

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2681 OF 2013 AND O.A.NO.1385 OF 2014
New Delhi, this the 22nd day of December, 2016

CORAM:

HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

.....

In both the O.As.:

Dr.Ravi Prakash,
aged 51 years, s/o late Shiv Kutilal,
resident of C-206, S.G. Impression,
Sector-4B, Vasundhara, Ghaziabad, U.P.,
Working as Registrar, Protection of Plant Varieties & Farmers'
Rights Authority,
S-2, A Block, NASC Complex,
DPS Marg, New Delhi 110012 Applicant

(By Advocate: Mr.Amit Anand)

Vs.

1. Union of India, through Secretary,
Ministry of Agriculture,
Krishi Bhawan,
New Delhi
2. The Chairperson,
Protection of Plant Varieties and Farmers' Rights
Authority,
S-2, A Block, NASC Complex,
DPS Marg,
New Delhi 110012
3. The Chairman,
Coconut Development Board,
Ministry of Agriculture,
Government of India,
Kochi, Kerala Respondents

(By Advocates: Mr.Rajeev Sharma for R-1, Mr.Rajinder Nischal for R-2, and Ms.P.K.Gupta for R-3)

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ORDER

Per RAJ VIR SHARMA, MEMBER(J):

We have perused the records of O.A.Nos.2681 of 2013 and 1385 of 2014, and have heard Mr.Amit Anand, the learned counsel appearing for the applicant, and Mr.Rajeev Sharma, Mr.Rajinder Nischal, and Ms.P.K.Gupta, the learned counsel appearing for the respondents. We have also perused the written notes of submissions filed by Mr.Amit Anand.

2. Both the O.As. being intertwined have been heard together and are being disposed of by this common order.

3. Brief facts giving rise to both the O.As. are as follows:

3.1 The applicant joined the service of respondent no.3-Coconut Development Board on 13.9.1985. Respondent no.2-Protection of Plant Varieties and Farmers' Rights Authority (hereinafter referred to as "PPV & FR Authority") issued an Advertisement No.PPV& FR Authority/7-03/2011 inviting applications for filling up one post of Registrar in PB 4: Rs.37,400-67,000/- with Grade Pay Rs.8700/- on deputation/transfer or absorption basis (including short term contract) from amongst officers of the Central/State

Government/UT/State Agricultural University recognized Research Institutions, Autonomous Organization/ Semi Government organization/PSUs. The applicant was working as Deputy Director (Dev.) with the respondent no.3-Coconut Development Board, when he made the application in response to the said Advertisement for selection and appointment to the post of Registrar, PPV & FR Authority. Respondent no.2-PPV& FR Authority, vide its letter dated 19.4.2012, informed respondent no.3-Coconut Development Board as follows:

“....Dr.Ravi Prakash has been selected for the post of Registrar on deputation basis. However, the Authority may consider to appoint Dr.Ravi Prakash on absorption basis provided he is willing to be appointed on permanent absorption basis and the Coconut Development Board is willing to discharge his pensionary liability on proportionate basis for the service rendered by him in the Coconut Development Board. An early reply in the matter is requested.

This issues with the approval of Competent Authority.”

Respondent no.3-Coconut Development Board, vide its letter dated 30.4.2012, informed respondent no.2- PPV & FR Authority that the applicant was willing to be appointed on permanent absorption basis in the PPV & FR Authority, and that the Coconut Development Board was willing to discharge his pensionary liability on proportionate basis for the service rendered by the applicant in the Coconut Development Board.

Accordingly, respondent no.2- PPV & FR Authority issued O.M. dated 3.5.2012 offering appointment to the applicant on the post of Registrar on absorption basis in PB 4: Rs.37,400-67,000/- with Grade Pay Rs.8700/- on the terms and conditions mentioned in the said O.M. Accepting the said offer, the applicant reported to respondent no.2- PPV & FR Authority for duty on 15.5.2012 as Registrar, and respondent no.2- PPV & FR Authority issued office order dated 17.5.2012 appointing the applicant as Registrar on absorption basis with effect from 15.5.2012 on the terms and conditions mentioned in the O.M. dated 3.5.2012, *ibid.* Respondent no.2- PPV & FR Authority, vide its letter dated 3.7.2012, sought advice from respondent no.1-Ministry of Agriculture in the matter of eligibility, or otherwise, of the applicant for non-contributory pension from PPV & FR Authority, and operating of a separate GPF Account in respect of the applicant. In response to respondent no.2- PPV & FR Authority's letter dated 3.7.2012, respondent no.1-Ministry of Agriculture issued O.M. dated 10.10.2012 calling upon respondent no.2-PPV & FR Authority to clarify as to whether the post of Registrar was filled up directly on absorption basis and also whether due procedure was followed by the PPV&FR Authority as per the norms laid down by the Department of Personnel & Training. Respondent no.2- PPV &

