was not qualified for appointment to the post of Agricultural Fieldman. He was therefore given the post of Agriculture Mate. Subsequently, he was promoted to the post of Agricultural Fieldman by order dated 29 April 1981. The petitioner was erroneously granted 1st ACP with effect from 9 August 1999 by order dated 28 February 2001. Subsequently, he was granted 2nd ACP with effect from 28 April 2005 by order dated 5 April 2006. The mistake committed by the Department granting two ACPs to the petitioner was rectified by passing an order dated 23 November 2011. The petitioner was subsequently granted 3rd MACP with effect from 2 May 2009 on completion of 30 years of service. According to the Department, the petitioner has no justifiable claim for considering his service prior to 28 April 1981 for the purpose of granting ACP.

4. The Tribunal considered the rival submissions and concurred with the views expressed by the Department. The Tribunal was of the view that the service of the petitioner from the date of his initial appointment on 2 May 1979 as Agricultural Fieldman cannot be taken, as he was not in possession of the required qualification at that point of time for appointment to the post of Agricultural Fieldman. The petitioner thereafter filed a review petition. The review petition was also dismissed.

5. We have heard the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2.

6. The petitioner proceeds as if he was appointed originally to the post of Agricultural Fieldman. The petitioner placed reliance on the letter sent by the Department dated 26 March 1979 calling him for interview for the post of Agricultural Fieldman. There is no proceeding produced by the petitioner before us to show that he was initially appointed to the post of Agricultural Fieldman.

7. The documents available on record and more particularly, the Office Order dated 29 April 1981 indicates that the petitioner was initially appointed as Agricultural Mate and subsequently, promoted as Agricultural Fieldman. The petitioner wanted this Court to ignore the order dated 29 April 1981 and arrive at a conclusion that his initial appointment was to the post of Agricultural Fieldman. The documents does not support the case pleaded by the petitioner either before the Tribunal or before this Court.

8. The petitioner placed reliance on an earlier order dated 8 January 2010 in O.A.No.2 of 2009. Even if the Tribunal at that point of time erroneously allowed the claim of an employee, the same would not be a ground to allow the Original Application filed by the petitioner. There cannot be an equality in illegality. Though the petitioner was appointed only as Agricultural Mate, it is his plea to consider the order of appointment as Agricultural Fieldman, as according to him, the entry post is only Agricultural Fieldman.

9. The Department, in the reply affidavit filed before the Tribunal very clearly stated that though the petitioner was called to appear for appointment to the post of Agricultural Fieldman, it was found that he was not in possession of the required qualification. The petitioner was therefore appointed as Agricultural Mate. Subsequently, he was promoted to the post of Agricultural Fieldman. There was no challenge to the order dated 29 April 1981 at any point of time. It is too late to consider the legality and correctness of the Office Order dated 29 April 1981 promoting the petitioner from the post of Agricultural Mate to Agricultural Fieldman.

10. The Central Administrative Tribunal considered the issue raised by the petitioner in the right perspective and rejected his claim. We do not find any error or illegality in the said order warranting interference by exercising the power of judicial review.

11. In the up shot, we dismiss the writ petition. No costs.

-s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

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To

- 1.The Secretary to Government
Union of India,
Ministry of Agriculture
Department of Animal Husbandry,
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+1 cc to Mr.M.Gnanasekar Advocate sr 15185

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