

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.33656 of 2016

Dr.K.S.Gamal Abdul Nasser ... Petitioner

Vs.

1. The Principal Secretary to Government,
Health and Family Welfare Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
2. The Principal Secretary to Government,
Finance Department,
Government of Tamilnadu,
Fort St.George, Chennai-600 009.
3. The Director of Medical Education,
Kilpauk, Chennai-600 010.
4. The Principal,
Tamilnadu Government Dental College and Hospital,
Muthuswamy Road,
Park Town, Chennai-600 003. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent passed in Letter No.2137/A1/2012-8, dated 11.09.2015 and quash the same and re-fix the petitioner's pay notionally at Rs.16,700/- with effect from 13.12.2006 in the scale of pay of Rs.14,300-400-18,300 and under revised scale of pay of Rs.37,400-67,000 with Grade Pay Rs.8,700/- for fixation of his pay notionally at Rs.40,390/- with Grade Pay Rs.8,700/- with effect from 13.12.2006 in the light of G.O.Ms.No.234, Finance (PC) Department, dated 01.06.2009 and G.O.Ms.No.245, Health and Family Welfare (A2) Department, dated 30.10.2013 and further regulated at Rs.42,380/- with effect from 01.01.2007, Rs.43,920/- with effect from 01.10.2008 and Rs.45,500/- with effect from 01.10.2009 with Grade Pay Rs.8,700/- with monetary benefit from 23.10.2009 to the petitioner for which he rendered service as Principal, Tamil

Nadu Government Dental College and Hospital, Chennai-3.

For Petitioner : Mr.R.Ramachandran
For Respondents : Mr.K.Dhananjayan, Spl.G.P.

ORDER

The petitioner has filed this Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent passed in Letter No.2137/A1/2012-8, dated 11.09.2015 and quash the same and re-fix the petitioner's pay notionally at Rs.16,700/- with effect from 13.12.2006 in the scale of pay of Rs.14,300-400-18,300 and under revised scale of pay of Rs.37,400-67,000 with Grade Pay Rs.8,700/- for fixation of his pay notionally at Rs.40,390/- with Grade Pay Rs.8,700/- with effect from 13.12.2006 in the light of G.O.Ms.No.234, Finance (PC) Department, dated 01.06.2009 and G.O.Ms.No.245, Health and Family Welfare (A2) Department, dated 30.10.2013 and further regulated at Rs.42,380/- with effect from 01.01.2007, Rs.43,920/- with effect from 01.10.2008 and Rs.45,500/- with effect from 01.10.2009 with Grade Pay Rs.8,700/- with monetary benefit from 23.10.2009 to the petitioner for which he rendered service as Principal, Tamil Nadu Government Dental College and Hospital, Chennai-3.

2. It is the case of the petitioner that he had entered into Tamil Nadu Government Medical Service on 04.06.1979 as Tutor in Dental Surgery and retired as Principal, Tamil Nadu Government Dental College and Hospital, Chennai-3, on attaining the age of superannuation on 30.06.2014 AN, after rendering 36 years of service. While he had been working as Principal of the fourth respondent-College, the pay scales were revised in the year 2009. The pre-revised scale of the petitioner was Rs.12750-375-6500. According to the Tamil Nady Revised Scales of Pay Rules, 2009, the petitioner's pay in the post of the Principal, was fixed at Rs.31410 + Grade Pay Rs.7700/- with effect from 13.12.2006 in the Pay Band-3 Rs.15600-39100-GP.7700/-. The pre-revised scale of pay of the Senior Civil Surgeons in the fourth respondent-College was Rs.12000-375-16500. The revised scale of pay of 2009 in regard to Senior Civil Surgeons was Rs.15600-39100+G.P.7600/-. The pre-revised scale of the petitioner for the post of the Principal was higher than that of the post of Senior Civil Surgeon in the Dental wing prior to implementation of the Tamil Nadu Revised Scales of Pay Rules, 2009. But according to the said Rules, there is only difference in the Grade Pay.

