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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24 .03.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

WRIT APPEAL (MD)Nos.922 and 923 of 2013

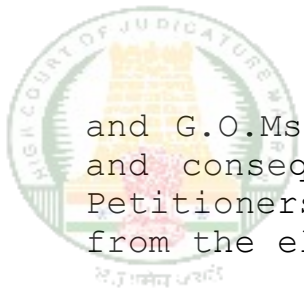
and

M.P.(MD)Nos.2,2 and 3 of 2013

- 1.The State of Tamil Nadu
represented by the Chief Secretary to
the Government, Fort St. George,
Chennai-600 009
- 2.The State of Tamil Nadu
Represented by the Principal Secretary to
the Government, Finance Department, Fort St. George,
Chennai-600 009.
- 3.The State of Tamil Nadu
represented by the Commissioner and
Secretary to the Government,
Department of Health and Family Welfare,
Fort St. George, Chennai 600 009.
- 4.The Director of Medical Education,
DMS Compound, Chennai 600 010.
- 5.The Dean, Madurai Medical College,
Madurai-625 020. : Appellants/Respondents
Vs.
Tamil Nadu Government Retired Medical Officers Association,
Madurai District, represented by its President,
Dr.T.Rajagopal : Respondent/Petitioner

W.A.(MD)No.922 of 2013: Writ Appeal is filed under Clause 15 of Letters Patent against the common order, dated 30.04.2013 made in W.P.(MD)No.5168 of 2011 on the file of this court.

Prayer in WP(MD)No.5168/2011: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the Respondents to fix and pay the revised pension as per G.O.Ms.No.354 Health and Family Welfare (B2) Department dated 23.10.2009 to the Post of Professor which the members of the Tamilnadu Govt. Retired Medical Officers Association were holding at the time of retirement by implementing the G.O.Ms.No.235 Finance (Pay Cell) Department dated 01.06.2009



and G.O.Ms.No.200, Finance (Pay Cell) Department dated 18.05.1999 and consequently to pay all the arrears to the Members of the Petitioners Association pursuant to fixation of revised pension from the eligible date.

- 1.State of Tamil Nadu,
represented by the Principal Secretary to
Government,
Finance (PC) Department,
Secretariat, Chennai-600 009.
 - 2.The Secretary to Government,
Department of Health and Family Welfare,
Fort St. George, Chennai 600 009.
 - 3.The Director of Medical Education,
Kilpauk, Chennai
 - 4.The Dean,
Madurai Medical College,
Madurai-625 020
 - 5.The Accountant General,
Office of the Accountant General,
(Accounts & Entitlements) Tamilnadu,
361, Anna Salai, Chennai-600 018.
- : Appellants/Respondents

Vs.

Dr.T.Rajagopal : Respondent/Petitioner

W.A.(MD)No.923 of 2013: Writ Appeal is filed under Clause 15 of Letters Patent against the common order, dated 30.04.2013 and made in W.P.(MD)No.9215 of 2011 on the file of this court.

Prayer in WP(MD)No.9215/2011: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings in Letter No. 27434/Pay Cell/2011-1 dated 22.07.2011 on the file of Ist Respondent and quash the same and further directing the Respondents to revise and pay the Petitioners pension on the basis of pay scale of Chief Civil Surgeon as prescribed in G.O.(Ms) No. 354 Health and Family Welfare (B2) Department dated 23.10.2009 .

For Appellant : Mr.A.L.Somayaji
in both Appeals Advocate General
Assisted by Mr.M.Govindan
Special Government Pleader



For Respondent : Mr.G.Prabhu Rajadurai
in W.A.No.922/13 for Mr.M.Jagadeesan

For Respondent
in W.A.No.923/13 : Mr.V.R.Venkatesan

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COMMON JUDGMENT

(Judgment of the Court was made by T.MATHIVANAN,J)

The common order, dated 30.04.2013 and made in W.P.(MD) Nos.5168 of 2011 and 9215 of 2011 on the file of this court, have been assailed in these memorandums of writ appeals.

2. With the parties in both the writ appeals are one and the same and the prime issue, which is involved in both the appeals is also one and the same, these appeals have been consolidated together, heard jointly and disposed of in this common judgment.

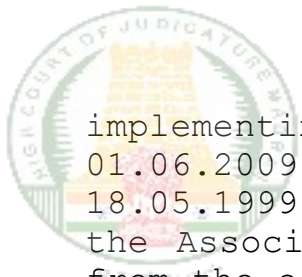
3. The appellants herein are the respondents in both the writ petitions viz., W.P.(MD)Nos.5186 and 9215 of 2011, whereas the respondents, in the writ appeal in W.A(MD)No.922 of 2013 viz., The Tamil Nadu Government Retired Medical Officers Association, Madurai District, represented by Dr.T.Rajagopal is the petitioner in W.P.(MD)No.5168 of 2011, whereas the respondent in W.A(MD) No.923 of 2013, Dr.T.Rajagopal is the petitioner in W.P.(MD) No.9215 of 2011.

4. For easy reference and for the sake of convenience, the respondent in both the writ appeals may herein after be refereed to as the petitioner and the appellants be referred to as the respondents wherever the context so require.

5. Excerpt of facts in common:-

The Tamil Nadu Government Retired Medical Officers Association, Madurai District, who is the petitioner in W.P.(MD) No.5168 of 2011 has been represented by Dr.T.Rajagopal. He has filed this writ petition in the capacity of President of Tamil Nadu Government Retired Medical Officers Association, Madurai. Another writ petition is filed by him, in his individual capacity.

6. In the writ petition in W.P.(MD)No.5168 of 2011, he, in the capacity of the President of the Tamil Nadu Government Retired Medical Officers Association, Madurai District (herein after be referred to in short, as Association wherever the context so require) has sought the relief of Writ of Mandamus, directing the respondents to fix and pay the revised pension as per Government Order No. 254/2009, dated 23.10.2009 to the post of Professor, which the members of the Association were holding at the time of their retirement by



implementing G.O.Ms.No.235, Finance (Pay Cell), Department, dated 01.06.2009 and G.O.Ms.No.200, Finance (Pay Cell) Department, dated 18.05.1999 and subsequently, to pay the arrears to the members of the Association, pursuant to the fixation of the revised pension from the eligible date.

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7. In his individual capacity, in W.P.(MD)No.9215 of 2011, he has sought the relief of Certiorarified Mandamus calling for the records regarding the proceedings in letter No.27434/Pay/Cell/2001-I, dated 22.07.2011 on the file of the first respondent and quash the same and to direct the respondents to revise and pay his pension on the basis of the pay scale of Chief Civil Surgeon as prescribed in G.O.Ms.No.354, Health and Family Welfare (B2) Department, dated 23.10.2009.

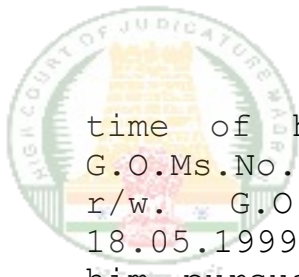
8. Both the writ petitions were strenuously resisted by the respondents.

9. After hearing both sides, the learned single Judge of this court has proceeded to allow those two writ petitions, in a common order, dated 30.04.2013 on the ground that the rejection of the reasonable demand of the petitioner and the other retired members of the Association has created only an unreasonable disparity in payment of pension to similarly placed persons and it has to be construed as apparent and patent, discrimination among equals and it is nothing, but violating the mandate of Article 14 of the Constitution.

10. Ultimately, the impugned order passed in Letter No.27434/Pay Cell/2001-1, dated 22.07.2011 on the file of the first respondent was set aside and the respondents were directed to pay pension to the petitioner in both the writ petitions, though they have retired prior to 23.10.2009, on par with other similarly placed Professors and Medical Officers, who have retired subsequent to G.O.Ms.No.354, Health and Family Welfare (B2) Department, dated 23.10.2009. The respondents were also directed to comply with the above directions within a period of eight weeks from the date of receipt of a copy of this order.

