

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :: **0913.03.2017**

Delivered on :: **13.03.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

AND

THE HONOURABLE MR.**JUSTICE M.V.MURALIDARAN**

W.P. No.27980 of 2015

T.Munirathnam ... petitioner

Vs

- 1 Union of India
rep. by the Secretary to Government
Ministry of Agriculture Departmental of
Animal Husbandry Dairying and Fisheries
Krishi Bhavan New Delhi
- 2 The Director
Central Cattle Breeding Farm & Post
Alamathi Chennai-52
- 3 S.Sekar
- 4 C.Bakthakumar
- 5 The Registrar Central Admn.
Tribunal Madras Bench High Court Buildings
Chennai-104
(respondents 3 & 4 are not necessary party
in this matter. Hence given up) ... respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the concerned records relating to the order dated 3.9.2014 in O.A.No.1451/2012 passed by the 5th respondent and quash the same in so far as the petitioner is concerned and consequently direct the 2nd respondent to permit the petitioner to

exercise their option to have their pay fixed in the scale 4000-6000 w.e.f. 10.3.2008 and grant the petitioner all consequential monetary and other benefits award costs.

For petitioner : Mr.M.Gnanasekar

For Respondents : Mr.S.Arockiam, ACGSC,
for respondents 1 and 2

ORDER

K.K.SASIDHARAN, J.

The request made by the petitioner to permit him to exercise option for fixation of pay under MACP Scheme was negatived by the Director, Central Cattle Breeding Farm, Chennai. The original application challenging the said order was dismissed by the Central Administrative Tribunal. Feeling aggrieved by the order dated 3 September 2014, in O.A.No.1451 of 2012, the unsuccessful petitioner is before this Court.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2.

3. The petitioner was appointed on 7 September 1989 as Cultivation Beldar in Central Cattle Breeding Farm, at Avadi. The Group D posts in the agricultural line were re-designated as Farm Attendant cum Chowkidar with effect from 2 August 2004.

4. The petitioner was granted the benefit of first Assured Carrier Progression Scheme with effect from 7 September 2001.

5. The petitioner through his representation dated 5 February 2010 requested the second respondent to grant him the MACP in the scale of Rs.4000-6000 on completion of 16 years of service. The rejection of the said request made him to approach the Tribunal and thereafter this Court.

6. The petitioner made a claim by agreeing to surrender the benefits granted earlier by way of first ACP, when the post in question was an isolated one. The petitioner wanted to exercise the option given to the employees by MACP Scheme dated 19 May 2009. The MACP Scheme found in the Office Memorandum issued by DPOT No.35034/3/2008/Estt. (D) dated 19 May 2009 provides that the right to exercise the option is given only for those employees who have been granted ACP upgradation between 1 January 2006 and 31 August 2008. The petitioner was given the ACP on 7 September 2001. The petitioner is therefore not entitled to exercise the option under the MACP Scheme.

7. The learned counsel for the petitioner contended that some of the other employees have been given the benefit and the petitioner was

singled out. There is no substance in the said contention. The facts in the subject case are admitted. There is no dispute with regard to the grant of first ACP on 7 September 2001. Similarly, there is no dispute with respect to the cut off period prescribed in the MACP scheme in question. In case any of the other employees got the benefit illegally, the same cannot be a reason to confer benefits on the petitioner, notwithstanding his ineligibility. Article 14 is a positive concept. There cannot be equality in illegality.

8. The entitlement of the petitioner is to claim the second ACP on completion of twenty years of service and third ACP after thirty years. The petitioner has no justifiable claim for the grant of MACP on account of the cut off period. We are therefore of the view that there is no merits in the Writ Petition.

9. We dismiss the Writ Petition with no order as to costs.

(K.K.SASIDHARAN, J.) (M.V.MURALIDARAN, J.)

13.03.2017

Index: Yes/no
tar

To

- 1 The Secretary to Government
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P.D. Order in

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