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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2023

CORAM

THE HON'BLE Mr. JUSTICE **C. V. KARTHIKEYAN**

W.P.No.15877 of 2019

and

W.M.P.Nos.15695, 15696 & 32161 of 2019

J. Krishnakumar

.. Petitioner

Vs.

1.The Programme Co-ordinator -Cum- Principal
Perunthalaivar Kamaraj Krishi Vigyan Kendra,
Puducherry.

2.The Secretary to Government (Agriculture)
Chief Secretariat, Puducherry.

3.The Indian Council of Agricultural Research,
Agricultural Technology Application Research Institute,
Represented by its Director,
Hyderabad.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent with No.2694/PKKVK/CAS/PC/PA/2017 dated 29.03.2017 and to quash the same and consequently to directed the 2nd respondent to grant the financial benefit under the Career Advancement



Scheme as granted to the petitioner or in the alternative to direct the 2nd respondent to grant the petitioner the benefit of the First A.C.P. With the Grade Pay of Rs.9,000/- with effect from 01.11.1992 and Second ACP with effect from 01.11.2014 and first MACP with effect from 01.11.2014 with retrospective effect with all other consequential benefits including difference of wages.

For Petitioner	.. Mr. V. Ajayakumar
For R1 & R2	.. Mr. R. Sreedhar, AGP, Puducherry
For R3	.. Mr. S. R. Sundaram, Standing Counsel

ORDER

This writ petition has been filed in the nature of Certiorarified Mandamus seeking records of the 1st respondent in No.2694/PKKVK/CAS/PC/PA/2017 dated 29.03.2017 and to quash the same and direct the 2nd respondent, the Secretary (Agricultural), Chief Secretariat, Puducherry, to grant the financial benefit under the Career Advancement Scheme as granted to the petitioner or in the alternate to direct the 2nd respondent to grant the benefit of First ACP with the grade pay of Rs.9,000/- with effect from 01.11.1992 and the Second ACP with effect from 01.11.2014 and first MACP with effect from 01.11.2014 with retrospective effect with all other consequential benefits including difference



of wages.

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2. Primarily, the writ petition is directed against the order of the 1st respondent dated 29.03.2017. By the said order, the 1st respondent had directed regulation of the pay and allowance of J. Krishnakumar, a staff of the Perunthalaivar Kamaraj Krishi Vigyan Kendra at Puducherry, who according to the 1st respondent had been granted Career Advancement Scheme (CAS) without observing due procedure. It had therefore been directed that there should be recovery of the amounts already paid. The order was in the form of a show cause notice to which the petitioner was directed to answer as to why there should not be recovery of the amounts paid under Career Advancement Scheme (CAS).

3. The background facts of the case are that the petitioner joined as Agricultural Officer in the Agriculture Department, Government of Puducherry in the year 1980. He was qualified with a Post Graduate Degree in Agriculture. He was posted on deputation as Junior Entomologist in the Krishi Vigyan Kendra and joined service on 19.09.1994.



4. It is to be noted that Krishi Vigyan Kendra had actually been started in the year 1974 under the Administrative Control of the Tamil Nadu Agricultural University. It was then taken over by the Government of Puducherry in the year 1992. It was brought under the 1st respondent, a registered Society is managed by the Government of Puducherry. The 1st respondent, Perunthalaivar Kamaraj Krishi Vigyan Kendra, had issued an order on 25.11.1997 by which, the petitioner was absorbed under the 1st respondent as Junior Entomologist in the pay scale of Rs.2200-4000. The petitioner was then placed in the pay scale of Rs.15,600-39,100 with the grade pay of Rs.6,600/-. The post of Junior Entomologist is a stand alone post or an isolated post and there was no further promotion opportunity. The only promotion available was in accordance with the rules of the 3rd respondent, Indian Council of Agricultural Research, to the post of Scientist (Senior Scale) and Senior Scientist and such posts do not exist in the 1st respondent. It is contended by the petitioner that there is no scope for promotion at all.