FR Authority, vide its letter dated 11.10.2012, clarified to respondent no.1-Ministry of Agriculture that the applicant was appointed as Registrar on absorption basis as per the provisions of the Recruitment Rules. Thereafter, respondent no.1-Ministry of Agriculture, vide its letter dated 19.7.2013, informed respondent no.2- PPV & FR Authority as follows:

- “i. As regards opening of New Account for Old Pension Scheme, the GPF and Old Pension Scheme have not been made applicable to PPV&FR Authority as it was established after 01.01.2004. If PPV & FR Authority is not a pensionable organization, the question of counting of past service for pension from PPV & FR Authority would not arise.
- ii. Accordingly, if Dr.Ravi Prakash wishes to repatriate, he should be allowed to do so by the Authority.
- iii. PPV&FR Authority is advised strictly to not take on people on deputation/make recruitment without prior clearance/consultation of Department of Agriculture & Cooperation.”

Respondent no.2-PPV & FR Authority, vide its office order dated 2.8.2013, called upon the applicant to furnish his comments by 5.8.2013 on the observations contained in the respondent no.1-Ministry of Agriculture's letter dated 19.7.2013, *ibid*, a copy whereof was also enclosed with the said office order. Soon thereafter, the applicant filed OA No.2681 of 2013 seeking the following reliefs:

- “(i) To quash the impugned order 1-8/2012-S.D.V. dated 19.07.2013 (Annexure-A-1 (Colly.) issued by the respondent No.1 and direct the respondents to continue the applicant in old pension scheme i.e. as per the service condition under which the applicant was absorbed and to pay interest in the GPF account as per the law.
- (ii) May also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice.”

3.2 In O.A.No.2681 of 2013, respondent no.2- PPV & FR Authority filed counter reply and additional counter reply resisting the claim of the applicant. In its additional counter reply, respondent no.2-PPV&FR Authority took the stand that appointment of the applicant on absorption basis was erroneous. The direct absorption of the applicant is against Regulation 5(1) of PPV& FR Regulations, 2006, which stipulates that Registrar can be taken on deputation and absorption. According to respondent no.2, a person appointed as Registrar on deputation basis can be absorbed, and the applicant could not have been appointed as Registrar on absorption basis. Respondent no.2-PPV& FR Authority also took the stand that the applicant is not entitled either to the benefit of the old Pension Scheme or to continue as a member of the GPF, because he was absorbed in PPV&FR Authority after 1.1.2004, and the old Pension Scheme was not in

operation in the PPV&FR Authority which came into existence only on 11.11.2005.

3.2.1 In its counter reply, respondent no.1-Ministry of Agriculture took the stand that the applicant's appointment as Registrar in PPV&FR Authority on absorption basis was erroneous because approval of the Central Government under Rule 20(3) of the PPV & FR Rules, 2003 was not obtained.

3.2.2 In their counter reply, respondent no.3-Coconut Development Board stated, *inter alia*, that they are ready to discharge the pensionary liability on proportionate basis for the service rendered by the applicant in the Coconut Development Board.

3.3 In view of the aforesaid stand taken by respondent no.1-Ministry of Agriculture, and respondent no.2- PPV & FR Authority, the applicant filed OA No.1385 of 2014 seeking the following reliefs:

- “1. That it is most humbly prayed that this Hon'ble Tribunal may graciously be pleased to direct the Respondent No.1 and 2 to hold the absorption of the applicant in accordance with the rules and to perpetually restrain from repatriating or removing the applicant from the post of Registrar in Respondent No.2 on grounds of erroneous absorption and wrong appointment in pursuance of the stand taken by the Respondent No.1 and 2 in their counter affidavit filed in OA 2681/2013.”