11. This common order, dated 30.04.2013 has been challenged in these writ appeals by the respondents.

12. In so far as the writ petitions in W.P.(MD)Nos.5168 of 2011 and 9215 of 2011 are concerned, this is the second inning of the petitioner. Previously, he had filed a petition in W.P.(MD) No.4582 of 2011 before this court seeking the very same relief, which is sought for in the above said two writ petitions, wherein he had sought for a direction by way of Writ of Mandamus to direct the respondents to fix and pay the revised pension as per G.O.Ms.No.354, Health and Family Welfare (B2) Department, dated 23.10.2009 to the post of Professor, which he was holding at that



time of his retirement, by implementing the order issued in G.O.Ms.No.235, Finance (Pay Cell) Department, dated 01.06.2009 r/w. G.O.Ms.No.200, Finance (Pay Cell) Department, dated 18.05.1999 and subsequently, to pay all the arrears of pension to him pursuant to fixation of revised pension from the eligible date.

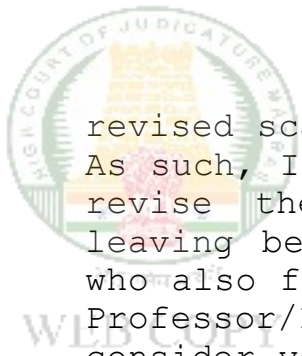
13. When the said petition came up for hearing on 20.04.2011 before the learned Judge of this court, he (K.Venkatraman.J) while disposing the said petition has observed as follows:-

"Admittedly, the association has sent a representation and hence, it would be suffice to direct the petitioner to send a detailed representation enlisting his grievance within one week from the date of receipt of a copy of this order and on receipt of the same, the first respondent is directed to consider the said representation on merits and in accordance with law within a period of eight weeks thereafter.

14. In pursuant to the direction of this court, the petitioner Dr.T.Rajagopal on 03.05.2011 had sent a detailed representation to the respondents 1 and 2. His representation was considered by the Government and the second respondent being the Principal Secretary to Government had sent a letter to the petitioner in letter No.27434/Pay Cell/2011-I, dated 22.07.2011.

15. In para 9 of the said letter, the second respondent viz., the Principal Secretary to Government has stated as follows:-

"In this context, I am to inform that if your request is considered, then there will also be claim for revision of pension from the Associate Professors, who were on the same scale of pay of Professors in the combined category prior to the upgradation/separation of the combined categories in G.O.Ms.No.354, Health and Family Welfare Department, dated 23.10.2009. Likewise, under Directorate of Medical Health & Rural Health Service and Directorate of Public Health & Preventive Medicine, the newly created post of Chief Civil Surgeons has been conferred to Assistant Surgeons, who have completed 20 years as on date and in future on completion of 12 years of service, the benefit of Pension/Family Pension Revision may perhaps have to be extended to the Senior Civil Surgeons who have retired prior to 01.01.2006 and completed a total service of 20 - years at the time of retirement right from their initial appointment as Assistant Surgeon with reference to the newly created post of Chief Civil Surgeon in the scale of Rs.37400-67000 + Grade Pay of Rs.8700 with effect from 23.10.2009 (i.e. from the date of upgradation/New creation of the posts). Further, in the case of newly created posts the pension in such cases is calculated only with reference to the corresponding revised scale of pay as against the pre-



revised scale of pay of employees at the time of their retirement. As such, I am directed to inform that there is no justification to revise the pension of the petitioner viz., Professors alone leaving behind the incumbents of the post of Associate Professor who also form part of the erstwhile combined category of Associate Professor/Professor. Hence, Government finds no valid reasons to consider your request".

16. With this reply, the representation made by the petitioner, dated 03.05.2011 was turned down by the Government.

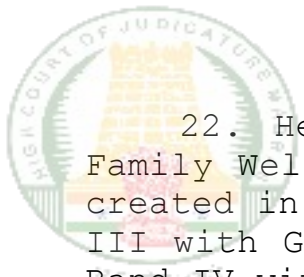
17. Having been aggrieved by the impugned letter No.27434/Pay Cell-2011-I, dated 22.07.2011, the petitioner Dr.T.Rajagopal has come forward with the above said writ petitions for himself and on behalf of the Tamil Nadu Government Retired Doctors Association, Madurai District.

18. Heard Mr.A.L.Somayaji, learned Advocate General assisted by Mr.M.Govindan, learned Special Government Pleader, in both the appeals for the appellants and Mr.G.Prabhu Rajadurai, learned counsel appearing for Mr.M.Jagadeesan, learned counsel appearing for the respondent in W.A.(MD)No.922 of 2013 and Mr.V.R.Venkatesan, learned counsel appearing for the respondent in W.A(MD)No.923 of 2013.

19. The entire case hinges around the pivot of G.O.Ms.No.354 Health and Family Welfare(B2) Department, dated 23.10.2009.

20. The petitioners, in both the writ petitions, have claimed benefit under the above said G.O. They are, therefore, under the prime obligation to answer the question as to whether they are having competency to claim the revision of pension as per this G.O. viz., G.O.Ms.No.354, dated 23.10.2009.

21. Though, the learned single Judge of this court has given a direction to the respondents to pay pension to the petitioners, in both the writ petitions as per the above said Government Order, the learned Advocate General has seriously challenged the order on behalf of the respondents and submitted that there was no specific post sanctioned in the nomenclature of Professors in the special rules for Tamil Nadu Medical Services, prior to the issuance of G.O.Ms.No.354, Health and Family Welfare Department, dated 23.10.2009 and that Readers/Associate professors working in the Government Medical colleges were designated as professors, after the completion of four years in the cadre of Readers/Associate Professors, based on the norms prescribed by the Medical Council of India.



22. He has also maintained that in G.O.Ms.No.354, Health and Family Welfare Department, dated 23.10.2009, a new post has been created in the cadre of Senior Assistant Professor in the Pay Band III with Grade Pay of Rs.6600/- and in the cadre of Professor Pay Band IV with Grade Pay of Rs.8700 respectively.

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23. It is the specific case of the petitioner Dr.T.Rajagopal that he joined in the medical service as Assistant Surgeon and after serving in various stations, and in various levels he had retired from service on attaining the age of superannuation on 31.08.2003 as Professor/Head of the Department of Pediatrics, after putting in 33 years of service.

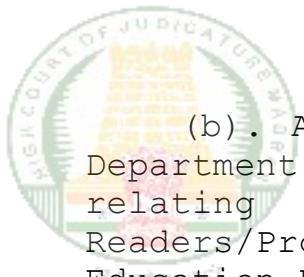
24. It is also his specific case that at the time of his retirement as professor his Pay Band was III and that the pay scale to the post of Professor is revised in G.O.Ms.No.354, Health and Family Welfare (B2) Department, dated 23.10.2009.

25. As per the revised scale of pay to the post of professor, which he was holding at that time of his retirement, the Government by passing G.O.Ms.No.354, has moved the pay band from III to IV to the post of professor. However, the Government has miserably failed to revise the pension to the post of professor from Pay Band III to IV, though he was entitled to pension on the basis of the revised Pay Band IV.

26. But, contrary to the case of the petitioner, the Government's stand is that there was no such post in the nomenclature of professor in the special rules for the Tamilnadu Medical services prior to the issuance of G.O.Ms.No.354 Health and Family Welfare Department, dated 23.10.2009. The readers/associate professors working in the Government medical colleges were designated as professors after the completion of four years in the cadre of readers/professors with the norms prescribed by the Medical Council of India.

27. Considering these two divergent stand, we have entertained certain doubts and therefore, the matter was listed on 26.02.2015 under the caption of clarification. On that day, the following questionnaire were projected for clarification:-

(a). As per the proceedings of the Director of Medical Education, dated 16.05.2000 in K.Dis.No.26514/E1/2/2000, it is stated that under the powers delegated in G.O.Ms.No.766 Health, dated 04.05.1981 Dr.T.Rajagopal, Reader in Pediatrics, Madurai Medical College Madurai is redesignated as professor with effect from 17.11.1999 F.N. and is posted as Additional Professor of Pediatrics, Madurai Medical College.



