

(2014) 10 AHC CK 0055
In the Allahabad High Court
Case No : C.M.W.P. No. 2520 of 2013

Bal Krishna Choubey

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 226

Citation : (2014) 11 ADJ 30 : (2015) 3 ALJ 25 : (2015) 108 ALR 35 : (2015) 2 AWC 1236

Hon'ble Judges : Satish Chandra, J; Dilip Gupta, J

Bench : Division Bench

Advocate : Bhagwati Prasad Singh and Vivek Kumar Singh, Advocates for the Appellant; Ram Dular and Narendra Pratap Singh, Advocates for the Respondent

Judgement

Dilip Gupta and Dr. Satish Chandra, JJ.—This petition seeks the quashing of the order dated 19 October, 2012 passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad (the Tribunal) by which Original Application No. 1180 of 2009 filed by the petitioners under section 19 of the Administrative Tribunal Act, 1985 has been dismissed. The petitioners also seek the quashing of the order dated 29 May, 2009 passed by the Director of the Indian Grassland and Fodder Research Institute, Jhansi (the Institute) by which the representation filed by the petitioners for grant of pensionary benefits has been rejected. The petitioners were appointed as Research Fellows on a fixed fellowship of Rs. 500/- per month by office memorandums dated 24 April, 1978 and 1/3 July, 1978 on purely temporary basis for a period upto 31 December, 1978. This was done as the process for appointment of Scientists in the newly constituted Agricultural Research Services (A.R.S.) was likely to take some time. A separate scheme called "Research Fellowship Scheme" was, accordingly, announced by the Indian Council for Agricultural Research (the I.C.A.R.) for appointment of Research Scholars against the vacant positions of Senior Research Assistant/Research Assistant. The period of appointment of the petitioners was subsequently

extended from time to time.

2. Writ Petition No. 12593 of 1984 was filed by the petitioners and two other Research Fellows before the Supreme Court with a prayer that their appointments should be regularized on the post of Scientist Grade S-I with effect from the date they joined as Research Fellows in 1977-78. This petition was disposed of by the Supreme Court on 25 March, 1985 in view of the statement made on behalf of the respondents that the petitioners would be allowed to appear at the ARS examination to be held in 1986 after relaxing the age requirement. The Supreme Court also ordered that the services of the petitioners shall not be terminated until the next examination is held.

3. The age limit was relaxed and the petitioners were permitted to appear at the ARS examination to be held in 1986 for which a letter dated 29 January, 1986 was sent by the ICAR to the Director of the Institute. Accordingly, a letter dated 14 February, 1986 was also sent by the Administrative Officer of the Institute to the petitioners informing them that the Governing Body of the ICAR had approved the proposed relaxation in their age limit for the purpose of appearing at the ARS examination to be held in 1986. The petitioners, however, did not appear at the examination held in 1986 and filed Writ Petition No. 4082 of 1986 in the High Court. An interim order dated 29 September, 1986 was passed in the aforesaid writ petition that the respondents shall pay the salary of Scientist S/ SRA to the petitioners. Subsequently, this petition was transferred to the Tribunal and was numbered as T.A. No. 18 of 1997. This transfer application was dismissed by the Tribunal by a detailed order dated 17 April, 2001. The Tribunal found that the persons who had been appointed as Research Fellows for a period of one year were not entitled to claim pay parity with the regularly appointed Research Assistant/Senior Research Assistant. The Tribunal also found that the applicants had never availed the opportunity of taking the competitive examination for induction in the Scientist Grade. However, as the petitioners had received the higher salary under the interim order passed by the High Court on 29 September, 1986, the Tribunal ordered that the salary/allowances already paid under the interim order shall not be recovered from the petitioners. It also directed that the respondents shall be at liberty to consider the petitioners for continuance on the post on the basis of qualification and experience or induction to a suitable grade of Scientist in ARS entirely on merits as per the Rules.

4. The petitioners assailed the order of the Tribunal by filing Writ Petition No. 16750 of 2001, Mahesh Prakash Rai and 2 others v. Central Administrative Tribunal and 3 others. This petition was dismissed by the judgment dated 8 May, 2007. The Court found that the job responsibility and other conditions of service of the petitioners vis-a-vis the Research Assistant and the Senior Research Assistant with whom the petitioners were claiming parity were not at par and, therefore, the doctrine of "equal pay for equal work" would not apply. The petitioners retired on attaining the age of superannuation of 60 years on 31 July, 2008.