3.4 Resisting OA No.1385 of 2014, respondent no.2-PPV & FR Authority have filed a counter reply wherein they have more or less reiterated the same averments and contentions as in their counter reply to OA No.2681 of 2013.

3.4.1 The applicant has filed a rejoinder reply refuting the stand taken by respondent no.2-PPV & FR Authority.

3.5 In their counter reply to OA No.1385 of 2014, respondent no.3-Coconut Development Board have stated, *inter alia*, that the lien of the applicant in their organization expired w.e.f. 14.5.2014.

4. The Tribunal, vide its interim order dated 25.4.2014 passed in OA No.1385 of 2014, directed that 'the respondents shall not pass any adverse orders against the applicant so far as his repatriation is concerned, without leave of this Tribunal'. This interim order still remains in force.

5. In the above backdrop, Mr.Amit Anand, the learned counsel appearing for the applicant, contended that when the Advertisement was issued by respondent no.2-PPV&FR Authority inviting applications for filling up one post of Registrar on deputation/transfer or absorption basis (including short term contract), and when respondent no.2-PPV&FR Authority duly selected the applicant and appointed

him to the post of Registrar on absorption basis, the plea taken by respondent no.2-PPV&FR Authority in the present proceedings that the applicant could not have been appointed as Registrar on absorption basis, and that his appointment on absorption basis is against Regulation 5(1) of the PPV & FR Authority Regulations, 2006, is untenable.

5.1 It was also contended by Mr.Amit Anand that PPV & FR Authority has been invested with the power to make appointment to the post of Registrar under Section 12(4) of the PPV & FR Act, 2001. The appointment of the applicant as Registrar on absorption basis has been made in accordance with Regulation 5 (1) of the PPV & FR Regulations, 2006. Rule 20(3) of the PPV & FR Rules, 2003 is not applicable to the case of appointment to the post of Registrar. Therefore, the question of obtaining prior approval from the Central Government for making appointment of the applicant as Registrar on absorption basis did not arise.

5.2 It was also contended by Mr.Amit Anand that acting on the offer of appointment issued by respondent no.2-PPV& FR Authority appointing him as Registrar on absorption basis, the applicant left his permanent job in respondent no.3-Coconut Development Board, and joined the

service of respondent no.2- PPV& FR Authority. Therefore, respondent no.2-PPV&FR Authority is estopped from turning back and saying that the appointment of the applicant as Registrar on absorption basis was erroneous. In support of this contention, Mr.Amit Anand placed reliance on the decision of the Hon'ble High Court of Orissa in **Pratima Das Vs. State of Orissa**, AIR 1975 Orissa 155.

5.3 It was also contended by Mr.Amit Anand that the applicant's lien in the service of respondent no.3-Coconut Development Board expired with effect from 14.5.2014, and repatriation of the applicant at this juncture would amount to his being thrown out of job which, under law, is impermissible.

5.4 It was also contended by Mr.Amit Anand that the applicant having been duly appointed as Registrar on direct absorption basis by respondent no.2- PPV& FR Authority, and there being no rule for repatriation of an employee, like the applicant, who was permanently absorbed in the service of respondent no.2-PPV&FR Authority, the applicant cannot be repatriated by respondent no.2-PPV&FR Authority to his erstwhile parent organization. To buttress this contention, Mr.Amit Anand placed reliance on the decision of the Hon'ble

Supreme Court in **Umapati Choudhary Vs. State of Bihar & another**, (1994) 4 SCC 659, where it has been held that as there is a tripartite agreement among lending Authority, borrowing Authority, and the employee, for permanent absorption, the employee cannot be repatriated unless it was not in public interest or vitiated by favouritism or *mala fide*.