(b). As per G.O(Rt.) No.1504, Health and Family Welfare (A1) Department dated 29.08.2003 with reference to the notification relating to Tamil Nadu Medical Services, Readers/Professor/Directors under the Directorate of Medical Education-Retirement on attaining the age of superannuation on 31.08.2003 A.F, the petitioner Dr.T.Rajagopal has been described as professor of Pediatrics. His name has been mentioned in Serial No.3 in the above said notification.

(c). According to the respondent Government the post of professor has been created by G.O.Ms.No.354, dated 23.10.2009 corresponding to Chief Civil Surgeon. If the post of professor is created by G.O.Ms.No.354, dated 23.10.2009, how the petitioner could have been ranked as professor in view of the Government Order in G.O.(Rt.)No.1504, Health and Family Welfare (A1) Department, dated 29.08.2003.

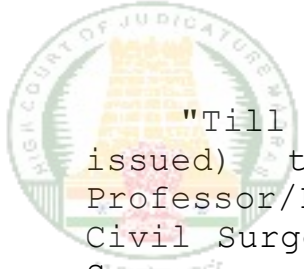
(d) Is it correct to say that the petitioner and other professors (Petitioner's association) who had retired prior to 23.10.2009 are in the same footing as that of the professors in the Directorate of Medical Education, retired after 23.10.2009.

(e) Is it correct to say that the petitioner and the members of the petitioner's association who had retired prior to 23.10.2009 cannot be construed as separate class and other professors of the Medical Department, retired after 23.10.2009 be in a class for the purpose of getting pension and hence, the unreasonable classification is violative of Article 14 of the Constitution.

(f) As per the case of the petitioner (Dr.T.Rajagopal) neither the post of professor nor the post of Chief Civil Surgeon was created by the said G.O.Ms.No.354, dated 23.10.2009, but the post of professor was already in existence and that the petitioner was holding the post of professor Pediatrics Department as evident from G.O.Ms.(Rt.) No.1504, dated 29.08.2003, which was issued by the Government at the time of his retirement. As claimed by the petitioner, if the post of professor was already in existence, how the respondents Government can claim that the post of professor was not in existence prior to the issuance of G.O.Ms.No.354.

28. For the purpose of clarifying the questionnaires as afore- stated, the learned Special Government Pleader (Writ) and Mr.V.R.Venkatesan, learned counsel appearing for the petitioner, have filed their respective written submissions on behalf of the respondents Government and the petitioner.

29. In his reply affidavit filed by the second respondent viz. the Secretary to the Government Department of Health and Family Welfare, has clarified the above position as under:-



"Till 23.10.2009 (the date on which the G.O.Ms.Nos 354 was issued) there was only a combined category of Associate Professor/Professor in the same pay scale in the cadre of Senior Civil Surgeon. The Medical Officers in the cadre of Senior Civil Surgeons and who have completed four years of Teaching experience in their speciality were made Professor by way of re-designation within the combined category of Associate Professor/Professor in the cadre of Reader. The re-designation did not entail any additional pay, as they remained in the cadre of Senior Civil Surgeon i.e., in other words the professor and Associate Professor were getting the same pay. The new scale of Chief Civil Surgeon was created only in 23.10.2009 after which the post of Professor was separated from the combined category and a new post of Professor (in the category of Chief Civil Surgeon) in a higher scale of pay was created. Even though the Medical Officer was working as Professor prior to 23.10.2009 by way of redesignation, he was only in the Senior Civil Surgeon Grade and not Chief Civil Surgeon Grade, since the cadre did not exist before 23.10.2009.

30. The petitioner Dr.T.Rajagopal was only holding the post of Professor in the combined category of Associate Professor/Professor by way of redesignation based on his completion of four years of teaching experience. The redesignation did not change the scale of pay as there was no higher scale existence during that time. Redesignation till 23.10.2009 had no monetary benefits or any higher scale of pay as it fell within the combined category. Senior persons with four years of teaching experience were called as Professor and the other remained as Associate Professors. Therefore, he was described as Professor at the time of his retirement, as it is seen in G.O.(Rt) No.1504, Health and Family Welfare (A1) Department, dated 29.08.2003. The Professor appointed after the creation of post based on G.O.Ms.No.354, Health and Family Welfare Department, dated 23.10.2009 cannot be compared with those who acted as Professors by way of redesignation before 23.10.2009 and therefore, it is incorrect to say that it is violative of Article 14 of the Constitution as the new post of Chief Civil Surgeon was not in existence before 23.10.2009. The petitioner was only in the category of Senior Civil Surgeon as the category of Chief Civil Surgeon did not exist prior to 23.10.2009. In fact, no post of professor was available in the Special rules for Tamil Nadu Medical Service in the nomenclature of Professor as it was only a re-designation till 23.10.2009 without a different scale in the cadre of Senior Civil Surgeon and it was not a promotion.

31. The second respondent has also stated that the petitioner Dr.T.Rajagopal was serving in the pay scale of Rs.12000-375-16500 which was common to both the Associate Professor/Professor, in the Senior Civil Surgeon scale., extending benefits to the professors, who served by way of redesignation prior to 23.10.2006 from out of

the combined category of Associate Professor/Professor in the common Senior Civil Surgeon scale would lead to all persons in the pre-revised combined scale to claim benefits of a scale of pay and post, which came into existence only after 23.10.2009. The petitioner is drawing corresponding pension as eligible for the revised scale of pay as indicated below:

S.No .	Name of the post	Pre-revised scale of Pay	Revised scale of pay
1	Associate Professor/Professor in the combined category of Reader	12000-375-16500	PB-3 Rs.15,600- 39,100 + GP Rs.7600/-

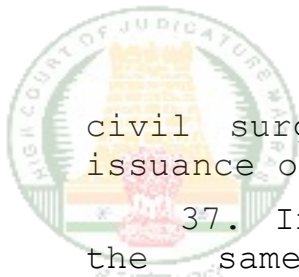
32. Based on the above clarification, the learned Special Government Pleader (Writ) has submitted that at the time of his retirement, the petitioner was serving only as professor by way of re-designation in the cadre of Senior Civil Surgeon.

33. On the other hand, Mr.V.R.Venkatesan, learned counsel appearing for the petitioner in his written clarificatory statement has emphatically denied the averments of clarificatory reply affidavit submitted on behalf of the 2nd respondent viz., the Secretary to the Government Health and Family Welfare Department.

34. In this connection, he would submit that it is absolutely false to say that only through the G.O.Ms.No.354 the post of Professor is created.

35. While advancing his argument, he has also narrated an incident which took place in the case of one Mr.T.Maruthupandian who was an Associate Professor of General Surgery in whose case, similar order was issued.

36. Mr.V.R.Venkatesan, learned counsel has also argued that the said Dr.T.Maruthupandian was holding the post of Associate Professor with effect from 25.10.2011. As per the proceedings, dated 09.05.2012, he was redesignated as professor of surgery by virtue of teaching experience acquired in the concerned speciality as per HC norms with effect from 07.12.2008 and not with effect from the date of issuance of G.O.Ms.No.354 and that all the senior



civil surgeons are refitted as Chief Civil Surgeon after the issuance of G.O.Ms.No.354 with effect from 23.10.2009.

37. In this regard he has also raised a question as to why the same scale which was applied in the case of Dr.T.Maruthupandian should not be applied in the case of the petitioner Dr.T.Rajagopal.

38. He has also argued that the main purpose of issuance of G.O.Ms.No.354 was only to rectify the anomaly, because the very same scale of Rs.37,400/- was already fixed to the professors working in the Government Art Colleges and that was the only reason the scale of pay was introduced in order to raise the scale of pay on par with professor working in the government Art colleges. When the qualification was not challenged to the post of Professor prior to the G.O.Ms.354 and after the G.O., absolutely there was no justification on the part of the appellant to differentiate who were holding the similar post after the G.O. alone were eligible to receive the revised scale of pay of Rs.37,400/-

39. Countering the submission made by Mr.V.R.Venkatesan, the learned Advocate General has made stress on the point that the date "23.10.2009" is the cut off date and this seems to be crucial in nature and decide the eligibility of the medical officers. Because, the Government Order in G.O.Ms.No.354 Health and Family Welfare Department, came into force from 23.10.2009 onwards. Therefore, according to the learned Advocate General, the G.O.Ms.No.354 is having only prospective effect and not retrospective effect and that based on the above said G.O., the existing Government doctors are getting their benefit with effect from 23.10.2009.

