

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2015

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.NO. 14422 OF 2007
(O.A.NO.4053 of 2003)

V.K. Balakrishnan

.. Petitioner

Vs.

The Dean
Madras Medical College
Chennai - 600 003.

.. Respondent

PRAYER: This Writ Petition came to be numbered under Article 226 of the Constitution of India by way of transfer of O.A.No.4053 of 2003 from the file of Tamil Nadu Administrative Tribunal with a prayer to call for the records relating to the order of the respondent issued in Ref. No. 16370/E2/(3)/2002 dated 25.11.2002 and the order dated 26.08.2003 issued in the Ref. No. 16370/E2(3)/2002 and quash the same and further direct the respondent to restore the order of the respondent dated 24.06.1998 issued in Ref. No. 4616/E2/(3)/1998.

For Petitioner : Mr. R. Muthukannu

For Respondents: Mrs. M.E. Rani Selvam, AGP

O R D E R

सत्यमेव जयते

The petitioner Mr. V.K. Balakrishnan, aggrieved by the impugned orders of reduction of pay and recovery issued by the Dean, Madras Medical College, Chennai the sole respondent herein, in Ref. No. 16370/E2(3)/2002 dated 25.11.2002 and 26.08.2003, preferred O.A. No. 4053 of 2003 before the Tamilnadu Administrative Tribunal, on the ground that the respondents without giving any notice whatsoever, had taken away the benefit given under Rule 4(3) of the Tamilnadu Revised Scales of Pay Rules, 1989 ought not to have passed the order.

2. Mr. R. Muthukannu, learned counsel appearing for the petitioner would contend that the impugned order also does not

contain any reason, either for cancelling the order dated 24.06.1998 or for recovery of the amount paid on the basis of application of Rule 4(3) of the said Act. Continuing his submission it was stated that the petitioner who was appointed as a Laboratory Technician with effect from 17.05.1968, after his promotion as Laboratory Technician Grade I on 27.07.1985 fixed his pay in the promotional post at Rs.1125/- in the scale of 705-1230. The Government of Tamilnadu issued V Pay Commission orders with effect from 01.06.1988. On implementation of the V Pay Commission, his pay was also revised and fixed at Rs.1480/- in the scale of Rs.1350-2200 namely in the ordinary scale of Laboratory Technician Grade I, since the selection grade pay of Laboratory Technician Grade II and the pay of the ordinary grade of Laboratory Technician Grade I was Rs.1350-2200. On the basis of G.O. Ms. No. 210, which says that if the scale of pay of the promotional post (ordinary grade) and the pay of the selection grade of the lower post are identical for awarding selection grade in the promotional post, the services rendered in the selection grade of the lower post can be taken into account. The petitioner was given selection grade in the post of Laboratory Technician Grade I with effect from 1.10.1988 and in the selection grade the applicant's pay was fixed at Rs.1600/-. Subsequently, the juniors who continued in the special grade of Grade II post were happened to receive more pay than the seniors who were holding the post of Grade I.

3. Therefore, clarification was sought in this regard by the Director of Medical Education from the Government. In response thereto, the Government also in their letter dated 23.10.1992 clarified stating that the such anomalies can be ratified by applying Rule 4(3) of the Tamilnadu Revised Scale of Pay Rules, 1989. Only on the basis of the said clarification letter authorising the higher officials to ratify the anomalies, applying Rule 4(3) of Tamilnadu Revised Scales of Pay Rules 1989 the petitioner was given special grade of pay of Laboratory Technician Grade II with effect from 1.10.1988 and his pay was fixed at Rs.1640/- in the scale of 1640-2900 by the proceedings of the respondent dated 24.06.1998. Consequent to VI Pay Commission that came into effect from 01.01.1996, the petitioner's pay was also fixed at Rs.6550/- in the scale of Rs.5500-9000. However, after a lapse of three years, without any notice whatsoever, by the impugned proceedings dated 25.06.2001 the earlier order dated 24.06.1998 was cancelled, fixing his pay at Rs.1480/- with effect from 01.06.1988 and fixed at Rs.1600/- with effect from 01.10.1988. Therefore, the grievance of the petitioner is, instead of fixing his pay in the scale of Rs.5500-9000 his pay was fixed at Rs.5300-8300, that too, without any notice whatsoever.

