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W.P.No.33825 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.P.No.33825 of 2012
and
M.P.No.1 of 2012

1.The Indian Council of Agricultural Research
Rep. by its Director General,
Krishi Bhavan, Dr.Rajendra Prasad Road,
New Delhi.

2.The Secretary,
Indian Council of Agricultural Research,
Krishi Bhavan, Dr.Rajendra Prasad Road,
New Delhi.

3.The Director,
Central Marine Fisheries Research Institute,
Ernakulam North P.O., Kochi.

4.The Scientist-in-Charge,
Tuticorin Research Centre of Central Marine
Fisheries Research Institute,
South Beach Road, Tuticorin – 628 001.

.. Petitioners

VS

1.Joseph Xavier Rodrigo

2.The Registrar,
Central Administrative Tribunal
Madras Bench, Chennai.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records to the order dated 16.02.2012 made in O.A.No.759 of 2010 on the file of the Registrar,



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Central Administrative Tribunal, Madras Bench, Chennai, the 2nd respondent herein and quash the same.

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For Petitioners : Mr.M.T.Arunan
For Respondents : Mr.R.Saravanan
for Mr.T.Sai Krishnan
R2 - Tribunal

ORDER

(Order of the Court was made by Dr.ANITA SUMANTH.,J)

The petitioners (P1 to P3) are officials in the Indian Council of Agricultural Research (collectively referred to as ICAR/petitioner). P4 is the Madras Centre of the Central Marine Fisheries Research Institute. The petitioners challenge the order passed by the Central Administrative Tribunal (in short, 'Tribunal/CAT') granting relief to the first respondent/R1, who had joined services as Laboratory-cum-Field Assistant on 30.11.1968. The pay scale at the time of his joining service was Rs.110 - 180/-.

2. The prayer of R1 before the Tribunal was for re-fixation of pay scale in the scale of Rs.425 - 700/- with effect from 01.01.1973 with a consequential induction into scientific services from prior date, and grant of revision, upgradation, promotion, career advancement and all other service monetary benefits with back wages and interest.

3. The prayer was based on the recommendations of the Third Pay Commission that had been implemented by the petitioners to various category of employees, selectively denying the same to some categories



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of employees alone.

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4. The mainstay of the case of R1 was that he possesses a Bachelors Degree in Zoology and is thus entitled to enhanced pay scale as per Technical Service Rules of the ICAR.

5. The Tribunal had allowed the original application taking note of his eligibility as well as the fact that similarly placed persons had been granted the benefit of enhanced pay scale in various locations viz., Cuttack, Ernakulam and Delhi, by virtue of orders passed by the Regional Benches of the CAT and High Court.

6. Mr.M.T.Arunan, learned counsel, who appears on behalf of the petitioner would reiterate the submissions made before the Tribunal emphasising on the fact that the applications of the respondents had been grossly bleated. The aspect of delay has been considered by the Tribunal at paragraph 6 of the order in the following terms:-

"6. Now, let us examine the issue of delay. It is true that the applicant wants the relief from 1.1.1973. It is also true that some of the applicants have retired in the year 2009 and the present applications have been filed after their retirement. However, we cannot deny them the benefit which has been granted to similarly placed persons by the respondents by implementing the orders which we have cited above. In the instant case, we do not find that by granting the benefit of pay scale sought for by the applicants, the same in any manner will affect any other person. In this connection, we would like to reproduce the below the relevant portion of the judgment of the Hon'ble Supreme Court in the case of Union of India and others v Tarsem Singh(2008 (8) SCC 648):

'To summarise, normally, a belated service related claim will be rejected on the ground of



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delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

7. On a careful appreciation of the order of the Tribunal as extracted above, we concur with the finding that the delay is not relevant in the present case and must be condoned.

8. Coming to the merits, the eligibility of the private respondent is not in question as it is admitted that R1 possesses a Bachelors Degree in Zoology.

9. The Delhi High Court in the case of *Indian Agricultural*



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Research v Bishamber Singh & Ors [W.P.(C) No.16025 of 2006 dated 25.02.2008], has also considered an identical case holding in favour of similarly placed employees. This decision has attained finality. As against the decision of the Ernakulam Tribunal, an appeal had come to be filed by the ICAR and in the case of *Agricultural Research and anr v V.Ravindran* C.A.No.4159 of 2009 and batch and by an order dated 08.02.2023, the appeal has been dismissed by the Apex Court.

10. The objections of the ICAR to the effect that the respondents did not possess qualifications as required under Appendix IV of the Technical Services Rules, came to be rejected on the ground that as per Rule 6.3 of the Technical Services Rules, longer experience i.e., experience of 10 years was sufficient to enable movement of the respondents from Category I to Category II. Thus, career advancement cannot be refused to R1 in view of the admitted position of their experience. Same is the factual position in the present matter.

11. The Apex Court has specifically found that those employees in Category I were discharging the same functions as discharged by employees in Category II and hence they satisfy the test of functionality as well. The discussion and conclusion of the Apex Court is as below:-

"The main thrust of the argument of the learned counsel for the Appellants is that under Rule 6.10, the assessment of the eligible persons for merit promotion/advance increments in Categories I and II has to be done by a Selection Committee.

According to the learned counsel, the procedure for assessment of persons for grant of promotion is also detailed in Appendix III of the Rules. In short,



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the contention of the learned counsel for the Appellant is that the Tribunal as well as the High Court conveniently overlooked all these Rules and went solely by Rule 6.3.

