

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.9207 of 2013

Dr. S. Peer Mohamed

... Petitioner

Vs.

1.Tamil Nadu Veterinary and Animal
Sciences University,
Madavaram Milk Colony, Chennai-51.
Rep. by its Registrar.

2.R.Prabhakaran,
Vice Chancellor,
Tamil Nadu Veterinary and Animal
Sciences University,
Madavaram Milk Colony, Chennai-51.

... Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India for a Writ of Certiorarified Mandamus,
calling for a record relating to the impugned order passed by
the first respondent in U.S.O. No. 60237/R.3/2012/No.20266/
R.3/2011 dated 30.03.2012 quash the same so far as it relates to
the petitioner and to give the petitioner promotion as professor
(Department of Veterinary Surgery and Radiology) from 10.01.2011
under the Career Advancement Scheme with retrospective benefits.

For Petitioner : Mr.R.Syed Mustafa

For Respondents : Mr.V.Gangadathan for R1
R2 : No Appearance

ORDER

The Petitioner obtained degree in Master of Veterinary
Science in Surgery from the first respondent / University in the
year 1987. He joined as Assistant Professor in the Department of
Veterinary under the first respondent on 01.05.1990. The
Petitioner sought permission to undergo full-time Ph.D.,
programme in the Gandhi Gram Rural University, Dindigul and the
first respondent granted permission on 05.02.2004. The
petitioner successfully completed the Ph.D., programme in the
year 2008 and obtained provisional certificate on 20.10.2008.

2.The Petitioner was eligible to be promoted and posted as Associate Professor under Career Advancement Scheme. However, the first respondent refused to recognise the Ph.D., granted by the Gandhi Gram Rural University.

3.The petitioner filed a Writ Petition in W.P.No.11500 of 2009 seeking recognition of his Ph.D., qualification and for promotion as Associate Professor with retrospective benefits and the writ petition was allowed by order dated 02.09.2010, directing the first respondent/ University to grant the petitioner, Career Advancement as Associate Professor along with all benefits including arrears payable on granting the benefits.

4.Based on the qualification, the petitioner was eligible to be promoted as Professor under the Career Advancement Scheme. The first respondent/University has framed Tamil Nadu Veterinary and Animal Science University Revised scale of Pay Rules 2009. It also provides for recruitment and promotion under Career Advancement Scheme with effect from 10.01.2011, for promotion of Associate Professor as Professor. A selection committee would process the application and select the person for promotion in accordance with the regulations.

5.The petitioner was fully qualified to be promoted as professor under Career Advancement Scheme and interview was held on 05.03.2012. The selection committee headed by the second respondent as its Chairman has been inimical towards the petitioner and no question was put to him by any of the member of the Selection Committee. The petitioner was awarded with very low mark in the interview alone and deliberately failed him and the same was communicated by the first respondent vide order dated 30.03.2012

6.Therefore, the petitioner has filed the present writ petition to quash the aforesaid order dated 30.03.2012 of the first respondent so far as it relates to the petitioner and to give promotion as professor (Department of Veterinary Surgery and Radiology) from 10.01.2011 under the Career Advancement Scheme with retrospective benefits.

7.The first respondent has filed the counter affidavit and denied the entire allegation set out in the writ petition.

8.The first respondent in his counter, it is admitted fact that this petitioner was submitted application for the year 2004 for doing the Ph.D. Degree at Gandhigram Rural University at Dindigul District and the same was granted with the following conditions:

"i)that there should not be any financial commitment to the University.

ii)that he should undergo his Ph.D. Degree course at Gandhigram on Extra-Ordinary leave without Pay and Allowances.

iii)the Ph.D. Degree programme if relevant and recognized by TANUVAS alone will be considered for promotion/Elevation to the higher cadre.

iv)that he should remit all the dues including Bond amount etc., before that date of his admission to the Ph.D. Degree programme at Gandhigram.

v)that he should obtain proper relief from the University Officer concerned.

vi)that he should not claim the period of EOL for counting towards pension or Career Advancement or other service benefits.

vii)he is informed that mere forwarding of the application does not confer on him any right whatsoever for retention of the post in the present station and or considering his case for elevation to higher cadre etc.,

viii)that he should abide by the terms and conditions as and when stipulated in the University."