5. There were two other ways by which the scale of pay could be equalized to make up for non-availability of promotion. One was by granting



CAS and the other was by granting ACP. But grant of ACP would incur financial liability to the respondents, though it would be financially better for the petitioner. But however, the respondents had taken a decision to extend CAS to the petitioner herein. By that particular scheme, three grades of CAS should be granted. The first one is to be granted after a period of six years of service. The second one is to be granted after a period of five years of service. The third one is to be granted after a period of further three years of service. The petitioner was granted the first CAS in the year 2003 having been absorbed in the year 1997. The second CAS was granted in the year 2008 after the period of five years. The third CAS had been granted in the year 2011 after the period of three years. The grant of these three CAS benefits is the bone of contention in the present writ petition.

6. It had been stated in the impugned order that the said CAS should not have been granted and therefore, it is contended that the monetary benefits gained should be recovered from the petitioner herein.

7. Questioning that particular recovery order, the present writ



petition has been filed.

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8. In the counter affidavit filed on behalf of the 1st 2nd respondents, it had been stated that the entire amount of pay and allowances for the sanctioned posts in the 1st respondent was funded only by the 3rd respondent, the Indian Council of Agricultural Research, Hyderabad. The scheme is also called Krishi Vigyan Kendra (Transfer of Technology) Schemes. Thereafter, the ICAR funds 75% for pay and allowance and the balance 25% would be borne by the Government of Puducherry. It had been further submitted that the petitioner herein was absorbed to the deputed post on 25.11.1997. Thereafter, it had been stated that there were various meetings held by the Governing Body and this particular subject of grant of CAS and payment of incentives for additional degree obtained and for the staff of the 1st respondent, were discussed at successive meetings of the Governing Body. The Governing Body had sought for a proposal to be forwarded.

9. It had been further stated in the counter affidavit that a separate proposal was to be forwarded to the Government of Puducherry for



obtaining approval. It had also been stated that the Governing Body had not approved implementation of the CAS. It had been however stated that the Secretary (Agriculture), Government of Puducherry had submitted the file to the Department of Personnel and Administration Reforms for examination of the feasibility of implementation of CAS to the staff of 1st respondent. It had also been stated that though matter was circulating around various departments, the institution namely, the 1st respondent had not taken any steps to contact ICAR for its opinion in this regard. It had been stated that the then Programme Co-ordinator, who had granted CAS to the petitioner had done so without referring the matter to the ICAR. It was also stated that the scale of pay of the staff are to be determined only by the State Government and by ICAR. It was finally stated that the petitioner had not replied to a show cause notice issued, but had filed the writ petition.

10. The learned counsel for the 3rd respondent had forwarded a circular dated 17.06.2015 in F.No.A.Extn.1/2/2015-AE-I issued by ICAR at New Delhi and signed by the Deputy Secretary (Agril.Extn.) wherein it had been stated that as per the Memorandum of Understanding signed between the ICAR and Host Institutions, the salary and other remuneration of staff of



Krishi Vigyan Kendra shall be borne by the grantee (Host Institutions) only.

In effect, it is claimed that it is the 1st respondent who is responsible for every pay and emolument to be given to the staff. It had been stated that the administrative control of the staff vests only with the Host Institutions. It is also stated that ICAR is liable to pay salary only to the office staff and that recruitment and appointment and service conditions shall be in accordance with the rules and regulations of the Host Institutions. It was therefore stated that the employees are not employees of ICAR and that they are employees of the respective Host Institutions.

11. The 3rd respondent had not filed any counter affidavit in this regard.

12. Heard arguments advanced by Mr. V. Ajayakumar, learned counsel for the petitioner and Mr. R. Sreedhar, learned Additional Government Pleader for the 1st and 2nd respondents / Union Territory of Puducherry and also Mr. S. R. Sundaram, learned Standing Counsel for the 3rd respondent.