5.5 It was also contended by Mr.Amit Anand that since its inception, respondent no.2- PPV& FR Authority has been making appointments to various posts which are outside Fourth Schedule, referred to in Rule 20(1) of the Protection of Plant Varieties & Farmers Rights Rules, 2003, without obtaining approval from respondent no.1-Ministry of Agriculture and Farmers' Welfare, and that the respondent no.1-Ministry of Agriculture & Farmers' Welfare has never objected to such appointments and, therefore, the objection as now raised by them in the case of the applicant is unsustainable. Mr.Amit Anand has also filed a list showing the names and designations of officers, and years of their appointments made by respondent no.2- PPV& FR Authority without observing the formality of obtaining approval from respondent no.1-Ministry of Agriculture. The said list is reproduced below:

Sl.No.	Posts in Schedule IV	Posts outside Schedule IV		
		Designation	Names of Officers	Year of appointment
1	Financial Advisor	Registrar	Shri R.K.Trivedy	2005
2	Legal Advisor	Registrar	Shri P.K.Singh	2008
3	Senior Accounts Officer	Joint Registrar	Sh.D.R.Choudhury	2008 – Continuing till date.
4	Technical Assistant	Deputy Registrar	Shri U.K.Dubey	2008 – Continuing till date
5	Computer Assistant	Senior Technical Officer	Dr.A.K.Singh	2008 – Continuing Till Date.
		Senior Technical Officer	Dr.Susheel	2008
		Registrar	Dr.Manoj Srivastava	2009
		Joint Registrar	Sh.D.S.Mishra	2010
		Deputy Registrar	Dr.A.C.Sarma	2011
		Registrar	Dr.Tejbir Singh	2011

5.6 It was also contended by Mr.Amit Anand that in view of the provision contained in Regulation 5(2) of the Protection of Plant Varieties and Farmers' Rights Authority Regulations, 2006, that the PPV & FR Authority shall follow Fundamental Rules, Central Civil Services (Leave) Rules, 1972 and Central Civil Services (Pension) Rules, 1972 while fixing salary and other allowances including pension, leave, travelling and daily allowances of the Registrar, the stand taken by the respondent no.2-PPV&FR Authority that the

Central Civil Services (Pension) Rules, 1972, are not applicable to the post of Registrar held by the applicant, is untenable.

5.7 Mr.Amit Anand invited our attention to the Department of Pension & Pensioners' Welfare, O.M. No. 28/30/2004-P&PW(B) dated 28.10.2009, which contained the decision of the Government of India to continue mobility of autonomous body employees who were appointed on or before 31.12.2003 and were governed under the old non-contributory pension scheme of their respective organizations in order to provide for the continuance of pensionary benefits based on combined service in accordance with the CCS (Pension) Rules, 1972. It was contended by Mr.Amit Anand that in view of the provisions contained in the Department of Pension & Pensioners' Welfare O.M. dated 28.10.2009, the applicant, having joined the service of respondent no.3-Coconut Development Board on 13.9.1985, and having been taken on the strength of respondent no.2- PPV&FR Authority on absorption basis with effect from 15.5.2012, is entitled to continue to be governed under the old non-contributory pension scheme, and also to subscribe to G.P.F.

5.8 It was also contended by Mr.Amit Anand that both respondent no.2-PPV&FR Authority and respondent no.3-

Coconut Development Board are under the administrative control of respondent no.1-Ministry of Agriculture & Farmers' Welfare, and that if pension is paid to the applicant by any of the said two organizations, the same only comes from the grants given by respondent no.1-Ministry of Agriculture & Farmers' Welfare, and there will be no extra financial burden on respondent no.1 in allowing the applicant to continue under the old Pension Scheme/Central Civil Services (Pension) Rules, 1972.

6. The learned counsel appearing for the respondents made their submissions on the line of their pleadings which have already been noted supra.

7. From the pleadings and rival contentions of the parties, the following issues arise for our consideration:

- (1) Whether the appointment of the applicant as Registrar of PPV & FR Authority on absorption basis is in accordance with Regulation 5(1) of PPV & FR Regulations, 2006;
- (2) Whether approval of the Central Government under Rule 20(3) of the PPV & FR Rules, 2003, was required to be obtained by the PPV & FR Authority for making appointment of the

applicant as Registrar, PPV & FR Authority, on absorption basis; and

- (3) Whether the applicant is entitled to be covered under the non-contributory pension scheme, i.e., CCS (Pension) Rules, 1972, and the General Provident Fund Scheme, on his appointment as Registrar of PPV & FR Authority on absorption basis with effect from 15.5.2012.