5. The petitioners submitted a representation for grant of pensionary benefits. The representation was forwarded by Institute to the ICAR which, by its communication dated 29 July, 2008, informed the Director that the request for grant of pensionary benefits cannot be acceded to in view of the provisions of the Rule 13 of the CCS. (Pension) Rules, 1972 (the 1972 Rules). Accordingly, copy of the communication dated 29 July, 2008 was forwarded to the petitioners.

6. The petitioners also filed Original Application No. 8130 of 2008 before the Tribunal contending that the age of superannuation should be 62 years and not 60 years. This Original Application was dismissed by the Tribunal by order dated 8 August, 2008. It was, however, ordered that the applicants shall be entitled to pensionary benefits, if any, in accordance with law and the order shall not prejudice the rights of the applicants to claim this relief either departmentally or through the Court.

7. Pursuant to the aforesaid order, the petitioners submitted a representation before the Director of the Institute. This representation was forwarded by the Director to the ICAR which informed the Director that the ICAR had earlier conveyed its decision on 29 July, 2008 that the petitioners were not entitled to pension and there was no necessity of changing its earlier decision. The Director, accordingly, by order dated 29 May, 2009 rejected the representation filed by the petitioners.

8. The order of the Director of the Institute dated 29 May, 2009 was assailed by the petitioners in Original Application No. 1180 of 2009. It is against the rejection of this Original Application by the Tribunal by the order dated 19 October, 2012 that the present petition has been filed.

9. Learned Senior Counsel for the petitioners has submitted that the claim of the petitioners for pension has been illegally rejected by the ICAR and the Tribunal committed an illegality in not allowing the claim of the petitioners. In this connection, learned Senior Counsel has placed reliance upon the communication dated 27 January, 2003 sent by the Director of the Institute to ICAR as also the letter dated 20 October, 2006 sent by the ICAR to the Director of the Institute and submitted that since the petitioners had been adjusted on the post of Experimental Scientist against which they were working, the petitioners were entitled to grant of pension under Rule 13 of the 1972 Rules. It is the submission of the learned Senior Counsel that the petitioners had worked about 30 years and, therefore, there was no reason to deny pension to them. In this connection, learned Senior Counsel has placed reliance on the decision of the Supreme Court in Jacob M. Puthuparambil and others Vs. Kerala Water Authority and others, and the decisions of this Court in Rajendra Singh Vs. Accountant General, U.P., Lekha II and Others, ; Smt. Shakuntala alias Brahmo Devi Vs. Director of Pension and Others, ; Babu Singh v. State of U.P. and others 2007 (1) ESC 488; The Board of Revenue Vs. Prasidh Narain Upadhyay (Late), ; Shyam Baboo Sharma Vs. District Inspector of Schools, Committee of Management, Chameli Devi Inter College and Ravi Shankar, and Chhedi Ram Maurya Vs. Uttar Pradesh Basic Education Board

and Others, . It is also the submission of the learned Senior Counsel for the petitioners that the finding recorded by the Tribunal that the petitioners did not appear in the examination held in 1986 is factually incorrect.

10. Sri Narendra Pratap Singh, learned Counsel appearing for the respondents has, however, contended that the petitioners are not entitled to grant of pension in view of Rule 13 of the 1972 Rules which provides that the qualifying services of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or officiating or temporary capacity provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post. In this connection, learned Counsel for the respondents drew the attention of the Court to the appointment orders of the petitioners as also the finding recorded by the Tribunal.