3. It is the further case of the petitioner that the third respondent, under the powers delegated and instructions issued in G.O.Ms.No.354, Health and Family Welfare Department, dated 23.10.2009, issued orders that the petitioner is eligible to

draw his pay and allowances in the scale of pay of Rs.37400-67000/- with Grade Pay of Rs.8,700/- in the Pay Band-4 with effect from 23.10.2009 and the petitioner's pay was fixed at Rs.37,400/- + Grade Pay Rs.8,700/- with effect from 23.10.2009, without reference to the pay last drawn in the revised scale of Pay Band-3, resulting in the pay of the petitioner fixed just equal to that of a Dental Surgeon who is far junior to the petitioner. The details of pay before revision of pay is tabulated below:

Particulars	Pay of the Senior, petitioner	Pay of a Junior
As on 01.10.2006	Rs.15,750/- (Rs.12000-375-16500) (Senior Civil Surgeon)	Rs.12,750/- (Rs.12000-375-16500) (Senior Civil Surgeon)
As on 01.10.2008	Rs.17,250/- (Rs.12750-375-16500) (Principal)	Rs.13,500/- (Rs.12000-375-16500) (Senior Civil Surgeon)

The pay revised as per the Tamil Nadu Revised Scales of Pay Rules, 2009, vide G.O.Ms.No.234, Finance (Pay Cell) Department, dated 01.06.2009, is as follows:

Particulars	Pay of the Senior, petitioner	Pay of a Junior
Pay fixed with effect from 01.10.2006	Rs.29160+7600 GP Rs.15600-39100+7600 (Senior Civil Surgeon)	Rs.23580+7600 GP. Rs.15600-39100+7600 (Senior Civil Surgeon)
with effect from 13.12.2006	Rs.31410+7700 GP. Rs.15600-39100+7700 (Principal)	Rs.24570+7600 Rs.15600-39100+7600 (Senior Civil Surgeon)
As on 01.10.2007	Rs.32590 + 7,700	Rs.25490 + 7,600
01.10.2007	Rs.33800 + 7,700	Rs.26490 + 7,600
01.10.2008	Rs.35050 + 7,700	Rs.27520 + 7,600
01.10.2009		

The revised pay as per G.O.Ms.No.354, Health and Family Welfare Department, dated 23.10.2009, is as follows;

As on 23.12.2009	Rs.37400 + 8700	Rs.37400 + 8700
As on 01.10.2012	Rs.41690 + 8700	Rs.41690 + 8700

4. It is the further case of the petitioner that from the above tabular column details, the pay of the Senior, the petitioner, is fixed equivalent to that of his far junior. The petitioner therefore made a representation, dated 01.10.2013 with a comparative statement, to the respondents. The said representation has not been considered by the second respondent in proper perspective.

5. It is further stated by the petitioner that the Senior Civil Surgeon's Pay Band of Rs.15600-39100+GP.7600 was also revised to Pay Band 4, Rs.37400-67000+GP 8,700, which is equivalent to the petitioner's Pay Band, though the petitioner's pre-revised scale of pay for the post of Principal was Rs.12750-375-16500, which was higher than that of Senior Civil Surgeon's pre-revised scale of pay of Rs.12000-375-16500/-.

6. It is further submitted by the petitioner that for the pre-revised scale of pay of Rs.12000-375-16500, in respect of Senior Civil Surgeons, the Additional Fitment Table-17 for the revised Pay Band-4 Rs.37400-67000+Grade Pay Rs.8,700/- was issued by the second respondent in Government Letter No.51082/Pay Cell/2010-1, dated 15.09.2010 (based on One Man Committee constituted to examine the pay anomalies, if any arisen consequent to the implementation of the recommendations of the Official Committee, 2009). But, the Additional Fitment Table for the pre-revised scale of pay of Rs.12750-375-16500 in respect of the post of Principal, was not issued. Non-issuance of additional fitment table for the pre-revised scale of pay of Rs.12750-375-16500, resulted in no difference of pay between the seniors and juniors. Even according to the fitment table issued for the existing pre-revised scale of pay of Rs.12000-375-16500, the pay of the petitioner was Rs.15,375/- as on 01.01.2006 in the pre-revised scale of pay of Rs.12750-375-16500. Taking the pre-revised pay of the petitioner as Rs.12750-375-16500 into consideration, the petitioner's pay should have been fixed at Rs.42,120/-, but the pay of the petitioner was fixed at Rs.37,400/- in the minimum of the revised scale of pay of Rs.37400-67000+Gr.Pay 8700/-. Thus, the pay of the senior is fixed at the minimum of the scale of pay, whereas the pay of the junior who was drawing in the minimum of the pre-revised scale of pay, i.e. Rs.12,000/- is also fixed at Rs.37,400/-. Therefore, according to the petitioner, this is irrational fixation of pay without any basis.