Issue No.1:

8. The applicant had initially joined the Coconut Development Board (respondent no.3) as a Technical Assistant on 13.9.1985. Subsequently, he had earned promotions to different grades. The Coconut Development Board, a statutory body established under the Ministry of Agriculture, Government of India, was governed by the old pension scheme, i.e., Central Civil Services (Pension) Rules, 1972, and General Provident Fund scheme. Thus, the applicant was covered by the old pension scheme and the General Provident Fund scheme while serving under the Coconut Development Board (respondent no.3). While working as Deputy Director (PB-3: Rs.15,600-39100) + GP Rs.6600/-) with the Coconut

Development Board, he responded to the Advertisement issued by respondent no.2-PPV & FR Authority for filling up one post of Registrar (PB-4: Rs.37,400-67,000/- + GP: Rs.8,700/-) “on deputation/transfer or absorption basis (including short term contract)” from amongst officers of the Central/State Government/ UT/ State Agricultural Universities/Recognized Research Institutions/ Autonomous Organizations/ Semi-Govt. organizations/PSUs. The PPV & FR Authority, a statutory body corporate came into being on 11.11.2005, vide S.O No.1589 (E) dated 11.11.2005. Respondent no.2- PPV & FR Authority, vide its letter dated 19.4.2012, while informing respondent no.3-Coconut Development Board about the selection of the applicant for appointment to the post of Registrar on deputation basis, also indicated to the Coconut Development Board that they might consider to appoint the applicant on absorption basis provided he was willing to be appointed on permanent absorption basis and the Coconut Development Board was willing to discharge his pensionary liability on proportionate basis for the service rendered by him in the Coconut Development Board. In reply, respondent no.3-Coconut Development Board, vide letter dated 30.4.2012, informed respondent no.2-PPV & FR Authority that the applicant was willing to be appointed on permanent

absorption basis in the PPV & FR Authority and the Coconut Development Board was willing to discharge his pensionary liability on proportionate basis for the service rendered by him in the Coconut Development Board. Accordingly, respondent no.2-PPV & FR Authority issued O.M. dated 3.5.2012 offering appointment to the applicant on the post of Registrar on absorption basis on the terms and conditions contained therein. Accepting the offer of appointment, the applicant joined respondent no.2-PPV & FR Authority on 15.5.2012 as Registrar, and respondent no.2-PPV & FR Authority, vide office order dated 17.5.2012, appointed the applicant as Registrar w.e.f. 15.5.2012 on the terms and conditions contained in the O.M. dated 3.5.2012, *ibid*.

9. Section 6 of the Protection of Plant Varieties and Farmers' Rights Act, 2001, reads thus:

“6. Officers and other employees of Authority.- Subject to such control and restriction as may be prescribed, the Authority may appoint such officers and other employees as may be necessary for the efficient performance of its functions and the method of appointment, the salary and allowances and other conditions of service of such other officers and employees of the Authority shall be such as may be prescribed.”

10. Section 12 of the Protection of Plant Varieties and Farmers' Rights Act, 2001, reads thus:

“12. Registry and offices thereof.- (1) The Central Government shall establish, for the purposes of this

Act, a Registry which shall be known as the Plant Varieties Registry.

(2) The head office of the Plant Varieties Registry shall be located in the head office of the Authority, and for the purpose of facilitating the registration of plant varieties, there may be established, at such places, as the Authority may think fit, branch offices of the Registry.

(3) The Authority shall appoint a Registrar-General of Plant Varieties who shall be entitled to such salary and allowances and shall be subject to such conditions of service in respect of leave, pension, provident fund and such other matters as may be prescribed.

(4) The Authority may appoint such number of Registrars as it thinks necessary for registration of plant varieties under the superintendence and direction of the Registrar-General under this Act and may make regulations with respect to their duties and jurisdiction.

(5) The term of office and the conditions of service of the Registrars shall be such as may be provided by regulations.

(6) The Authority may, by notification in the Official Gazette, define the territorial limits within which a branch office of the Registry may exercise its functions.

(7) There shall be a seal of the Plant Varieties Registry.

