

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD
BENCH : AT HYDERABAD

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O.A.No. 757 of 1989

Date of Decision: 31.8.90

Between:-

V. Balarama Murthy .. Applicant

and

1. Union of India represented by its Secretary, Ministry of Agriculture, Department of Rural Development, New Delhi.
2. The Agricultural Marketing Advisor to Govt. of India, Directorate of Marketing and Inspection, NH-IV, Fareedabad, Pin:121001.
3. State of Andhra Pradesh, represented by its Secretary, Food and Agriculture Department, Secretariat Bldgs., Saifabad, Hyderabad-500004.
4. The Commissioner and Director of Agriculture, Government of Andhra Pradesh, Fathemaiddan, Hyderabad-500001.

.. Respondents

Appearance:-

For the Applicant : Shri V. Jogayya Sarma, Advocate.
For the Respondents
1 & 2 : Shri Naram Bhaskar Rao, Addl. CGSC.
For the Respondents
3 & 4 : Shri D. Panduranga Reddy, Special Counsel for A.P. Govt.

CORAM:

THE HONOURABLE SHRI B.N. JAYASIMHA, VICE-CHAIRMAN.
THE HONOURABLE SHRI D. SURYA RAO, MEMBER (JUDICIAL).

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
SHRI D. SURYA RAO, Member (J)).

1. The Applicant herein joined the service of the Government of Andhra Pradesh in the year 1956. He worked

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in the State Government as Field Assistant/Tobacco Assistant in the Department of Agriculture from 1-10-1956 to 19-1-1963. While working so, the Union Public Service Commission advertised for recruitment to the post of Deputy Marketing Development Officer in the Directorate of Marketing and Inspection under the Ministry of Agriculture, Government of India. The Applicant had applied for this post. After the interview, he was selected. The Applicant submitted a resignation on 2-1-1963 to the State Government. The Director of Agriculture by Memo dated 11-1-1963 bearing Memo No.Estt.II(5)/165/63, accepted the resignation of the Applicant and informed him that his name would be removed from the list of approved candidates selected by the Public Service Commission for regular appointments as Agricultural Assistants in the Department.

2. The Applicant joined the post of Deputy Marketing Development Officer on 23-1-1963 afternoon. The Government of India, Ministry of Home Affairs, Department of Personnel and Administrative Reforms, by its Memo No.3(20)/Pen(A)/79, dated 31-3-1982 issued orders in consultation with the State Government whereby it is ^{clarified &} ~~clear~~ that there would be allocation of pensionary liability in respect of temporary service rendered in the Government of India and the State Government. In that order it has been decided in consultation with the State Government that there is pensionary liability in respect of temporary service rendered under the Central and State Governments to the extent such services would have qualified for grant of pension under the rules of the respective Governments. The pension liability will be shared by the Government concerned on service-share

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basis. This was subject to certain conditions.

3. The applicant alleges that on 27-6-83 the Government of India asked for clarification from the A.P. State Government whether the State Government would share pensionary liability for the period 1956 to 1963 of service rendered by the applicant under the A.P. Government. On 2-4-1983 the Director of Agriculture, Government of Andhra Pradesh, furnished the service certificate to the effect that the Applicant had consequent on his selection for the post of Deputy Marketing Development Officer under the Government of India, tendered his resignation for the post in the State Department of Agriculture and that it was accepted with effect from 19-1-1963 afternoon. The Government of India, however, raised a query to the effect that it has not been stated that whether the resignation tendered by the applicant was for administrative reasons and/or to satisfy the technical requirements to join the new post under the Government of India with proper permission. Since certificate that the State Government would share the proportionate pensionary liability in respect of the service rendered by the Applicant under the State Government was necessary, the Central Government requested the State Government to make available such certificate in terms of Ministry of Home Affairs, Department of Personnel and Administrative Reforms No.3(20)/Pen.(a)79, dated 31-3-1982. Thereafter the applicant was informed on 5-4-1988 that the Food & Agriculture Department, Government of Andhra Pradesh, had intimated that the Applicant's resignation was not accepted to take up another appointment. Hence his request for counting of past service rendered under the Government of Andhra Pradesh cannot be accorded. On further representations xxxxxx xxxxxx xxxxxx