11. We have considered the submissions advanced by the learned Counsel for the parties.

12. It clearly transpires from the office memorandums dated 24 April, 1978 and 1/3 July, 1978 that the petitioners were appointed as Research Fellows for the period upto 31 December, 1978 purely on a temporary basis on a fellowship of Rs. 500/- per month. This temporary appointment of the petitioners was subsequently extended from time to time. The petitioners had filed Writ Petition No. 12593-95 of 1984 before the Supreme Court for regularizing the appointment of the petitioners on the post of Scientist Grade S-I by inducting them into the ARS and for extending the benefits of facilities applicable to the post of Scientist Grade S-I but this petition was dismissed by the Supreme Court on 25 March, 1985 in view of the statement made by the learned Counsel for the respondents that the petitioners will be allowed to appear at the ARS examination to be held in 1986 after relaxing the age requirement. The Supreme Court also ordered that the services of the petitioners will not be terminated until the next examination is held. The ICAR had relaxed the age limit so that the petitioners could appear at the examination to be held in 1986 and information in this regard was also sent to the petitioners by a letter dated 14 February, 1986 but the petitioners did not avail this opportunity and did not appear at the examination. In fact, they filed Writ Petition No. 4082 of 1986 which was transferred to the Tribunal. The transfer application was dismissed by the Tribunal by a detailed order dated 17 April, 2001. Writ Petition No. 16750 of 2001 filed by the petitioners to challenge the order passed by the Tribunal was dismissed. The petitioners were retired on attaining the age of 60 years and Original Application No. 8130 of 2008 filed by the petitioners for a relief that they should be superannuated on attaining the age of 62 years was dismissed with liberty to the petitioners to move a representation for claiming the pensionary benefits. The representation filed by the petitioners for claiming the pensionary benefits has been rejected in view of the provisions of Rule 13 of 1972 Rules by order dated 29 May, 2009. The Tribunal, while rejecting the submission advanced

on behalf on the petitioners to assail the order dated 29 May, 2009, found as a fact that the petitioners did not avail of the opportunity for appearing at the examination held in 1986 and the findings recorded by the Tribunal in this context are as follows:

"Having given thoughtful consideration to the arguments and pleadings of the parties and the case law referred to by the learned Counsel for the parties, I agree with the arguments advanced by the learned Counsel for the respondents. The applicants were never appointed substantively against any post, nor were they ever regularized. They did not appear in the examination in the year 1986 which was prerequisite for regularization, inspite of full knowledge of the same. They even submitted their applications to the Department for forwarding the same to the concerned authorities, for appearing in the said examination (SCA 1 to SCA-5 filed with the Supplementary Counter affidavit) and they were intimated vide letter dated 14.2.1986 and 25.7.1986 to appear in the examination taking place in the year 1986 (copy of advertisements published in the National Newspapers enclosed with the above letters) which was received by the applicants (SCA-1 to SCA-4). The ICAR considered the request of the applicants for pensionary benefits and did not accede to it, as communicated by letter dated 29.7.2008. As per order of the Tribunal dated 8.8.2008 passed in O.A. No. 813/2008, the case of the applicants was again considered, as communicated vide letter dated 29.7.2008 and it was found that there was no change in the decision of the ICAR, consequently, the impugned order was passed. Moreover, the applicants are claiming the benefit of Rule 13 of CCS (Pension) Rules, 1972 for claiming pensionary benefits which provides "qualifying service of a Government Servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity, provided that officiating and temporary service is followed without interruption by substantive appointment in the same or another service or post." But the applicants have not been able to establish their claim because they were never appointed either in substantive or in officiating or temporary capacity. Therefore, this rule also will not be helpful to the applicants. The case law referred to by the learned Counsel for the applicants are not applicable in the present case. In view of the foregoing analysis, the O.A. lacks merit and is liable to be dismissed. The O.A. is accordingly dismissed. No costs."

13. The petitioners were never substantively appointed as Scientist. They were also not appointed either in officiating or temporary capacity. They are clearly not entitled to the grant of pension in view of the provisions of Rule 13 of the 1972 Rules as they do not have the requisite qualifying service. The finding recorded by the Tribunal in this regard, therefore, does not suffer from any illegality. The petitioners had been granted an opportunity to appear at the examination for induction in the Scientist Grade but they did not appear at this examination. The submission of the petitioners that the opportunity was not granted cannot be accepted as copies of the orders/communications in this regard have been placed on record. Mere recommendations made by the Institute to the ICAR will not

help the petitioners as the decision has to be taken by the ICAR. Continuance of the petitioners for a substantial period of time would also not help the petitioners as pension is to be granted in terms of the applicable Rules and as noticed above, the petitioners were not entitled to pension under the Rules. The decisions relied upon by the learned Senior Counsel for the petitioners, therefore, do not help the petitioners.

14. The order passed by the Tribunal does not suffer from any illegality which may call for interference by this Court under Article 226 of the Constitution. The writ petition is, accordingly, dismissed.