40. The submissions made by Mr.A.L.Somayaji, learned Advocate General drive us to extract the relevant portions from G.O.Ms.No.354, dated 23.10.2009:-

(a) Para I:- The Tamil Nadu Government Doctor's Association (TNGDA) requested the Government that the Government doctors may be provided with Dynamic Assured Career Progression (DACP) due to lack of adequate promotional opportunities and stagnation at various levels in the system.

41. From the above portion, it is palpable that the Tamil Nadu Government Doctor's Association (TNGDA) had made a representation requesting the Government that the Government doctors (which means working Government doctors as on date of presentation of the said representation and not the retired doctors) may be provided with Dynamic Assured Career Progression (DACP) to due to lack of adequate promotional opportunities and stagnation at various levels in the system.



42. The above portion, further expound that since, there was no adequate promotional opportunities and there was stagnation at various levels in the system, the working Government doctors' Association had requested the Government that they might be provided with Dynamic Assured Career Progression (DACP).

43. Para 4(I) (xiv) and (xv) reads as under:-

...(xiv). The Government also fix the eligibility for promotion to a higher level in Director of Public Health and Preventive Medicine/Director of Medical and Rural Health Services/ESI/Foreign service/other institutions as follows:-

(i) An Assistant Surgeon shall put up 5 years of service for promotion as Senior Assistant Surgeon.

(ii) A Senior Assistant Surgeon shall put up 4 years of service in the post of Senior Assistant Surgeon for promotion as Civil Surgeon.

(iii) A Civil Surgeon shall put up 2 years of service in the post for promotion as Senior Civil Surgeon.

(iv) A Senior Civil Surgeon shall put up 1 year of service in the post of promotion as Chief Civil Surgeon.

xv. The above eligibility is prospective i.e. for future promotions and it is not applicable to the existing structure. The Medical Officers on whom disciplinary action is pending/punishments given are not eligible for the above exercise.

a. However, the above minimum periods would be for future promotions only, and would not be applicable while refitting the existing structure into the proposed structure. This refitment will be done based on the restructured posts, with the postulate that those who have completed 20 years may be fitted in the Chief Civil Surgeon level, those who have completed 15 years may be fitted in the Civil Surgeon level and those who have completed 8 years may be fitted in the Senior Assistant Surgeon level without taking into reckoning the minimum experience prescribed above for each level.

b. The Director of Medical and Rural Health Services will be empowered to do the refitment and effecting the promotions upto the level of Chief Civil Surgeon, on the guidelines above.



7. This order shall take effect from the date of issue of orders.

45. From the above context, it is, therefore, explicit that G.O.Ms.No.354, Health and Family Welfare (B2) Department, dated 23.10.2009 shall take effect from the date of issuance of the Government orders i.e., from 23.10.2009, and further as stated in clause (xv), the eligibly criteria enumerated in clause 14 is prospective in nature i.e., for future promotion and not applicable to the existing structure. The entire structure of the above said G.O., is only having prospective effect and not retrospective effect.

46. The petitioner Dr.T.Rajagopal has expressed his grievance in his affidavit, filed in support of the writ petition saying that "there is disparity between the professors in medical colleges, who retired prior to 01.01.2006 and after 23.10.2009 (G.O.Ms.No.354). In his affidavit, he has, therefore, made two divisions:-

- (i) Professors retired prior to 01.01.2006;
- (ii) Professors retired after 23.10.2009

47. Keeping in view of the above facts, the petitioner Dr.T.Rajagopal claims that:-

"The revision of pay ordered in G.O.Ms.No.354, dated 23.10.2009 is applicable to the Professor retired prior to 23.10.2009 also and therefore, there is disparity of pension among the professors retired at different period and though all these anomaly has been brought to the knowledge of the respondent Government by making representations, they did not take any effective steps to annual the grievance of the petitioner and his Association and that the Government cannot adopt two yard sticks to the persons similarly situated.

48. The learned single Judge of this court has mainly placed reliance upon the decision reported in D.S.Nakara's case (1983)1 SCC 305, for coming to the conclusion that the rejection of the demand made by the petitioner and his Association has created only an unreasonable disparity in payment of pension to similarly placed persons and that it has to be construed as apparent, patent, discrimination and violative of Article 14 of the Constitution of India.

49. The principles laid down in D.S.Nakara's case [(1983)1 SCC 305], has become fell into insignificance, in view of the <https://hccservices.com/legis/hccservices/> down by the Hon'ble Apex Court in Union of India and others vs. Lieut (Mrs) E.lacats [(1997)7 SCC 334], K.L.Rathee vs. Union of India and others [(1997)6 SCC 7], State of W.B. and



another vs. W.B. Govt. Pensioner's Association and others [(2002)2 SCC 179].

50. In D.S.Nakara's case, challenge was not made to the validity of the pension liberalization scheme. But the petitioners therein had challenged only that part of the scheme by which its benefits are admissible to those who retired from service after a certain date. In other words, they challenge that the scheme must be uniformly enforced with regard to all petitioners for the purpose of computation of pension irrespective of the date when the Government servant retired subject to the only condition that he was governed by 1972 Rules.

51. In the above cited case, viz., D.S.Nakara's case, the following questions were raised before the Constitution Bench of the Hon'ble Apex Court:-

(i) Do pensioners entitled to receive superannuation or retiring pension under Central Civil Service (Pension) Rules, 1972 form a class as a whole?

(ii) Is the date of retirement a relevant consideration for eligibility when a revised formula for computation of pension is ushered in and made effective from a specified date?

(iii) Would differential treatment to pensioners related to the date of retirement qua the revised formula for computation of pension attract Article 14 of the Constitution and the element of discrimination liable to be declared unconstitutional as being violative of Article 14?

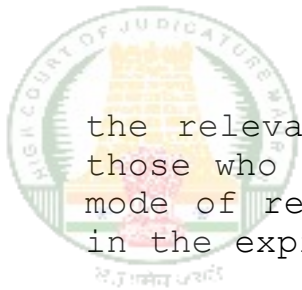
52. His Lordship Hon'le Mr. Justice D.A. Desai, while penning down the judgment on behalf of the Constitution Bench of the Hon'ble Apex Court has observed as under:-

"These and the related questions debated in this group of petitions call for an answer in the backdrop of a welfare State and bearing in mind that pension is a socio-economic justice measure providing relief when advancing age gradually but irrevocably impairs capacity to stand on one's own feet.

53. In that case, what the primary contention focussed was that the pensioners of the Central Government form a class for purpose of pensionary benefits and there could not be mini-classification within the class designated as pensioners.

54. With reference to the expression 'pensioner', His Lordship has defined as under:-

"The expression 'pensioner' is generally understood in contradistinction to the one in service. Government servants in service are entitled to salary and other allowances. Those who retire and are designated as 'pensioners' are entitled to receive pension under



the relevant rules. Therefore, this would clearly indicate that those who render service and retire on superannuation or any other mode of retirement and are in receipt of pension are comprehended in the expression 'pensioners'.

55. In para 9, His Lordship has observed that :-

"Is this class of pensioners further divisible for the purpose of 'entitlement' and 'payment' of pension into those who retired by certain date and those who retired after that date? If date of retirement can be accepted as a valid criterion for classification, on retirement each individual government servant would form a class by himself because the date of retirement of each is correlated to his birth date and on attaining a certain age he had to retire..... Now, if date of retirement is a valid criterion for classification, those who retire at the end of every month shall form a class by themselves. This is too microscopic a classification to be upheld for any valid purpose. Is it permissible or is it violative of Article 14?.