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by the Applicant, the earlier letter dated 5-4-1988 was reiterated vide letter dated 2-1-1989 from the Ministry of Agriculture, Government of India, to the Applicant. Thereafter the Applicant filed the present application stating that the State Government has no option to refuse to pay the share for the period for which the Applicant worked in the State Government from 20-1-1956 to 19-1-1963. He relied on the Government of India, Ministry of Home Affairs Memo dated 31-3-1982. He contends that the action of the State Government offends Article 21 of the Constitution. He alleges that despite the Government of India, ^{having} reconsidered the matter, no orders have been passed by the State Government on the subject. The Applicant has therefore prayed for the following reliefs:-

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- (i) Compel the respondents to treat the services rendered by the Applicant between 20-1-1956 to 19-1-1963 in the State Government as service which could be counted as qualifying service for grant of pension on the eve of the retirement of the applicant from the post of Senior Marketing Officer, Directorate of Marketing and Inspection;
- (ii) To declare that the State Government is bound by the decision of the Government of India communicated in No.2(20)/Pen.A/79, dated 31.3.1982 of the Government of India, Ministry of Home Affairs, Department of Personnel & Administrative Reforms in as much as the same was issued in consultation with the State Government;
- (iii) To declare that the action of the State Government in refusing to count the services rendered by the Applicant in Andhra Pradesh Government for the purpose of pension, etc., as illegal, arbitrary and opposed to the principles of natural justice and offends Article 21 of the Constitution of India;
- (iv) To grant such other relief or reliefs as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

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4. The applicant has made the Union of India and the Agricultural Marketing Advisor, Government of India, as Respondents 1 and 2 and the State of Andhra Pradesh represented by its Secretary, Food & Agriculture Department, and the Commissioner and Director of Agriculture, Government of Andhra Pradesh as Respondents 3 and 4.

5. On behalf of Respondents 1 and 2, a counter has been filed. Facts relating to making of representations by the Applicant and correspondence between Government of India and the State Government of Andhra Pradesh are not denied. It is stated that the counting of service rendered by the applicant in the State Government for purposes of pensionary liability is dependant upon the furnishing of ^{the} requisite certificate by the State Government and that if the A.P.State Government refuses to issue such certificate, the reciprocal agreement as enunciated in the Government of India's order dt.31-3-1982 cannot be acted upon unilaterally by the Central Government. It is stated that the Central Government had again approached the Andhra Pradesh Government to reconsider its decision and issue the requisite certificate. Since the certificate has not been received, the Central Government is liable to settle the pensionary benefits of the applicant only for the period of his service rendered under the Central Government. For these reasons,

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they pray that there are no merits in the application and the same may be dismissed with costs. The State Government is not represented by any counsel though notice was served.

4. We have heard the learned counsel for the applicant Shri Jogayya Sarma, and the learned standing counsel ^{for the Central Government-90} Shri Naram Bhaskar Rao. The applicant is praying for a direction to compel the respondents to treat the service rendered by him between 20-1-1956 to 19-1-1963 as qualifying service for grant of pension. He seeks a further direction that State Government is bound by the Government of India decision communicated in letter No.2(20)/Pen.A/79, dated 31-3-1982, Ministry of Home Affairs, Department of Personnel & Administrative Reforms and liable to contribute to the pension for the period of service rendered in the State Government. From the facts stated above it is also clear that Government of India is not averse to treating the said period of service rendered as qualifying service for pension. However, the liability is not that of Government of India and is only that of the State Government. Unless the State Government accepts this liability there is nothing that the Government of India can do in the matter. By virtue of the agreement between the Government of India and State Government as contained in Ministry of Home Affairs