11. Section 95(1)(2)(a) & (b) of the Protection of Plant Varieties and Farmers' Rights Act, 2001, reads thus:

“95. Power to make regulations.- (1) The Authority may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matter namely:-

(a) duties and jurisdiction of the Registrars under sub-section (4) of section 12;

- (b) the term of office and the conditions of service of the Registrars under sub-section (5) of section 12;

xx

xx”

12. Section 96(1)(2)(iv) of the Protection of Plant Varieties and Farmers’ Rights Act, 2001, reads thus:

“96. Power of Central Government to make rules.-

(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particulars, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

(i) xxx

(ii) xxx

(iii) xxx

(iv) the control and restriction regarding appointment of the officers and other employees of the Authority and the method of such appointment, salary and allowances and other conditions of service under section 6;

xx

xx”

13. In exercise of the powers conferred by section 96 of the Protection of Plant Varieties and Farmers’ Rights Act, 2001 read with Section 22 of the General Clauses Act, 1897, the Central Government made the Protection of Plant Varieties and Farmers’ Rights Rules, 2003, Rule 20 thereof, reads thus:

“20. The method of appointment of officers and other employees of the Authority.- (1) The Authority may make recruitment and appointment to the posts of officers specified in the Fourth Schedule.

(2) The Authority shall after advertising the posts in the Employment News and at least one national daily recruit officers and other employees of the Authority by the method of direct recruitment or

contract basis by selection after conducting interview.

(3) Notwithstanding anything contained in sub-rule (1) and subject to the approval of the Central Government the Authority may also appoint such other officers and employees as may be required by it on transfer or deputation basis or on contract basis.

(4) The salary, allowances and other conditions of service of the officers and employees of the Authority shall be the same as applicable to Central Government servants of equivalent rank.

(5) If any question on the service conditions of any officer or employee of the Authority arises, it shall be decided by the Central Government.”

14. In exercise of the powers conferred by sub-section (1) of section 95 of the Protection of Plant Varieties and Farmers’ Rights Act, 2001, the Protection of Plant Varieties and Farmers’ Rights Authority made, with the approval of the Central Government, the Protection of Plant Varieties and Farmers’ Rights Regulations, 2006, Regulation 5 whereof reads thus:

“5. The term of office and conditions of service of the Registrars.- (1) A person having adequate practical knowledge of Plant Variety Protection System and Post-graduation in Agricultural Science (with specialization in Plant Breeding and Genetics, Biotechnology, Agriculture Botany, etc.) or Forestry or allied subject shall be eligible to hold the Office of Registrar in the Authority. The Registrar can be taken on deputation and absorption basis from other Departments or Organization.

(2) The Authority shall follow Fundamental Rules, Central Civil Services (Leave) Rules, 1972 and Central Civil Services (Pension) Rules, 1972, while fixing salary and other allowances including pension, leave, travelling and daily allowances of the Registrar. The Authority shall have the flexibility to

make the special policy or rules or regulations or guidelines for career advancement or promotion of Registrar and other staff of the Authority.

(3) A person holding the office of the Registrar may relinquish the office by giving in writing to the Authority notice of not less than three months.

(4) The other conditions of the Registrar shall be regulated by orders made in that behalf by the Authority from time to time.”

15. Regulation 5(1) of the Protection of Plant Varieties and Farmers' Rights Regulations, 2006, prescribes that the 'Registrar can be taken on deputation and absorption basis from other Departments or Organization'. That is to say, an eligible person, working in other Department or Organization, can be selected and appointed to the post of Registrar by the PPV & FR Authority either on deputation basis or on absorption basis under Regulation 5(1) of the PPV & FR Regulations, 2006. It is nowhere laid down in Regulation 5(1), *ibid*, that a person, who has been working as Registrar in PPV & FR Authority on deputation basis, has only to be appointed as Registrar on absorption basis. Respondent no.2-PPV & FR Authority has also not placed before us any other material to show that an eligible person working in a different Department or Organization cannot be appointed to the post of Registrar on absorption basis, unless he has already been appointed to the post of Registrar and working on the post of Registrar in the PPV & FR Authority on deputation basis. In view of this,