13. The facts are clear. The facts are straight forward. The petitioner herein was absorbed in the year 1997 under the 1st respondent.



The 1st respondent had been taken over by the Government of Puducherry under the Krishi Vigyan Kendra scheme, which was originally started in the year 1974 under the Administrative Control of the Tamil Nadu Agricultural University. It also had branches at Puducherry and those branches were taken over by the Government of Puducherry under a registered Society namely, Perunthalaivar Kamaraj Krishi Vigyan Kendra. The Administrative Control of the staff was with the Government of Puducherry.

14. An order was passed on 25.11.1997 by the 1st respondent, whereby, the petitioner was absorbed as a staff of the 1st respondent as Junior Entomologist.

15. In this connection, the circular dated 17.06.2015 in F.No.A Extn.1/2015-AE-1 of the 3rd respondent has to be examined. By the said circular, the 3rd respondent had stated that the staff do not come under the control of the ICAR and come under the administrative control of the Host Institutions, in this case, the 1st respondent. Therefore, the contention of the 3rd respondent that they do not have any Administrative Control over the staff has to be rejected.



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16. It is also to be noted that this particular post to which the petitioner was absorbed namely, Junior Entomologist, was a stand alone post and there was no promotional avenue at all. The next promotional avenue was the Post of Scientist (Senior Scale) and Senior Scientist and such post do not exist in the 1st respondent.

17. In view of that particular fact, CAS was introduced. The petitioner benefited by the said scheme. It involved grant of first CAS after a period of six years, the second one after a period of five years and the third one after a period of three years. It is seen that the Governing Body at regular intervals had discussed about this particular aspect. The final resolution was passed in the 27th Governing Body Meeting held on 17.04.2015. In that particular resolution, it had been resolved as follows:

“d). Regarding the implementation CAS to the Scientific / Technical staff as per the pattern of ICAR, the committee suggested to constitute an Expert Committee under the headship of Chairman, PKKVK to regularise the CAS implemented.”



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18. The above resolution is laid stress by the learned counsel for the petitioner, who pointed out that it was decided to regularize the “CAS implemented” which was interpreted to infer that CAS scheme had already been implemented and what remains was only regularization of the same.

19. It is trite in law to point out that every public servant should have a promotional avenue in his career. If that is not available, then there must be protection of pay. In this case, by the grant of CAS to the petitioner, since promotion is not available. There was therefore a regular upward increase in the pay scale. This is one of the foundational principle of every public service. There cannot be stagnation in one particular post continuously.

20. In *State of Tripura and others Vs. K.K.Roy* reported in (2004) 9 SCC 65, the Hon'ble Supreme Court examined an appeal filed by the State of Tripura, wherein, the respondent / employee held a Master's degree and a degree in Law was appointed as Law Officer -cum- Draftsman in the Directorate of Co-operation, Government of Tripura in 1982 which was a



single-cadre post with no promotional avenues. His representations for upgrading the post or providing two promotional avenues were not considered by the State of Tripura and hence he had filed a writ petition. The High Court had directed the State of Tripura to provide 'graded scale' with pay scale equivalent to Grade-I and Grade-II officer of Tripura Judicial Service. Questioning that particular direction, the State of Tripura had filed the appeal. While examining the issue of a single-cadre post without promotional avenue, and without any scheme of assured career promotion, the Hon'ble Supreme Court had held as follows:

4. Indisputably, the post of Law Officer-cum-Draftsman is a single-cadre post. It is also undisputed that there does not exist any promotional avenue therefor. The respondent is holder of a Master's degree as also a degree in Law. He was appointed in the year 1982. If the contention of the appellant is to be accepted, the respondent would be left without being promoted throughout his career. In almost an identical situation, a Bench of this Court in Council of Scientific and Industrial Research v. K.G.S. Bhatt [(1989) 4 SCC 635 : 1990 SCC (L&S) 45 : (1989) 11 ATC 880] held: (SCC pp. 638-39, para 9)



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“It is often said and indeed, adroitly, an organisation public or private does not ‘hire a hand’ but engages or employs a whole man. The person is recruited by an organisation not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See Principles of Personnel Management, Flipo, Edwin B., 4th Edn., p. 246.) Every management must provide realistic opportunities for promising employees to move upward. ‘The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors.’ (See Personnel Management, Dr Udai Pareek, p. 277.) There cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of promotions.”