4. It was also submitted by learned counsel appearing for the petitioner that the petitioner was given the benefit of stay by

learned Tamilnadu Administrative Tribunal on 15.12.2003 and the matter was transferred to this Court. During the pendency of the case, the petitioner reached the age of superannuation and retired. Therefore, he was enjoying the benefit of stay during his service. In any event, since the scale of pay of the petitioner was fixed at Rs.1600/- with effect from 01.10.1988, on the basis of the clarification letter issued by the Government in G.O. Ms. No. 210, which also comes to the effect if the scale of pay of the promotion post (ordinary grade) and the pay of the selection grade of the lower post were identical for awarding selection grade in the promotion post, the services rendered in the selection grade of the lower post can be taken into account, the order dated 24.06.1998 issued by the second respondent applying Rule 4(3) of the Tamilnadu Revised Scale of Pay Rules 1989 cannot be modified or cancelled. Moreso, without issuing any notice whatsoever, without calling upon any explanation from the petitioner, the respondent reduced the pay and sought recovery of the amount already paid. In any event, when Rule 4(3) of the said Rules clearly speaks that the petitioner's pay fixed in the post of Laboratory Technician Grade I with effect from 01.10.1988 in the scale of pay of Rs.1640-2900 is absolutely in order, the impugned order issued by the respondent is liable to be set aside.

5. A detailed counter affidavit has been filed. Learned Additional Government Pleader appearing for the respondent would submit that after the petitioner was appointed as Laboratory Technician Grade II on 17.05.1968, he got promotion as Laboratory Technician Grade I with effect from 27.06.1987. After V Pay Commission, the petitioner was drawing pay in the scale of Rs.1350-2200, being the selection grade pay of Laboratory Technician Grade II. Since the selection grade pay of Laboratory Technician Grade II and the pay of ordinary Grade Laboratory Technician Grade I was Rs.1350-2200, the pay of the petitioner was fixed in the scale of pay of Rs.1400-2660 in the post of selection grade Laboratory Technician Grade I. Hence his pay was also fixed in the scale of Rs.1600-2660 with effect from 09.11.1994. However, consequent on the revision of scales, as per G.O. Ms. No. 828 Health dated 09.11.1994, with effect from 09.11.1994 the juniors happened to receive more pay than the seniors, who were holding the post of Grade I, therefore, a clarification was issued by the Government in Lr. No. 116493/PC/92-1 dated 23.10.1992 stating that the above pay anomaly be rectified by applying Rule 4(3) of Tamilnadu Revised Scales of Pay Rules and orders were issued. On that basis, the Dean of Madras Medical College, Chennai had issued revised fixation to the petitioner, duly fixing in the scale of Rs.1640-60-2000-75-2900 with effect from 01.06.1988 as per Rule 4(3) of Tamilnadu Revised Scales of Pay Rules. But the Government in another Lr. No. 39308/C2/2001-5 Health and Family Welfare Department dated 07.12.2001 stated that the above scale of pay is applicable only

with effect from 09.11.1994. Therefore, the respondent had issued revised orders in Lr. No.16370/E2/3/2002 dated 25.11.2002 in which recovery of Rs.83,327/- has been worked out. Since recovery orders have been issued due to the difference of pay occurred during re-fixation of pay, giving prior notice to the impugned order does not arise, she pleaded.