7. For the above grievance, the petitioner made several representations, dated 28.09.2010, 16.02.2013 and 01.10.2013, for considering his case. Since no order was passed by the authorities, the petitioner filed W.P.No.5918 of 2015 on the file of this Court, and on 16.03.2015, this Court directed the respondents to pass appropriate orders on the said representations of the petitioner, on merits and as per law, within a period of two months from the date of receipt of a copy of the order. The first respondent, by the impugned letter in No.2137/A1/2012-8, dated 11.09.2015, informed the petitioner that his request is not feasible of compliance due to the fact that the Pay Band 4 Pay Scale (Rs.37400-67000+Gr.Pay Rs.8700) had not been granted based on Official Committee, 2009, or subsequent Anomaly Committees constituted by the Government and it cannot be complied with, and accordingly, the above said representations were rejected. Challenging the said order of rejection, dated 11.09.2015, the petitioner has filed this Writ Petition for the relief stated supra.

8. When the Writ Petition is taken up for consideration, learned counsel for the petitioner submitted that the petitioner's pay has not been fixed in accordance with G.O.Ms.No.354, Health and Family Welfare Department, dated 23.10.2009. It is further stated that G.O.Ms.No.245, Health and Family Welfare (A2) Department, dated 30.10.2013 was issued with clarifications/amendments for ensuring smooth implementation of the said G.O.Ms.No.354. Since the second respondent failed to take into consideration the clarifications/amendments issued in G.O.Ms.No.245, which squarely applies to the case of the petitioner, he has resorted to file this Writ Petition.

9. It is further contended that the petitioner's pay is covered by the said G.O.Ms.No.354, which shall be re-fixed with effect from 01.01.2006 or from the date of promotion, whichever is later as per the option/revised option as per G.O.Ms.No.234, Finance (PC) Department, dated 01.06.2009 and further regulated notionally upto 23.10.2009 with monetary benefits from 23.10.2009 in accordance with clarifications/amendments issued in the above said G.O.Ms.No.245.

10. Learned counsel for the petitioner further submitted that in consonance with the orders issued in the above said G.O.Ms.No.354, the third respondent by proceedings issued in R.Dis.No.89594/DACP/2010, dated 21.06.2010, has re-designated and appointed the petitioner as Professor of Dental Surgery (Prosthetics), Tamil Nadu Government Dental College and Hospital, Chennai-3, with effect from 19.08.1995. The third respondent also certified that the petitioner is fully eligible to hold the post of Professor, but he allowed the petitioner only to draw the arrears of Pay Band-4 of Rs.37400-

67000+G.P.8700- with effect from 23.10.2009 at the minimum of the Pay Band-IV, though he had been re-designated as Professor as stated above.

11. It is further contended by the learned counsel that taking into consideration G.O.Ms.No.245 stated above, the petitioner satisfied 20 years of service as on 03.06.1999. The pre-revised scale of pay of the petitioner ought to have been fixed at Rs.14300-400-18300 on 04.06.1999 and subsequent revision of scale of pay of Rs.37400-67000 with Grade Pay Rs.8,700/- should have been given effect to accordingly, with the monetary benefit from 23.10.2009. Hence, the learned counsel prayed for granting the prayer stated supra in this Writ Petition.

12. Heard the learned Special Government Pleader appearing for the respondents on the above lines of arguments of the learned counsel for the petitioner.

13. Keeping in mind the above submissions made on either side, I have carefully considered the same and perused the materials available on record.