56. In order to explain the scope of contents and meaning of Article 14 of the Constitution of India, His Lordship (D.A.Desai,J) has made reference to Maneka Gandhi vs. Union of India [(1978) 1 SCC 248; (1978) 2 SCR 621 : AIR 1978 SC 597].

57. In this connection, His Lordship has observed in para 11 that "The decisions clearly lay down that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation.

58. His Lordship has also continued that "In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz., (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that that differentia must have a rational relation to the objects sought to be achieved by the statute in question, (Reference made to Shri Ram Krishna Dalmia vs. Shri Justice S.R. Tendolkar and Ors.: [1959]1SCR279 : AIR 1958 SC 538: 1959 SCJ 147.

59. His Lordship has also added that "The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be a nexus i.e., causal connection between the basis of classification and object of the statute under consideration. It is equally well settled by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.



60. As afore stated in the above cited case, (D.S.Nakara's case) the basic contention, which was raised is that the pensioners for the purpose of receiving pension form a class and there is no criterion on which classification of pensioners retiring prior to specified date and retiring subsequent to that date can provide a rational principle correlated to object, viz., object underlying payment of pensions.

61. Having taken into consideration of various factors, His Lordship has concluded that:-

"If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who retired earlier cannot be worst off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory.

62. Further, in para 43 also, His Lordship has concluded as under:

"..Further, the classification is wholly arbitrary because we do not find a single acceptable or persuasive reason for this division. This arbitrary action violated the guarantee of Article 14.....

63. In K. Thimmappa v. Chairman, Central Board of Directors, SBI, (2001) 2 SCC 259, the Division Bench of the Hon'ble Apex Court has observed that:-

"What Article 14 prohibits is class legislation and not reasonable classification for the purpose of legislation. If the rule-making authority takes care to reasonably classify persons for a particular purpose and if it deals equally with all persons belonging to a well-defined class then it would not be open to the charge of discrimination. But to pass the test of permissible classification two conditions must be fulfilled:

(a) that the classification must be founded on an intelligible differentia which distinguishes persons or things which are grouped together from others left out of the group; and

(b) that the differentia must have a rational relation to the object sought to be achieved by the statute in question.



64. Even in D.S.Nakara's case, it has also been observed that:-

"Article 14 Prohibits only class legislation and not reasonable classification and further it has also to be held that if the rule Making Authority takes care to reasonably classify persons for a particular purpose and if it deals equally with all persons belonging to a well defined class then it would not be open to the charge of discrimination and that the differentia must have a rational relation to the object sought to be achieved by the statute in question."

65. The learned single Judge of this court has also made reference to Union of India and another vs. SPS Vains (Retd.) and others [(2008) 9 SCC 125 wherein it has been observed that:-.

"The dispute arose, in this case, was due to disparity in determination of pension of pre 1.1.1990 and post 1.1.1996 retirees who retired from defence services as Major General or Equivalent posts. The disparity arose because pension of those retired as Major General prior to 1.1.1996 were given the same pension as that of a Brigadier. However, in the case of those Major Generals who retired after 1.1.1996, their pay was initially fixed according to Clause 12(c) of Special Army Instruction 2/S/1998, which enabled them to draw higher pension than those who retired before 1.1.1996."

66. In this connection, the Hon'ble Mr.Justice Altamas Kabir, while speaking on behalf of the Division Bench has held that:-

"the decision of the Central Government does not address the problem of disparity having been created within the same class so that two officers both retiring as Major Generals, one prior to 1.1.1996 and the other after 1.1.1996, would get two different amounts of pension. While the officers who retired prior to 1.1.1996 would now get the same pension as payable to a Brigadier on account of the stepping up of pension in keeping with the fundamental rules, the other set of Major Generals who retired after 1.1.1996 will get a higher amount of pension since they would be entitled to the benefit of the revision of pay scales after 1.1.1996. It would be arbitrary to allow such a situation to continue since the same also offends Article 14 of the Constitution..

67. In K.Thimmappa's case (AIR 2001 SUPREME COURT 467), D.S.Nakara's case has not been referred to.



68. In SPS Vains' case (2008)9 SCC 125, cited supra also D.S.Nakara's case has been referred to.

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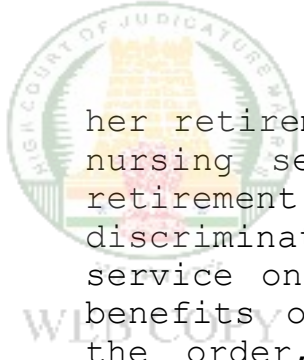
69. In K.L.Rathee vs. Union of India and others (1997)6 SCC 7, after referring D.S.Nakara's case, His Lordship Hon'ble Mr.Justice Suhas C.Sen speaks on behalf of the Division Bench of the Hon'ble Apex Court in para 10 as under:-

"....10.In fact, the principle laid down in the case of Indian Ex-Services League (1991)2 SCC 104: 1991 SCC (L& S) 536 : (1991)16 ATC 488: (1991)1 SCR 158, negates the case of the petitioner in the instant case. Nakara case [(1983)1 SCC 305] does not lay down that the last ten months' emoluments must be deemed to be the same for all the employees at the time of their retirement. The emoluments have to be calculated according to the government rules in force at the time of retirement of the employees. But, if the principle of average of last ten months' emoluments has been adopted for some employees, then that principle must be extended to all the employees who have retired before them. Nakara case [(1983)1 SCC 305] did not lay down that the reckonable emoluments for the purpose of calculation of pension must be the same for a person occupying the same post."

70. His Lordship, in para 13 has also observed as under:-

"..13.It clearly appears from all these cases that Nakara case [(1983)1 SCC 305] is not a case of universal application irrespective of the facts and circumstances of the case. When the Government decided that pension was to be calculated on the basis of average salary drawn over a period of last ten months, it was held in Nakara's case that this principle has to be applied even to those persons who had retired before the notified date. That, however, does not mean that the emoluments of the persons who were retiring after the notified date and those who have retired before the notified date holding the same status must be treated to be the same. This argument was specifically negatived by the Constitution Bench in the case of All India Services Pensioners' Assn.[(1988)2 SCC 580]. What the petitioner is claiming in this case is more or less the same relief as was denied to him in the above case..... ultimately the writ petition was dismissed.

71. In Union of India and others vs. Lieut (Mrs.) E.Iacats [(1997)7 SCC 334], pursuant to an advertisement, the respondent had applied for the post of Nursing Sister (Lieutenant) in the Military Nursing Service for local service. She was selected and joined the post on 06.02.1959. On attaining the age of 55 years, she was superannuated with effect from 30.11.1981. The respondent had filed a writ petition in the Gauhati High Court, challenging



her retirement at the age of 55 years on the ground that in other nursing services under the Military Establishment, the age of retirement was 58 years. According to the respondent, it was discriminatory to retire the nurses, who were appointed for local service only at the age of 55 years. She also claimed pensionary benefits on retirement. Her petition was allowed. Challenging the order, the appellants herein have filed the above appeal before the Hon'ble Apex Court.