5. *The matter came up for consideration again in O.Z. Hussain (Dr) v. Union of India [1990 Supp SCC 688 : 1991 SCC (L&S) 649 :*



(1991) 16 ATC 521] wherein this Court in no uncertain terms laid down the law stating: (SCC pp. 691-92, para 7)

“Promotion is thus a normal incidence of service. There too is no justification why while similarly placed officers in other ministries would have the benefit of promotion, the non-medical ‘A’ Group scientists in the establishment of Director General of Health Services would be deprived of such advantage. In a welfare State, it is necessary that there should be an efficient public service and, therefore, it should have been the obligation of the Ministry of Health to attend to the representations of the Council and its members and provide promotional avenue for this category of officers.”

6 [Ed.: Para 6 corrected vide Corrigendum No. F.3/Ed.B.J./4/2004 dated 15-1-2004] . *It is not a case where there existed an avenue for promotion. It is also not a case where the State intended to make amendments in the promotional policy. The appellant being a State within the meaning of Article 12 of the Constitution should have created promotional avenues for the respondent having regard to its constitutional obligations adumbrated in Articles 14 and 16 of the Constitution of India. Despite its constitutional obligations, the State cannot take a stand that as the respondent herein accepted the terms and conditions of the offer of appointment knowing fully well that there was no avenue for promotion, he cannot resile therefrom.*



It is not a case where the principles of estoppel or waiver should be applied having regard to the constitutional functions of the State. It is not disputed that the other States in India/Union of India having regard to the recommendations made in this behalf by the Pay Commission introduced the Scheme of Assured Career Promotion in terms whereof the incumbent of a post if not promoted within a period of 12 years is granted one higher scale of pay and another upon completion of 24 years if in the meanwhile he had not been promoted despite existence of promotional avenues. When questioned, the learned counsel appearing on behalf of the appellant, even could not point out that the State of Tripura has introduced such a scheme. We wonder as to why such a scheme was not introduced by the appellant like the other States in India, and what impeded it from doing so. Promotion being a condition of service and having regard to the requirements thereof as has been pointed out by this Court in the decisions referred to hereinbefore, it was expected that the appellant should have followed the said principle.

21. The Hon'ble Supreme Court had stated that promotion goes to the root of any public service, and if that could not be granted then naturally pay protection must be granted and there must be upward pay revision. This



would also ensure that increase in cost of living and inflation are taken care of and there is equanimity in the salary which is granted to the public servant.

22. In the instant case, there were three steps of CAS which was offered to the petitioner. The petitioner was granted the same. What was required was putting up a formal proposal to regularise the sanction.

23. Among the documents filed by the 2nd respondent is a note file, which had been prepared by the Programme Co-ordinator. In the same, it had been stated as follows:

*“5(1).Career Advancement Scheme for Scientific Staff-
“S grade” (as per VI Pay Commission) vide letter of
ICAR F.No.1(1)2009-per.IV dt.06 March, 2009 – on
par with UGC scales (S1 to S8).*

a.

b.

*c. A Scientist who does not have Ph.D or M.Phil degree
shall be eligible for RGP of Rs.7000 after completion
of six years service as Scientist.*



d.A Scientist with completed service of five years in the RGP of Rs.7000 shall be eligible, subject to other requirements as may be laid down by ICAR, to move up to RGP of Rs.8000.

e.A Scientist on completion of three years of service in the RGP of Rs.8000 and possessing a Ph.D' degree in the relevant discipline shall be eligible, subject to other conditions as may be laid down by ICAR, to move to the pay band of Rs.37400-67000 with RGP of Rs.9000 and shall be designated as Senior Scientist.”