14. It is seen that the first respondent has mechanically rejected the petitioner's request as not feasible of compliance, without considering the clarifications/amendments issued in G.O.Ms.No.245 discussed supra. It is useful to quote the relevant portion of the said G.O.Ms.No.245, Health and Family Welfare (A2) Department, dated 30.10.2013 as follows:

"4. The Government have examined the case in the light of the minutes of the review meeting and in cancellation of the amendment issued in G.O.(Ms). No.357, Health and Family Welfare Department, dated 15.12.2010, issue the following clarificatory amendment orders for ensuring smooth implementations of the original Government Order second read above (-G.O.Ms.No.354, Health and Family Welfare Department, dated 23.10.2009):

... ..

... ..

... ..

3. Director of Medical and Rural Health Services side (including Director of Public Health and Preventive Medicine side):

... ..

... ..

(iii) The posts sanctioned in the G.O.Ms.No.354, Health and Family Welfare Department, dated 23.10.2009 will be recognised in the categories of Assistant

Surgeon/Senior Assistant Surgeon/Civil
Surgeon/Senior Civil Surgeon/Chief Civil
Surgeon and the process of promotion/drawal
of panel will be subject to availability of
vacancies. However, the fixation of pay of
any Medical Officer shall be strictly time
bound as envisaged under the Dynamic Assured
Career Progression, i.e. irrespective of
inclusion in panel and promotion and the
Medical Officers scale of pay will be fixed
in the relevant Pay Band/Grade Pay, subject
to fulfillment of the required period of
service and the duty exemption other special
service conditions applicable to Chief Civil
Surgeon will be available to only such
officers who have been promoted through panel
seniority.
..... "

15. On a perusal of the above contents of G.O.Ms.No.245, it is clear that the first respondent, without considering the clarificatory amendment order issued in G.O.Ms.No.245, had summarily rejected the petitioner's representation/request. Hence, this Court finds that there is disparity in the fixation of pay of the petitioner with his junior. Therefore, I am of the opinion that taking into consideration the said clarificatory amendment issued in G.O.Ms.No.245, the petitioner is entitled for the relief sought for in this Writ Petition, as he has completed 20 years of service as on 03.06.1999 and he is eligible for the time-bound promotion of Chief Civil Surgeon in the Pay Band-IV, i.e. Rs.37400-67400+Grade Pay Rs.8,700/- with effect from 04.06.1999 and as per the said clarificatory amendment issued in G.O.Ms.No.245, stated above, he is entitled to get the benefits of the time bound promotion post from the date of completion of the stipulated period of 20 years, with effect from 04.06.1999 and his pay has to be fixed in the Pay Band-IV scale of pay of Rs.37400-67400+Grade Pay of Rs.8,700/- notionally with effect from 13.12.2006 being the date of fixation of his pay in the post of Principal.

16. Accordingly, the Writ Petition is allowed as prayed for. The impugned order dated 11.09.2015 is quashed. The petitioner's pay has to be re-fixed notionally at Rs.16,700/- with effect from 13.12.2006 in the scale of pay of Rs.14,300-400-18,300 and under revised scale of pay of Rs.37,400-67,000 with Grade Pay Rs.8,700/- for fixation of his pay notionally at Rs.40,390/- with Grade Pay Rs.8,700/- with effect from 13.12.2006, in the light of G.O.Ms.No.234, Finance (PC) Department, dated 01.06.2009 and G.O.Ms.No.245, Health and Family Welfare (A2) Department, dated 30.10.2013 and further regulated at

Rs.42,380/- with effect from 01.01.2007, Rs.43,920/- with effect from 01.10.2008 and Rs.45,500/- with effect from 01.10.2009 with Grade Pay Rs.8,700/- with monetary benefit from 23.10.2009 to the petitioner for which he rendered service as Principal, Tamil Nadu Government Dental College and Hospital, Chennai-3. No costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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Copy to

1. The Principal Secretary to Government,
Health and Family Welfare Department,
Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
2. The Principal Secretary to Government,
Finance Department,
Government of Tamilnadu,
Fort St.George, Chennai-600 009.
3. The Director of Medical Education,
Kilpauk, Chennai-600 010.
4. The Principal,
Tamilnadu Government Dental College and Hospital,
Muthuswamy Road,
Park Town, Chennai-600 003.

+1cc to Mr.R. Ramachandran, Advocate, S.R.No.70748

+1cc to the Government Pleader, S.R.No.71278

vgi(CO)
md(04/01/2017)

W.P.No.33656 of 2016