we do not find any substance in the contention of respondent no.2-PPV &FR Authority that appointment of the applicant as Registrar on absorption basis was violative of Regulation 5(1) of the PPV & FR Regulations, more so when applications were invited from eligible persons working in different Departments and Organizations for selection and appointment to the post of Registrar on deputation/transfer or absorption basis, when the PPV & FR Authority(vide their letter dated 19.4.2012) informed respondent No.3-Coconut Development Board that they might consider to appoint the applicant on absorption basis provided he was willing to be appointed on permanent basis and the Coconut Development Board was willing to discharge his pensionary liability on proportionate basis for the service rendered by him in the Board, when the O.M. dated 3.5.2012 was issued by the respondent no.2-PPV & FR Authority offering appointment to the applicant on the post of Registrar on absorption basis, and when the office order dated 17.5.2012 was issued by respondent no.2-PPV & FR Authority appointing the applicant as Registrar on absorption basis with effect from 15.5.2012. Accordingly, issue no.1 is decided in favour of the applicant, and against respondent no.2-PPV & FR Authority.

Issue no.2:

16. On a combined reading of Sections 6, 12, 95(1)(2)(a)&(b) and 96(1)(2)(iv) of the Protection of Plant Varieties and Farmers' Rights Act, 2001, Rule 20 of the Protection of Plant Varieties and Farmers' Rights Rules, 2003 and Regulation 5 of the Protection of Plant Varieties and Farmers' Rights Regulations, 2006, it is clear that while Sections 6 and 96(1)(2)(iv) of the Act and Rule 20, *ibid*, prescribe the method of appointment, the salary and allowance, other conditions of service, etc., of other officers and employees of the PPV & FR Authority, Sections 12 and 95(1)(2)(a) & (b) of the Act and Regulation 5, *ibid*, prescribe the method of appointment, and terms and conditions of service, etc., of Registrars, PPV & FR Authority. Thus, it has to be examined as to whether the approval of the Central Government under Rule 20(3) of the PPV & FR Rules, 2003, was required to be obtained by the PPV & FR Authority for making appointment of the applicant as Registrar, PPV & FR Authority, on absorption basis. When appointment to the post of Registrar is governed under Section 12 of the Act, 2001, read with Regulation 5(1) of the Regulations, 2006, when neither Section 12 nor Regulation 5(1) provides for obtaining of approval from the Central Government by the PPV & FR

Authority for appointing any eligible person as Registrar either on deputation or absorption basis, and when Section 6 of the Act and Rule 20 of the Rules, 2003, govern appointment of officers and employees other than Registrar-General and Registrars of PPV & FR Authority, it can hardly be said that Rule 20(3) of the Rules, 2003, is applicable to the case of appointment of Registrar, and approval of the Central Government under Rule 20(3) of the Rules, 2003, is a *sine qua non* for making appointment of an eligible person as Registrar, PPV & FR Authority, either on deputation basis or on absorption basis. In this connection, we would like to refer to the maxim: *generalia specialibus non derogant*, which means, the provisions of a general statute must yield to those of a special one. When two provisions are in conflict and one of them deals specifically with the matter in question while the other is of more general application, the conflict may be avoided by applying the specific provision to the exclusion of the more general one. The specific prevails over the general. Applying this maxim to the present case, we have no manner of doubt that approval of the Central Government under Rule 20(3) of the PPV & FR Rules, 2003, was not required to be obtained by the PPV & FR Authority for making appointment of the applicant as Registrar, PPV & FR Authority, on

absorption basis. Accordingly, issue no.2 is decided in favour of the applicant and against respondent no.1.

Issue No.3:

17. Section 12(5) of the Protection of Plant Varieties and Farmers' Rights Act, 2001, stipulates that the term of office and conditions of service of the Registrar shall be such as may be provided by Regulations. Regulation 5 of the Protection of Plant Varieties & Farmers' Rights Regulations, 2006, prescribes the term of office and conditions of service of the Registrar. Sub-Regulation (2) of Regulation 5, *ibid*, mandates that the PPV & FR Authority shall follow Fundamental Rules, Central Civil Services (Leave) Rules, 1972 and Central Civil Service(Pension) Rules,1972, while fixing salary and other allowances including pension, leave, travelling and daily allowances of the Registrar. This apart, Rule 20(4) of the Protection of Plant Varieties & Farmers' Rights Rules, 2003, stipulates that the salary, allowances and other conditions of service of the officers and employees of the Authority shall be the same as applicable to the Central Government servants of equivalent rank.