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~~Letter~~ dated 31-3-1982 there should be allocation of pensionary liability in respect of the services rendered by applicant under the Government of India and State Government. The correspondence between the Government of India and State Government produced by the applicant particularly the final letter dt.9-6-1989 enclosed by the applicant to this application shows that the Government of India was of the view that the reasons given by the State Government are not tenable. The Government of India ^{had therein} ~~therefore~~ requested the State Government to re-consider the claim of the applicant for counting his service and to communicate its decision to the Government of India. Thus the Government of India has done all that it can do to enforce the agreement between the Government of India and State Government as contained in the Ministry of Home Affairs letter dt.31-3-1982. The State Government has not responded to the communications of the Government of India. In ^{the} ~~the~~ circumstances the only remedy of the applicant is to proceed against the State Government and not against the Government of India. Since the dispute is with ~~reference~~ to the service rendered by the applicant in the State Government and not with ~~reference~~ to service rendered in the Government of India, ^{the} ~~being~~ called upon to bear the liability nor can any direction be issued to the Government of India in this regard. It the applicant

is aggrieved by the inaction of the State Government in granting him any benefits, he has to sue only the State Government. No doubt the State Government has been made a party to this application but the further ~~question~~ ^{is} ~~that~~ whether this Tribunal can adjudicate or determine the claim of the applicant against the State Government. Section 14 of the Administrative Tribunals Act, 1985 confers jurisdiction on this Tribunal to grant relief in relation to all service matters concerning persons recruited to any All India Service or to any Civil post of the Union. No doubt the applicant is a member of the Civil Post of the Union. However, the relief he is asking for i.e. payment of pension or contribution by the State Government is ^{for} ~~the~~ services rendered to the State Government and not under the Union. This Tribunal obviously cannot have any jurisdiction to adjudicate in regard to a claim made in regard to service rendered in a Civil Post under the State Government. The remedy of the applicant is either to approach the Andhra Pradesh Administrative Tribunal or to approach the A.P. High Court for any such relief. In the circumstances we are of the opinion that grant of the relief prayed for is wholly and solely against the State of Andhra Pradesh and not against the Government of India, ^{and that the grant of} ~~for~~ such relief he cannot move this Tribunal.

5. Shri Jogayya Sarma, counsel for the applicant

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To

1. The Secretary, Union of India,
Ministry of Agriculture, Dept. or Rural Development,
New Delhi.
2. The Agricultural Marketing Advisor to Govt. of India,
Directorate of Marketing and Inspection, NH-IV, Fareedaabad,
Pin- 121001.
3. The Secretary, State of A.P., Food and Agriculture Department,
Secretariat Buildings, Saifabad, Hyderabad --4.
4. The Commissioner and Director of Agriculture, Govt. of A.P.,
Fathemaigan, Hyderabad-1.
5. One copy to Mr. v. Jogayya Sarma Advocate
5-1-896/6, Putli Bowli, Hyderabad.
6. One copy to Mr. N. Bhaskar Rao, Addl. CGSC, CAT. Hyd. Bench
7. One copy to Mr. D. Panduranga Reddy, Spl. Counsel for A.P. Govt.
8. One spare copy.

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for any orders and he is only seeking a declaration against the State Government. We are of the view that such a declaration would or could lie only with regard to the service rendered as a member of the Civil Service under the Union and ^{an application to this Tribunal for the} the declaration cannot lie in regard to the service rendered as a member of a State Government. In any event, issuance of such a declaration would be a futile exercise as any such declaration would not be enforceable by this Tribunal. For the reasons given above we are of the view that the present application seeking directions as prayed for to the State Government is not maintainable. In the circumstances, the application is rejected. No order as to costs.

B.N. Jayasimha
 (B.N. JAYASIMHA)
 Vice-Chairman

D. Surya Rao
 (D. SURYA RAO)
 Member (J)

Dated : 31st August, 1990 .

D. V. Rama Rao
 Deputy Registrar (Judl)

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