

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	29/11/2017
PRONOUNCED ON	14 /12/2017

Coram

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.No.1341 of 2017 &
C.M.P.No.18531 of 2017

- 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 Tamil Nadu,
Fort St. George, Chennai-600 009.
- 3.The Director of Medical Education,
Kilpauk, Chennai - 600 010.
- 4.The Principal,
Tamil Nadu Government Dental College and Hospital,
Muthusamy Road,
Park Town, Chennai - 600 003. ... Appellants

Vs.

Dr.K.S.Gamal Abdul Nasser ... Respondent

Prayer : Writ Appeal filed under Clause 15 of Letters Patent to set-aside the order dated 01.12.2016 made in W.P.No.33656 of 2016, on the file of this Court, praying call for records of the 1st respondent passed in letter no 2137/A1/2012-8 dt 11/09/2015 and Quash the same and refigix the petitioners pay notionally at Rs 16700 with effect from 13/12/2006 in the scale of pay of Rs 14,300-400-18,300 Etc.

For Appellants : Mr.K.Venkataramani
Additional Advocate General
Assisted by Ms.A.Srijayanthi
Special Government Pleader

For Respondents : Mr.R.Ramachandran

J U D G M E N T

The possibility of filing similar Writ Petitions by others, with a claim for refixation of pay, by placing reliance on the order passed by the writ court, is the substantial ground taken by the appellant before this Court to justify the initiation of this intra court appeal, notwithstanding the bona fides of the claim made by the respondent, who had put in 34 years of meritorious service in the Tamil Nadu Government Medical Service till his retirement as Principal in the only Dental College and Hospital in the State of Tamil Nadu.

2. The writ appeal is arising out of the judgment dated 01.12.2016 made in W.P.No.33656 of 2016.

3. It would be appropriate to notice that the aforementioned Writ Petition has been preferred by the respondent 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 his 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 respondent for which he rendered service as Principal, Tamil Nadu Government Dental College and Hospital, Chennai-3.

4. Facts culled out in brief necessary for the disposal of the writ appeal are as follows:-

4.1 It is the case of the respondent 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, 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 respondent was Rs.12750-375-6500. According to the Tamil Nadu Revised Scales of Pay Rules, 2009, the respondent'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 respondent 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.

4.2 It is further submitted by the respondent 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 respondent 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 respondent as Rs.12750-375-16500 into consideration, his pay should have been fixed at Rs.42,120/-. But the pay of the respondent 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 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 respondent, this is nothing but an irrational fixation of pay without any basis.

4.3. For the above grievance, the respondent 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 respondent filed W.P.No.5918 of 2015 on the file of this Court, and on 16.03.2015, this Court directed the appellants to pass appropriate orders on the said representations of the respondent, 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 appellant, by the impugned letter in No.2137/A1/2012-8, dated 11.09.2015, informed the respondent 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 accordingly, the above said representations were rejected. Challenging the said order of rejection, dated 11.09.2015, the respondent has filed the Writ Petition.

5. After considering the facts and circumstances of the case, the learned Single Judge has allowed the Writ Petition.

6. Aggrieved against the order of the learned Single Judge, the appellants have filed the present Writ Appeal.

7. The learned Additional Advocate General appearing for the appellants would submit that the learned Single Judge ought to have considered that as per the orders issued in G.O.Ms.No.234, Finance (Pay Cell) Department, dated 01.06.2009, the pay of the respondent was appropriately fixed in the Pay Brand 3, in the revised scale of pay of Rs.15600-39100 + G.P. 7600 with reference to the pre-revised pay scale of Rs.12000-16500. Subsequently, on his promotion as Principal (Rs.15600-39100 + G.P. 7700) he has been granted an increment with a difference of Grade Pay of Rs.100 in the same pay scale and there is no anomaly whatsoever in the fixation made based on the Official Committee recommendation which has taken care of his seniority and granted due bunching in the Fitment Tables. He would further submit that the learned Single Judge ought to have considered that consequent on the fixation made on the basis of G.O.Ms.No.354, Health and Family Welfare Department, dated 23.10.2009, wherein all those Professors / Principal of Dental College who are drawing a pay below Rs.37400 were fixed in the minimum of the time scale of pay in PB4 Rs.37400-67000 + G.P. 8700 on