18. In view of the above provisions of Section 12(5) of the Protection of Plant Varieties and Farmers' Rights Act, 2001, Regulation 5(2) of the Protection of Plant Varieties &

Farmers' Rights Regulations, 2006, and Rule 20(4) of the Protection of Plant Varieties & Farmers' Rights Rules, 2003, we do not find any substance in the contention of respondent nos. 1 and 2 that the non-contributory pension scheme, i.e., the Central Civil Services (Pension) Rules, 1972, was not in operation in the PPV & FR Authority which came into being only on 11.11.2005.

19. The O.M. dated 3.5.2012 issued by the respondent no.2-PPV & FR Authority offering appointment to the applicant in the post of Registrar on absorption basis contained the following among other terms and conditions governing his appointment:

“6. Provident Fund Benefits:
Dr.Ravi Prakash will enjoy the benefit of Provident Fund scheme applicable in PPV & FR Authority, New Delhi.”

20. As already noted, the applicant had joined the service of respondent no.3-Coconut Development Board on 13.9.1985. While serving under the respondent no.3-Coconut Development Board, the applicant was governed by the Central Civil Services (Pension) Rules, 1972 and the GPF Scheme. Consequent upon his selection and appointment as Registrar on absorption basis, he had to quit the service under the respondent no.3-Coconut Development Board, and joined the service of the respondent no.2-PPV & FR Authority on

15.5.2012. Sub-paragraph (i) of paragraph 2 of the Department of Pension & Pensioners Welfare's O.M. No.28/30/2004-P & PW (B), dated 26.7.2005, stipulates that all the employees who entered into Central Government service or in the service of an Autonomous Body set up by Central Government (satisfying the conditions laid down in para 4 of O.M. dated 29.8.1984), on or before 31.12.2003 and who were governed by old pension scheme under the Central Civil Services (Pension) Rules, 1972 will continue to be governed by the same pension scheme and same rules, for the purpose of counting of their past service under the said rules or under the provisions of the DP&AR's O.M. No.28/10/84-PU dated 29.8.1984, as amended from time to time, if such employees submit technical resignation on or after 1.1.2004 to take up new appointment in another Ministry or Department of the Government of India or an Autonomous Body set up by the Central Government, in which the pension scheme under Central Civil Services (Pension) Rules, 1972 already exists for the employees who entered into service on or before 31.12.2003.

21. In view of the aforesaid rule position, the Government of India's decision, and the terms and conditions governing the appointment of the applicant as Registrar, PPV

& FR Authority, we have no hesitation in holding that the applicant is entitled to be covered under the non-contributory pension scheme, i.e., CCS (Pension) Rules, 1972, and the General Provident Fund scheme, on his appointment as Registrar of PPV & FR Authority on absorption basis with effect from 15.5.2012. Accordingly, issue no.3 is decided in favour of the applicant, and against respondent nos. 1 & 2.

22. In view of our above findings, and considering the totality of the facts and circumstances of the case, we hold and declare that appointment of the applicant as Registrar, PPV & FR Authority, on absorption basis from 15.5.2012 is in accordance with rules, and that the applicant is entitled to be governed by the non-contributory pension scheme, i.e., CCS (Pension) Rules, 1972, and the GPF scheme, in terms of the Department of Pension & Pensioners' Welfare, O.M. dated 26.7.2005, *ibid*. Accordingly, we quash the impugned letter dated 19.7.2013 issued by respondent no.1 and all other actions taken by respondent no.2 pursuant thereto, and direct respondent no.2 to issue, within three months from today, appropriate orders treating the applicant to be governed by the non-contributory pension scheme/CCS (Pension) Rules, 1972, and GPF Scheme, on his appointment as Registrar, PPV & FR

Authority, with effect from 15.5.2012, and also to operate the applicant's GPF Account in accordance with rules.

23. Resultantly, both the O.As. are allowed to the extent indicated above. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

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