But we are not impressed with the aforesaid contention of the learned counsel for the Appellants. Rule 6.3 reads as follows:-

"6.3 As per the revised grade structure, the entrants of Category I at T-1 grade would continue to be regulated for assessment from T-1 to T-2 after five years of service, as at present. However, the T-2 grade personnel, possessing the qualifications, as prescribed hereinafter under the Notification of 3 February 2000 for Category II for direct recruitment, would be eligible for assessment promotion to T-3 grade after five years of service, while those not possessing such qualifications shall become eligible for assessment promotion to T-3 grade only after 10 years of service in T-2 grade. The assessment promotions from T-3 to T-4 and T-4 to T-5 shall continue to be regulated at five years interval, as 6 at present."

A careful reading of Rule 6.3 extracted above would show that persons working in T-1 grade in Category I, possessing the qualifications prescribed in the Rules will be eligible for assessment promotion to T-3 grade in Category II, after five years of service. But those not possessing such qualifications would become eligible for assessment promotion to T-3 grade only after ten years of service in T-2 grade.

In other words, persons possessing the qualifications prescribed in Appendix IV to the service rules, will be eligible for movement from grade T-2 in Category I to grade T3 or T-4 in Category II, if they have put in service of five years. But if they do not have the educational qualifications, they must put in ten years of service. Therefore, Rule 6.3 has been rightly interpreted by the Tribunal as well as by the High Court.

Coming to Rule 6.9 on which reliance is placed, it is



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seen that the same deals with the question of determining the eligibility of a person for grant of merit promotion or advance increments, which reads as follows:-

"6.9 For determining the eligibility of a person for the grant of merit promotion or advance increments, the entire period of the service in the grade including the service rendered in the pre-revised scale of pay will be counted.

(i) The service rendered by an individual in another Institute from where he comes on transfer on compassionate ground will be taken into account for computing the eligibility period of 5 years. (ICAR letter No.7-5/83-Per.III dated 27 August 1984).

(ii) For the purpose of computing the prescribed period for assessment, the period of ad-hoc service in the same grade and also the period of leave, including study leave/EOL, and period spent on deputation, will also be counted.

(iii) However, it may be added that the following periods are not to be counted for computing the prescribed period of eligibility for assessment/promotion to the next higher grade.

(a) Period of suspension treated as dies-non for all purposes inclusive of assessment under Technical Service Rules;

(b) Period of reduction to lower grade as measure of penalty.

(ICAR letter No.7-34/80-Per.III dated 19 May 1982)."

Unfortunately for the Appellants, the Rule does not make a reference to the qualifications stipulated in Appendix IV. Even Rule 6.10, on which reliance is placed, merely stipulates the procedure to be followed for movement from Category I to Category II by referring the matter to a Selection Committee.

A careful look at the entire scheme of the 1975 Rules, as modified on 3.2.2000, would show that Rule 7.4 is the only Rule which refers to the model qualification. Rule 7.4 reads as follows:-



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"7.4 The Model Qualifications prescribed for different groups of the three categories are given in Appendix IV. 8 Note: Alternative qualifications circulated vide the Council's letter No. 7(10)/78-Per.III dated 27.1.1979 are applicable to the Council's employees for the purpose of promotion only against the 33.3% vacancies, reserved for departmental promotions. These qualifications will not, therefore, be applicable to the Council's employees when they apply for technical posts against 66.6% quota reserved for direct recruitment."

Rule 7.4 is followed immediately by Rule 8, which deals with direct recruitment. Rule 8.3 which makes the qualifications prescribed in Appendix IV applicable to appointments, reads as follows:

"8.3 The minimum educational/trade qualifications prescribed for different groups of the three categories will be as per Appendix IV. Any modifications to this Appendix, if considered necessary, will be made in consultation with the Agricultural Scientists' Recruitment Board.

Note: In the case of ex-servicemen, the equivalence for their qualifications with those prescribed in Appendix IV will be decided in consultation with the Director-General of the Resettlement, Ministry of Defence."

Unfortunately, Rule 8.3 finds a place only under the heading 'Direct Recruitment'.

Therefore, in the absence of any specific reference to the educational qualifications prescribed in Appendix IV and also in view of the enhanced experience criteria prescribed in Rule 6.3 for those not possessing the educational qualifications, we do not think that the Tribunal or the High Court committed a serious error warranting interference by this Court.

It must be pointed out that the Respondents were appointed more than 50 years ago and they have



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retired perhaps more than a decade or two ago. Learned counsel for the Appellants expressed an apprehension that this interpretation may open a floodgate. But we are only dealing with the cases of the Respondents and in particular, Rule 6.3. Therefore, we do not think that this can really open the floodgate.

This case actually arises out of the merger of two grades, namely, T-I-3 in Category I and grade T-II-3 in Category II. Therefore, we do not think that the apprehension expressed by the learned counsel for the Appellants will be justified.

In view of the above, the Appeals are dismissed. There will be no order as to costs.

Pending application(s), if any, stand disposed of."

12. Incidentally, the High Court of Orissa, has taken a view adverse to R1 as against which, a Special Leave Petition has been filed by similarly placed respondents in C.A.No. 007118 of 2011 which is pending before the Apex Court.

13. In view of the authoritative pronouncement of the Apex Court in the case of *V.Ravindran*, as noticed aforesaid, we have no hesitation in confirming the order of the CAT impugned before us and dismiss this writ petition. No costs. Connected miscellaneous petition is closed.

[A.S.M., J] [G.A.M., J]
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Index:Yes/No
Neutral Citation:Yes
ssm

To



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The Registrar,
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