a person-oriented upgradation to alleviate the stagnation among Doctors. In the said G.O. among others, the post of Principal of Dental College has been upgraded to the level of Chief Civil Surgeon grade provided that he possesses Post Graduate qualification. In addition as the incumbent is heading an institution having other Professors in Pay Band 4, he would get an additional administrative allowance of Rs.500/- per month. According to the learned Additional Advocate General, the learned Single Judge ought to have considered that G.O.Ms.No.245, H & FW Department, dated 30.10.2013, wherein the Assistant Surgeon / Medical Officers working in the Tamil Nadu Medical Service of all the Directorates have been given time bound promotion on completion of 8, 15, 17 years of eligible service in the designation / scale of pay of Senior Assistant Surgeon i.e., Rs.15600 - 39100 + Grade Pay 5700, Civil Surgeon pay Rs.15600 - 39100 + GP6600, Senior Civil Surgeon Pay Scale is Rs.15600-39100+GP 7600 and on completion of 20 years service as Chief Civil Surgeon in PB-4 Rs.37400-67000+GP8700. The benefits will be from the date of completion of the stipulated periods. However, G.O.Ms.No.354 Health and Family Welfare Department, dated 23.10.2009 was given prospective effect only from the date of issue of the order. Even though the respondent completed 20 years of service before the date of issue of order, the benefit would be given effect only from 23.10.2009 i.e., the date of issue of the order.

8. The learned Additional Advocate General would further submit that the learned Single Judge ought to have considered that the time bound promotion of Doctors on completion of 20 years of eligible service in the post are designated as Chief Civil Surgeon with scale of pay of Rs.37400-67000 + GP 8700 with effect from 23.10.2009 only. Hence, the respondent has given a wrong interpretation and misguided this Court. The higher pay scale cannot be given retrospective effect from 13.12.2006 for the post of Principal in Tamil Nadu Government Dental College and Hospital alone. He would further submit that the learned Single Judge ought to have considered that no distinction can be made in respect of the incumbents in the 419 posts by considering the person as promoted prior to 23.10.2009 based on the seniority, since all the incumbents to the upgradations were placed in Pay Band 3, only and that the respondent was granted pay fixation in the appropriate revised pay scale of Rs.15600-39100 + G.P. 7700 corresponding to the pre-revised pay scale of pay of Rs.12750-16500. He would further submit that the learned Single Judge ought to have considered that the respondent

has been paid all his eligible benefits and his scale of pay has been revised from Pay Band-3 to Pay Band-4 as per G.O.Ms.No.354, Health and Family Welfare Department, dated 23.10.2009 with effect from 23.10.2009 which is in order. In view of the non-adjudication of the relief sought for by the respondent in Writ Petition, the impugned order suffers from infirmities and it has necessitated this Court to interfere by setting aside the same and in the interest of justice, equity and fair play. Hence, the learned Additional Advocate General prays for allowing the Writ Appeal.

9. (a) The learned counsel appearing for the respondent would submit that the respondent entered into the 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, 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 respondent was Rs.12750-375-6500. As per the Tamil Nadu Revised Scales of Pay Rules, 2009, the respondent'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 respondent 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. According to the said Rules, there is only difference in the Grade Pay.

(b) The learned counsel would further submit that third appellant, 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 respondent is eligible to draw his pay and allowance 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 respondent'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 respondent fixed just equal to that of a Dental Surgeon who is far junior to him.

He would further submit that the respondent'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 order in G.O.Ms.No.354. The second appellant failed to take into consideration the clarifications/ amendments issued in G.O.Ms.No.245, which squarely applies to the case of the respondent. He would further submit that the respondent'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 to regulate 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. According to the learned counsel, the learned Single Judge after considering the above said G.O.Ms.No.245 and considering the services rendered by the respondent and taking into consideration the implementation of VIth Pay Commission, appreciated the facts and allowed the Writ Petition. The order passed by the learned Single Judge does not warrant interference and seeks for dismissal of Writ Appeal.

10. It is an admitted fact that respondent 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, on attaining the age of superannuation on 30.06.2014, after rendering 36 years of service. It is also not in dispute that the pre-revised scale of the respondent for the post of Principal was higher than that of the post of Senior Civil Surgeon in the Dental wing prior to the implementation of the Tamil Nadu Revised Scales of Pay Rules, 2009.

11. According to the respondent 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 appellant 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 nil 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 respondent 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 respondent as Rs.12750-375-16500 into consideration, his pay should have been fixed at Rs.42,120/-, but the pay 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 was 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/- was also fixed at Rs.37,400/-.