24. It is thus seen that this particular scheme had been introduced only consequent to the letter of the 3rd respondent dated 06.03.2009. It had been further noted as follows:

“7. In this context it is stated that the Career Advancement Scheme (UGC) was followed from inception of KVK from 1974 till 1992 when it was under the administrative control of Tamil Nadu Agricultural University (TNAU), Coimbatore. Soon after taking over



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the control by the Govt. of Puducherry during 1992, the Scientific and Technical posts were filled by the Govt. of Puducherry with officials from Department of Agriculture, Puducherry on Deputation basis. As deputation staff they were abides to follow the promotion pattern of Department of Agriculture and not followed the ICAR - CAS pattern.

8. *From the year 1997 onwards, most of deputed staff have been absorbed in this Kendra as KVK staff and KVK has also inducted new staff directly. As KVK posts are isolated and there is no promotional avenue, KVK staff have been working in the same pay scale for more than 15 years without any upgradation of pay. In order to safe guard their career prospective, it is very much essential to rejuvenate the Career Advancement Scheme to KVK Scientific and Technical staff.*

11. *The Career Advancement Scheme proposal has already been placed in the XVII, XIX, XX & XXVI*



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Governing Body Meetings of PKKVK held on 21.09.2004, 12.02.2007, 23.04.2008 and 2012 respectively. Though the proposal was agreed in principle, the GB has recommended to put a detailed proposal through file. Hence this file is submitted to Government of Puducherry for approval and implementation of Career Advancement Scheme to Scientific and Technical Staff of this Kendra.

12. Further, it is also requested that necessary approval may be accorded to implement the Career Advancement Scheme (CAS) Rules to the staff of KVK with permission to amend the same as and when changes and modifications incorporated to the Career Advancement Scheme (CAS) by the ICAR.

13. The financial implications involved in this Scheme will be met by the ICAR to the extent of 100 per cent for KVK staff, 75 per cent for AICRIP-ICAR and with respect to GOP staff the financial implications will be met from



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the GOP.

14. The Chairman may kindly approve the proposal and forward the same to the Secretary (Agriculture) for the kind perusal and approval please.

15.Submitted please.”

25. It is thus seen that CAS had been granted and active steps had been taken to regularize the same. When that process is under way, issuing of the impugned notice seeking recovery of the said amount cannot withstand scrutiny of this Court. The petitioner is entitled to the benefit of the Career Advancement Scheme. He had put in necessary years of service. The scheme had been extended only after the stipulated completion of the years of service.

26. I hold there was no infirmity in the extension of CAS to the petitioner herein. No public servant can be expected to work in the same post with the same salary throughout his career. There has got to be incentives provided. In this case, the incentive so provided was extension of the Career Advancement Scheme.



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27. This Writ Petition stands partly allowed by striking down the impugned proceedings of the 1st respondent in No.2694/PKKVK/CAS/PC/PA/2017 dated 29.03.2017. A direction is given to the 2nd respondent to put up a proposal to the 3rd respondent to grant financial benefit under CAS to the petitioner and when such a proposal is put up by the 2nd respondent, a further direction is issued to the 3rd respondent to grant necessary financial benefit within a period of sixteen weeks from the date on which the 2nd respondent actually forwards the proposal to the 3rd respondent. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

10.08.2023

Index:Yes/No
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Speaking order: Yes/No
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To



- 1.The Programme Co-ordinator -Cum- Principal
Perunthalaivar Kamaraj Krishi Vigyan Kendra,
Puducherry.
- 2.The Secretary to Government (Agriculture)
Chief Secretariat, Puducherry.
- 3.The Director,
Indian Council of Agricultural Research,
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C.V.KARTHIKEYAN,J.

smv

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