72. While speaking on behalf of the Division Bench of the Hon'ble Apex Court, Hon'ble Mrs. Justice Sujata V. Manohar, in para 4 has observed as under:-

.....The terms and conditions of service were known to her at the time when she joined the service. At the time of joining service she has signed an agreement to abide by the Rules and Regulations governing Military Nursing Service (Local) from time to time. She has claimed that pensionary benefits which were conferred for the first time on all those who retired on or after 1st October 1983 should be given to her although she retired much prior to that date. Although she has not challenged the cut-off date as arbitrary, reliance in this connection is placed by her on the decision in the case of D.S. Nakara and Ors. v. Union of India : (1983)ISC 305. This decision has been subsequently explained and distinguished in a number of cases. In the case of Sushma Sharma (Dr.) v. State of Rajasthan [1985 Supp SCC 45, page 66 para 44t), this Court cited with approval its earlier observations in Union of India v. Parameswaran Match Works Ltd. (1975) 1 SCC 305 : AIR 1974 sc 2349 to the effect that the choice of a date as a basis of classification cannot always be dubbed as arbitrary unless it is capricious or whimsical. In the case of State of West Bengal and Ors. v. Ratan Behari Dey and Ors. (1993)4 SCC 62, this Court considered the pension scheme introduced by the Calcutta Municipal Corporation from 1.4.1977. It upheld the validity of the cut-off date. Nakara's case (supra) was distinguished on the ground that in Nakara's case by an artificial cut-off date, distinction was sought to be made between retired employees who were governed by the same rules. However, when a pension scheme is introduced from a given date, there are two sets of employees who are governed by two different sets of rules. They cannot be treated as similarly situated. As the cut-off date was retrospective, this Court also examined the reasonableness of this retrospective operation. It found the cut-off date to be reasonable, it being based upon the date of, appointment of the Pay Commission..... This Court, distinguishing Nakara's case (supra), held that he cannot be retrospectively made eligible under the new rules. Pensioners under the old rules and pensioners under the new rules are not similarly situated. Each set of retiring employees will be governed by their own rules in force when they retire.



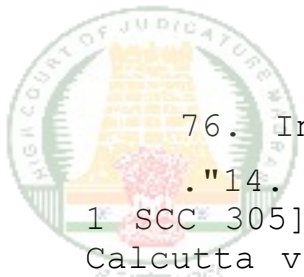
73. In an another case viz., State of W.B. and another vs. W.B. Government Pensioners' Association and others [(2002)2 SCC 179]], the issue, which arose for consideration before the Division Bench of the Hon'ble Apex Court headed by His Lordship Mr. Justice G.B. Pattanaik was as to whether the decision of the Hon'ble Apex Court in D.S. Nakara vs. Union of India (1983)1 SCC 305 obliges the appellant to pay pension calculated on the revised scales of pay under the West Bengal Services (Revision of Pay and Allowances) Rules, 1990, to all the erstwhile employees of the State Government irrespective of their date of retirement.

74. What happened in this case was:-

"The West Bengal Services (Revision of Pay and Allowances) Rules, 1990 inter alia, revised the pay scales of the State Government employees with effect from 01.01.1986. It covered those employees who were in service on 01.01.1986 even though such employees may have retired before the 1990 Rules, were in fact published. As far as these retired employees were concerned, their pay could only be revised notionally and a memorandum was issued on 25.04.1990 giving them pensionary benefits calculated on the basis of such notionally revised scales of pay. The said notification was challenged by the respondent Association, the members of which are all pre-1986 retirees. They in fact had filed a writ petition before the Calcutta High Court claiming that they too were entitled to the same benefits as the post 1986 retirees. The petition was disposed of by a learned Single Judge by directing the Secretary of the Finance Department to consider the claim of the Association in the light of the judgment in D.S. Nakara's case [(1983)1 SCC 305], after giving the Association a chance of being heard and by passing a speaking order.

75. It was held by the High Court that in keeping with the decision in D.S. Nakara's case, the members of the Association were entitled to the pensionary benefits as were paid to post-1986 retirees. The decision of the High Court was challenged by the State Government before the Hon'ble Apex Court in this appeal. After hearing both sides, while writing the judgment by Her Lordship Mrs. Justice Ruma Pal on behalf of the Division Bench, has observed in para 13, after placing reliance upon Union of India vs. P.N. Menon [(1994)4 SCC 68] that:-

..... As such it cannot be held that the cut off date has been selected in an arbitrary manner. Not only in matters of revising the pensionary benefits, but even in respect of revision of scales of pay, a cut off date on some rational or reasonable basis, has to be fixed for extending the benefits."



76. In para 14, Her Lordship has observed as under:-

"14. Illustrative of another aspect of the Nakara case [1983] 1 SCC 305] principle, is the decision in Commander Head Quarter, Calcutta v. Capt. Biplabendra Chanda [(1997)1 SCC 208] which said that the requirement of equality prescribed by Nakara did not extend to a new retiral benefit but was limited only to an upward revision of an existing benefit. It was held, therefore, that a person who was not entitled to receive pension on the date of his retirement could not claim a grant of pension because of a subsequent change in the criteria of eligibility for such grant. (See also Union of India v. Dr Vijayapurapu Subbayamma⁵ and V. Kasturi v. Managing Director, State Bank of India Bombay [(1998)8 SCC 30]."

77. We have thoroughly and carefully gone through the decisions of the Hon'ble Apex Court made in K.L.Rathee vs. Union of India and others [(1997)6 SCC 7], Union of India and others vs. Lieut (Mrs) E.Iacats [(1997)7 SCC 334] and State of W.B. and another vs. W.B. Government Pensioner's Association and others [(2002)2 SCC 179). In all these cases, the decision made in Nakara's case has been distinguished and in fact, in K.L.Rathee vs. Union of India and others [(1997)6 SCC 7] cited supra, it is held that D.S.Nakara's case cannot be applicable universally, irrespective of the facts and circumstances of the case.

78. Apart from this in Commander, Head QArter vs. Capt. Biplabendra Chanda [(1997)1 SCC 208], it is held that distinguishing Nakara's case, the respondent cannot be retrospectively made eligible under the new rules. It is also held that pensioners under the old rules and pensioners under the new rules are not similarly situated and each set of retiring employees will be governed by their own rules in force when they retired.

79. We have also perused the common order of the learned single Judge of this court, which is impugned in these writ appeals and find that, had the above cited decisions been cited before the learned single Judge of this court, he would not have taken a different stand. Probably, he would have taken the decision in congruence with the observations made by the Hon'ble Apex Court in the above decisions. viz., K.L.Rathee vs. Union of India and others [(1997) 6 SCC 7], Union of India and others vs. Lieut (Mrs) E.Iacats [(1997)7 SCC 334] and (2002)2 SCC 179 [State of W.B. and another vs. W.B. Government Pensioner's Associations and others].

80. In Kallakkurichi Taluk Retired Officials Association, Tamil Nadu and others vs. State of Tamil Nadu [(2013)2 SCC 772],



the controversy was related to a dispute inter se between the State Government and the retired employees in respect of the component of 'dearness allowance' liable to be treated as "dearness pay" for computation of pension. But the circumstances of the case narrated therein are entirely different to that of the facts and circumstances relating to the instant case on hand. We, therefore, that no purpose is going to be served in placing reliance upon the above decision cited on behalf of the respondents.

81. According to the learned Advocate General, the G.O.(Ms) No.354, dated 23.10.2009 is not based on the recommendation of the Pay Commission, but it was passed by the Government based on the demands of the Tamil Nadu Government Doctors' Association to provide better promotional opportunities and Dynamic Assured Career Progression (DACP) for the medical officers only those who are not getting promotion in service.

82. It is also the submission made by the learned Advocate General that the petitioner Dr.T.Rajagopal had retired from Government service on attaining the age of superannuation on 31.08.2003. He had been serving in different places and at present, he has been drawing pension as per the existing rules in force applicable to the post, which he was held at the time of his retirement and without understanding this fact, he has wrongly sought the benefit of pension, based on a new Government Policy viz., Dynamic Assured Career Progression (DACP), which was introduced in the year 2009, which has become applicable from 23.10.2009 to the professors in service, after the issuance of the said G.O.Ms.No.354, dated 23.10.2009.

83. On the other hand, Mr.V.R.Venkatesan, learned counsel appearing for the petitioner Dr.T.Rajagopal has specially argued that there was a parity among the same cadre post in calculating and computation of pension and that the revision of scale of pay was done long back to the post of professor on the same scale of pay as mentioned in G.O.Ms.No.354, but in the medical side, both in Health service and Education side, the revision of pay scale to the post of Professor was done only in the year 2009 by issuance of G.O.Ms.No.354.

84. He has also adverted to that when all the professors working in the Arts colleges and other colleges were receiving the same scale of pay as mentioned in G.O.Ms.No.354 and the retired professors are getting revised pension on the basis of the revised scale of pay of Rs.37400-67000+AGP Rs.9000/-, the petitioner and the members of Association ought not to have been denied their legitimate claim.