12. According to the appellants as per the orders issued in G.O.Ms.No.234, Finance (Pay Cell) Department, dated 01.06.2009, the pay of the respondent was appropriately fixed in the Pay Band 3, in the revised scale of pay of Rs.15600-39100 + G.P. 7600 with reference to the pre-revised pay scale of Rs.12000-16500. Subsequently, on his promotion as Principal (Rs.15600-39100 + G.P. 7700), the respondent has been granted an increment with a difference of Grade Pay of Rs.100 in the same pay scale and there is no anomaly whatsoever in the fixation made based on the Official Committee recommendation which has taken care of his seniority and granted due bunching in the Fitment Tables.

13. However, as per G.O.Ms.No.245, Health & Family Welfare (A2) Department, dated 30.10.2013, "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." It is an admitted fact that the respondent has completed 20 years of service as on 03.06.1996 and therefore, he should have been given 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 hence, the learned Single Judge has held as follows:-

"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."

14. The learned Single Judge, after considering the Government Order in G.O.Ms.No.245 and considering the services rendered by the respondent and taking into consideration the implementation of VIth Pay Commission, appreciated the facts correctly and allowed the Writ Petition. We do not find any reason to interfere with the order passed by the learned Single Judge. We direct the appellants to comply with the order passed by the learned Single Judge dated 1 December 2016 within a period of three weeks from the date of receipt of a copy of this Judgment.

15. The Writ Appeal fails and the same is dismissed.
There is no order as to costs. Consequently, connected
miscellaneous petition is closed.

Sd/-
Deputy Registrar

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Sub Assistant Registrar

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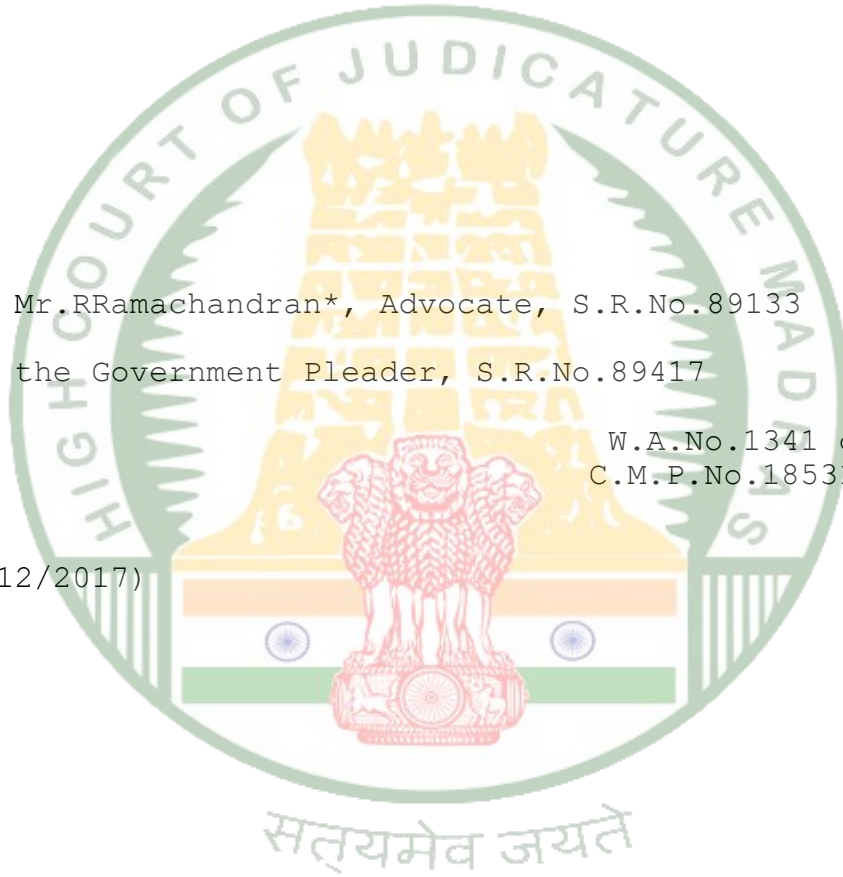
To,

+1cc to Mr.RRamachandran*, Advocate, S.R.No.89133

+1cc to the Government Pleader, S.R.No.89417

W.A.No.1341 of 2017 &
C.M.P.No.18531 of 2017

RRK(18/12/2017)



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