6. But, this Court finds no reason or justification to issue the impugned order seeking to reduce the pay of the petitioner and further ordering recovery of the amount already paid, when admittedly the petitioner has been receiving his pay on selection grade on the basis of the clarification Lr. No. 116493/PC/92-1 dated 23.10.1992 issued by the Government stating that the pay anomaly can be rectified by applying Rule 4(3) of Tamilnadu Revised Scales of Pay Rules, 1989. In the present case, admittedly, the juniors who continued in Grade II posts happened to receive more pay than the petitioner who is a senior, when he was holding the post of Laboratory Technician Grade I. Based on the above clarification letter read with Rule 4(3) of Tamilnadu Revised Scales of Pay Rules, the petitioner was given Special Grade pay of Laboratory Technician Grade II with effect from 01.10.1988. Thereafter, it was also an admitted case of both sides that he was promoted as Laboratory Technician Grade I on 27.06.1987 and the V Pay Commission came into effect on 01.06.1988. Therefore, the petitioner was eligible for pay fixation as per V Pay Commission, as on 01.06.1988. Accepting the said position, his pay was also fixed giving the benefit of VI Pay Commission with effect from 01.01.1996. But the respondent without even mentioning how Rule 4(3) of Tamilnadu Revised Scales of Pay Rules, 1989 cannot be applied to the case of the petitioner, had wrongly issued the impugned order and the same has been stayed by this Court. In the meanwhile, the petitioner also reaching the age of superannuation was allowed to retire from service, enjoying the previous pay.

7. Therefore this Court, taking note of the admitted positions of the respondent that without even giving any notice to the petitioner had passed the impugned order, is inclined to set aside the impugned orders of reduction in pay and recovery passed by the respondent in Ref. No. 16370/E2(3)/2002 dated 25.11.2002 and 26.08.2003. It is needless to mention that, if any recovery has been made, the petitioner is entitled to get the refund of the amount recovered from him and the said exercise shall be done within a period of ten weeks from the date of receipt of a copy of this order.

8. The Writ Petition is allowed on the above lines. No order as to costs.

Sd/-
Asst.Registrar (AD I)

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Sub Asst. Registrar

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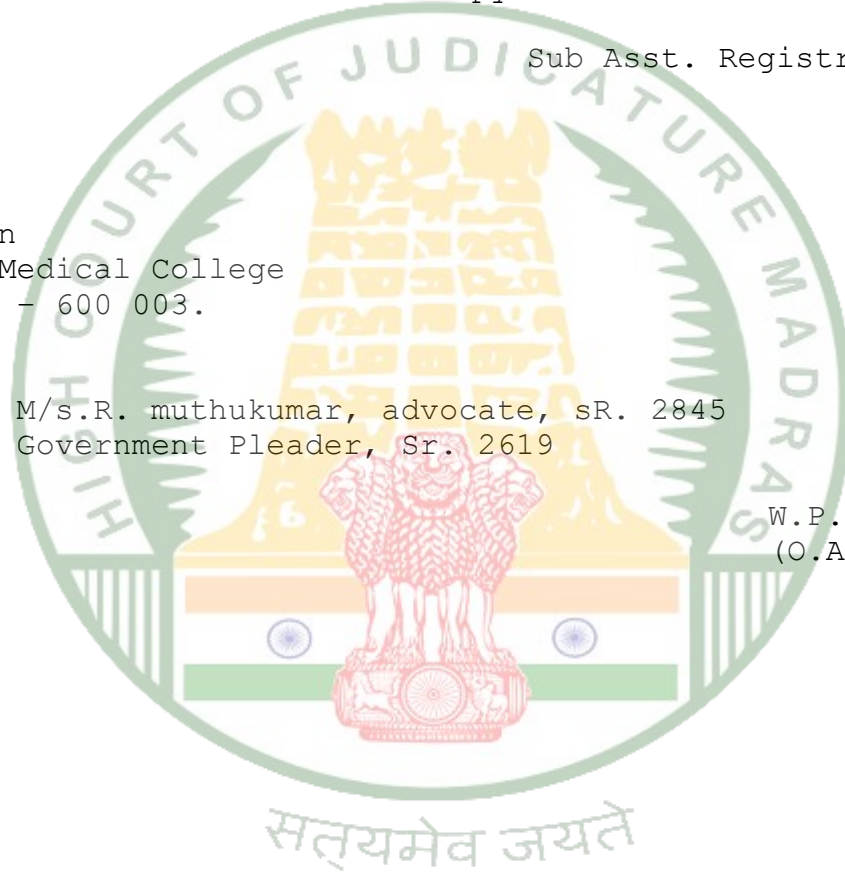
To

The Dean
Madras Medical College
Chennai - 600 003.

1 cc to M/s.R. muthukumar, advocate, sR. 2845
1 cc to Government Pleader, Sr. 2619

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