85. He has also argued that G.O.Ms.No.354 did not create two groups i.e., one is retired prior to the issuance of G.O. i.e., prior to 23.10.2009 and another one is after the issuance i.e., after 23.10.2009.

86. What Mr.V.R.Venkateshan, would argue is that the petitioner and his Association are not claiming revision of scale of pay, but they are claiming only the corresponding revision of 50% of pension on the revised scale of pay.

87. Besides this, he has also argued that the persons, who are legally entitled to enforce the claim ought to have been given similar benefits. Especially, when the professors working in the Arts and other colleges are able to receive the revision of pension on the basis of Rs.37400-67000+AGP Rs.9000/-, the refusal of extending similar benefits to the persons, similarly placed is nothing, but discriminatory in nature and it will attract the provisions of Article 14 of the Constitution of India.

88. He has also pointed out that the impugned action of the respondents is punitive in character and discriminatory in nature and violative of Article 14 of the Constitution of India and as observed by the Hon'ble Apex Court in D.S.Nakara's case [(1983)1 SCC 305], the object sought to be achieved was not created a class within a class, but to ensure that the benefits of pension made available to all persons of the same class equally. Otherwise, it would cause violation to the provisions of Article 14 of the Constitution.

89. On coming to the instant case on hand, the petitioner Dr.T.Rajagopal has claimed that he had joined in service as Assistant Surgeon and after serving in various stations and in various positions, he had retired from service on attaining the age of superannuation on 31.08.2003 as Professor/Head of the Department of Pediatrics. According to him, at the time of his retirement, the scale of pay to the post of Professor was Rs.12,000/- per men sum.

90. He has also conceded that he and the members of the Association, after the age of superannuation, have been receiving their respective pension from the date of their retirement. As per G.O.Ms.No.235, Finance Department, dated 01.06.2009, their pension was revised in the year 2006 with the monetary benefit from 2007. These are all admitted facts.

91. Apart from this, it is also the case of the petitioner that at the time of his retirement, his Pay Band was III and subsequently the pay to the post of Professor was revised by G.O.Ms.No.354, Health and Family Welfare (B2), Department, dated 23.10.2009 and as per the revised scale of pay to the post of



professor, which he was holding at the time of his retirement, the Government has moved the Pay Band from III to IV to the post of professor.

92. It is also his case that though the Government, by passing G.O., has revised the pay from Pay Band III to IV, it has miserably failed to revise the pension to the post of professor from Pay Band III to IV and that though, the members of the Association were entitled to get benefit of the revised Pay Band IV, they are getting pension still in Pay Band III, less than their colleagues, who had retired after the issuance of G.O.Ms.No.354, Health and Family Welfare (B2) Department, dated 23.10.2009.

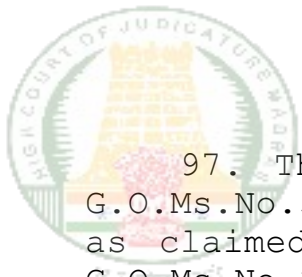
93. According to the petitioner, Dr.T.Rajagopal, there is disparity between the professors in medical colleges, who retired prior to 01.01.2006 and after 23.10.2009.

94. Petitioner also says that the professors, who retired prior to 01.01.2006 (with 33 years of service as on 31.08.2003) are drawing pension of Rs.18,280/- and the professors, who retired after 23.10.2009 (with 33 years of service as on 31.10.2009) are getting pension of Rs.46,100/- = Rs.23,050 (Less pay drawn Rs.37,400 + Rs.8,700/-). as per the pension.

95. Having been aggrieved with this disparity, the persons, including himself, namely the professors and Senior Civil Surgeons working in the Government Hospitals have requested the Government to rectify this anomaly, by revising the scale of pay as that of the persons similarly situated working in Government colleges and other departments and only thereafter, the Government has inclined to pass an order. Accordingly, the G.O.Ms.No.354, Health and Family Welfare (B2) Department, dated 23.09.2010 was issued with the sole intention of rectifying the anomaly and disparity of pay scale. But this has been specifically denied by the learned Advocate General saying that:-

"The Tamil Nadu Governments Doctor's Association had requested the Government that the Government Doctors might be provided with Dynamic Assured Career Progression (DACP) due to lack of adequate promotional opportunities and stagnation at various levels in the system. Accordingly, the Government had constituted a committee to look into the promotional opportunities of the Government doctors at various levels headed by the Special Secretary to Government, Finance Department and to submit a report. Based on the direction of the Government, the Committee had submitted its report to the Government with its recommendation.

96. He has also submitted that after careful examination, the Government had issued orders in GO.(MS)No.354, Health and Family Welfare (B2) Department, dated 23.10.2009 by providing promotional opportunities to the existing Government Doctors, who have completed 8, 15 and 20 years in Government service.



97. The learned Advocate General has canvassed that G.O.Ms.No.354, dated 23.10.2009 is not a common Government order, as claimed by the petitioner Dr.T.Rajagopal, as in the case of G.O.Ms.No.234, Finance (Pay Cell) Department, dated 01.06.2009, but, it has been issued considering the demands of the Tamil Nadu Govt. Doctors' Association with the sole intention to provide Dynamic Assured Career Progression (DACP) for the existing Government Doctors alone and not for retired Government doctors.

98. It is palpable that the crucial date, for giving monetary benefit as per G.O.Ms.No.354, Health and Family Welfare Department is 23.10.2009 i.e., the date of issuance of the order, whereas the Government Order in G.O.Ms.No.235, Finance (Pay Cell) Department, dated 01.06.2009 was given effect from 01.01.2006 and the monetary benefit was with effect from 01.01.2007 and therefore, it could not be compared with the order issued in G.O.Ms.No.,354, dated 23.10.2009.

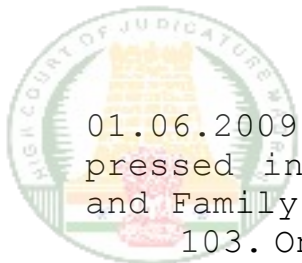
99. From the above context, we find that the learned Advocate General was trying to reiterate the stand of the Government that there was no posts in the nomenclature of Professor in the special rules for the Tamil Nadu Medical services, prior to the issuance of G.O.Ms.No.354, Health and Family Welfare Department, dated 23.10.2009 and that the above Government Order has been given effect from 23.10.2009 and hence, it could not be given retrospective effect, as requested by the petitioner and the benefits of upgradation is applicable only to the serving personnels on that date and the same is not applicable to those retired prior to the issue of the Government order, dated 23.10.2009.

100. As adumbrated in the opening paragraphs, the petitioner has sought for the direction as against the respondents to fix and pay the revised pension as per G.O.Ms.No.354, Health and Family Welfare (B2) Department, dated 23.10.2009 to the post of professor, which the petitioner and the members of the Association were holding at the time of their retirement by implementing the G.O.Ms.No.235, Finance (Pay Cell) Department, dated 01.06.2009 and G.O.Ms.No.200, Finance (Pay Cell) Department, dated 18.05.1999.

101. In this regard, we would like to say that G.O.Ms.No.235, Finance (Pay Cell) Department, dated 01.06.2009 has already been implemented and the petitioner Dr.T.Rajagopal and the members of the Association have been receiving their respective pension from the date of their retirement and their pension was revised in the year 2006 with the monetary benefit from 2007 as per G.O.Ms.No.235, Finance (Pay Cell) Department, dated 01.06.2009, as discussed in paragraph No.90.

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102. The petitioner Dr.T.Rajagopal has also admitted this fact. When the G.O.Ms.No.235, Finance (Pay Cell) Department, dated



01.06.2009 has already been implemented, it need not once again be pressed into service to give effect to the G.O.Ms.No.354, Health and Family Welfare (B2) Department, dated 23.10.2009.

103. On perusal of the G.O.Ms.No.354, Health and Family Welfare (B2) Department, dated 23.10.2009, it is intelligible that the Tamil Nadu Government Doctor's Association had requested the Government that the Government Doctors may be provided with Dynamic Assured Career Progression (DACP) due to lack of adequate promotional opportunities and stagnation at various levels in the system.

104. At Page 5, Clause II under the caption "Director of Medical Education side", sub clause (ix) reads as under:-

"The combined grade of Associate Professor/Professor is split into two namely, Associate Professor and Professor corresponding to Senior Civil Surgeon and Chief Civil Surgeon on Director of Medical and Rural Health Services, Director of Public Health and Preventive Medicine side, respectively. Thus, Assistant Professor, Senior Assistant Professor, Associate Professor and Professor would be in the Pay band and Grade Pay laid down in the G.O.(Ms) No.234 Finance (Pay Cell) Department, dated 01.06.2009 corresponding to the pre-revised scales of Rs.9100/-, Rs.10000/-, Rs.12000/- and Rs.14300/- respectively.

105. Considering the prayer of the petitioner as well as the petitioner's Association, we find that the petitioner as well as the petitioner's Association are under the prime obligation to answer the question as to how far the above said G.O.Ms.No.235, dated 01.06.2009 and G.O.Ms.No.200, dated 18.05.1999 could be implemented to press into the service of the G.O.Ms.No.354 Health and Family Welfare (B2) Department, dated 23.10.2009 for the purpose fixing and paying the revised pension to the post of professors, which the members of the Association were holding at the time of their retirement.

106. In this connection, we would like to point out that:-

(a) In G.O.Ms.No.200, Finance (Pay Cell) Department, dated 18.05.1999, it is stated that:-

" following the orders of the Government of India in the case of pre-01.01.1996 pensioner/family pensioner, orders were issued to the effect that in the case of employees, who have retired from service prior to 01.01.1996, the revised pension shall be calculated at 50% of the minimum of the revised time scale of pay introduced with effect from 01.01.1996 applicable to the post last held by the employee at the time of retirement. Likewise, Family pension was calculated at 30% of the minimum of the revised time



scale of pay introduced with effect from 01.01.1996 for the post last held by the concerned pensioner/deceased Government Servant. In case where, the posts are not in existence, 30% has been permitted only with reference to the corresponding revised scale of pay admissible to such posts corresponding to the pre-revised scale of pay drawn by such employees at the time of their retirement.

(b) Subsequently, consequent to the implementation of the recommendations of Official Committee - 2009, the revision of scales of pay of Employees/Teachers in Government Departments were given effect notionally with effect from 01.01.2006 with monetary benefit from 01.01.2007. Following the pay revision, orders have also been issued in G.O.Ms.No.235, Finance (Pay Cell) Department, dated 01.06.2009 revising the pension /family pension of the retired employees with effect from 01.01.2007. In para 2 (vi) of the said Government Order, on the analogy of the orders issued in G.O.Ms.No.200, Finance (Pay Cell) Department, dated 18.05.1999, it has been ordered that the fixation of pension shall be subject to the provision that the revised pension in no case shall be lower than fifty percent of the minimum of the pay in the Pay Band plus Grade Pay corresponding to the pre-revised pay scale from which, the pensioner had retired.

107. But on careful perusal of G.O.Ms.No.354, Health and Family Welfare Department, dated 23.10.2009, we find that this orders were issued creating better promotional opportunities to the Government doctors working in the Directorate of Medical Education/Directorate of Medicine and Rural Health Services/Directorate of Public Health and Preventive Medicine Departments.

108. The phrase 'employee', which is employed, therein is not meant for 'retired employees' in the medical services, but for creating better promotional opportunities to the Government doctors working in the Directorate of Medical and Rural Health Services/Directorate of Public Health and Preventive, Medicine Department.

109. Therefore, as argued by the learned Advocate General, the date i.e., 23.10.2009 on which the G.O.Ms.No.354 was issued is the cut off date and this seems to be crucial in nature and decide the eligibility of the medical officer as observed in para No.39 and as such it's benefit cannot be extended retrospectively either to the petitioner or to the members of his Association..

110. We, therefore, find that the petitioner at the time of his retirement i.e., on 31.08.2003 was only holding the post of professor in the combined category of Associate Professor/Professor by way of re-designation as Professor, after the completion of four years as teaching experience and the re-designation did not change the scale of pay, as there was no higher scale in existence during that time.



111. It is pertinent to note here that the re-designation till 23.10.2009, which is the cut off date had neither given monetary benefits nor higher scale of pay to the petitioner, as it fell within the combined category.

112. As argued by the learned Advocate General, the senior professor with four years teaching experience called as 'Professor' and others remained as 'Associate Professors'.

113. We would like to underline the point that the professors appointed after the creation of posts based on G.O.Ms.No.354, dated 23.10.2009 cannot be compared with those who acted as professor by way of re-designation before 23.10.2009. Even, it is admitted by the petitioner (Dr.T.Rajagopal) that based on the representation made by the Tamil Nadu Government Doctors' Association that they might be provided with Dynamic Assured Career Progression (DACP) due to lack of adequate promotional opportunities and stagnation at various levels in the system, the Government had constituted a Committee to look after the promotional opportunities of Government Doctors at various levels headed by the Special Secretary to Government, Finance Department and on his report, the Government have issued G.O.Ms.No.354, Health and Family Welfare Department, dated 23.10.2009 by providing promotional opportunities to the existing Government Doctors, who have completed 8, 15 and 20 years in Government service.

114. Therefore, it is explicit that the object which is sought to be achieved by way of issuance of G.O.Ms.No.354, dated 23.10.2009, does not mean to create a new class, but to ensure that the Government doctors are getting promotional opportunities, who have completed 8/15/20 years of Government service by way of granting Dynamic Assured Career Progression (DACP).

115. As it is discussed in the foregoing paragraphs, Article 14 of the Constitution of India, does not forbid reasonable classification. In so far as this case is concerned, the classification between the Government doctors, who had retired prior and after 23.10.2009 is a permissible and reasonable classification and therefore, it could be construed as an intelligible differentia. This classification is having a rational nexus to the object sought to be achieved by the issuance of G.O.Ms.No.354, dated 23.10.2009.

116. Having regard to the related facts and circumstances, we are of the considered view that the cut off date viz., 23.10.2009 is not arbitrary and therefore, it does not create any unreasonable disparity in the payment of pension as the doctors, who had retired prior to 23.10.2009 were not similarly placed to the Government Doctors, who have retired after 23.10.2009. Hence, the G.O.Ms.No.354, Health and Family Welfare (B2) Department,



dated 23.10.2009 cannot be given retrospective effect, as this G.O. is having only prospective effect, which is clearly stipulated in the G.O., which cannot be deviated or flexed in accordance with the whims and fancies of the petitioner and the members of his Association.

117. Keeping in view of the above facts, we are of the considered view that the impugned order passed by the learned single Judge of this court is liable to be set aside and the writ petitions viz., W.P.(MD)No.5168 and W.P.(MD)No.9215 of 2011 filed by the petitioners and his association are liable to be dismissed.

118. Accordingly, both the writ appeals are allowed. The common order, dated 30.04.2013 is set aside and the writ petitions viz., W.P.(MD)Nos.5168 and W.P.(MD)No.9215 of 2011 are dismissed. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Chief Secretary to the Government, Fort St. George, Chennai-600 009
 - 2.The Principal Secretary to the Government, Finance Department, Fort St. George, Chennai-600 009.
 - 3.The Commissioner and Secretary to the Government, Department of Health and Family Welfare, Department of Health & Family Welfare, Fort St. George, Chennai 600 009.
 - 4.The Director of Medical Education, DMS Compound, Chennai 600 010.
 - 5.The Director of Medical Education, Kilpauk, Chennai
 - 6.The Dean, Madurai Medical College, Madurai-625 020.
- +2ccs to Mr.V.R.Venkatesan, Advocate, SR.Nos.14267, 14268
+One cc to The Special Government Pleader, SR.Nos.14536
er
RL/10c - 30/3/2015

Judgment made in
W.A(MD)Nos.922 and 923 of 2013
24.03.2015