9.The 1st respondent also states that the Ph.D. degree obtained by the petitioner has not been considered on par with such degree issued by the said University for academic and for promotional purpose and therefore he was not considered for elevation under Career Advancement Scheme for the post of Associate Professor. The said order was challenged by the writ petitioner by way of writ petition in W.P.No.11500 of 2009 and this Court by order dated 02.09.2010 directing the 1st respondent University to grant Career Advancement as Associate Professor along with all benefits including arrears payable on granting the benefits to the petitioner. Pursuant to the order that in strict adherence of the verdict of the order of this Court in W.P.No.11500 of 2009, the 1st respondent University has taken into account the petitioner's Ph.D. degree and called him to the interview for the post of Associate Professor during the year 2011. Thereafter, the pay fixation of the petitioner was revised in the post of Associate Professor with effect from the date of completion of his Ph.D. degree i.e. from 04.10.2008.

10.The 1st respondent University states that the University has only forwarded the petitioner's application for undergoing the Ph.D. degree in the Gandhigram University on full time basis

and not deputed by the University to undergo such Ph.D. with full pay and allowances. On the other hand, the petitioner out of his own accord has undergone Ph.D. degree, without any financial commitment to the University and he completed the Ph.D. degree course on Extra Ordinary Leave without pay and allowances. The 1st respondent University also states that it is pertinent to point out that the petitioner has initially joined Ph.D. Course in the discipline of Animal Biotechnology during 1993 on part time basis and it was discontinued during 1994-1995 due to personal reasons. Thereafter, after 3 years, again in the year 1998, the petitioner has requested for re-register his Ph.D. Course and the direction was also granted to re-register Ph.D. Course on full time basis, since the break period exceeds the maximum permissible time limit. As the petitioner had less than two months of earned leave at his credit at that time, he again discontinued the Ph.D. programme. Therefore, the statement of the petitioner that the staff undergoing Ph.D. are eligible for full pay and allowances is against the existing Leave Rules and he was not deputed by the University initially with full pay and allowance.

11.The 1st respondent University also states that on implementation of U.G.C. Scales of pay initially, the pay of the petitioner was re-designated as Associate Professor and the pay was fixed at Rs.37,400/- + 9,000/- (46,400/-) with effect from 01.01.2006 i.e. from the date of re-designated of Associate Professor and permitted the petitioner to withdraw the arrears with effect from 30.06.2010 as per the guidelines of UGS Scales of pay. Therefore, the pay was fixed for the petitioner in the post of Associate Professor with effect from the date of completion of his Ph.D. degree i.e. from 04.10.2008 and not from 30.06.2010 as done earlier and as per the orders of this Court in W.P.No.11500 of 2009.

12.While working out the arrears of salary of the petitioner on the revised pay fixation, the entire records has been verified and it has been found that during the period of Extra Ordinary Leave for 758 days availed by the petitioner for undergoing Ph.D. degree on full time basis. The 1st respondent University erroneously sanctioned the increments though the petitioner was not eligible. Therefore, the said increments sanctioned during the period Extra Ordinary Leave without pay and allowances availed by the petitioner has already been withdrawn by the 1st respondent University and directed the petitioner to pay a sum of Rs.1,51,130/-, challenging the said order, the writ petitioner again approach this Court and filed the writ petition in WP(MD)No.11187 of 2012 and the said writ petition was pending. As per the circular No.20266/R-3/2011 dated 25.10.2011, the 1st respondent University called for applications from the eligible staff for Elevation to Higher

Academic Grade pay under the Career Advancement Scheme and as per the circular dated 25.10.2011, it is stated as follows:

"the qualification and service conditions for eligibility to be appointed to the above Academic Grade Pay shall be as per the amendment issued to the Appendix - IA of the University Regulation and Service Rules framed. However the Academic Performance Indicators (API) criteria based Performance Based Appraisal System (PBAS) shall be progressively and prospectively rolled out with effect from 11.08.2011"

13.The 1st respondent also states that in his counter that as per University Grants Commission in its Regulations dated 30.06.2010 which has been clearly mentioned that minimum qualifications for academic staff in Universities and colleges for the maintenance of standards in higher education. In Row 5 Column 2 of Appendix III Table II(A) of the UGC Regulations, it has been clearly mentioned that the minimum percentages required for a candidate to be eligible for promotion under Career Advancement Scheme is 50% out of 100%. This 100% mentioned includes 50% from Category - III 30% from categories I and II and 20% for interview. The points secured by the candidates in Category III during assessment period has to be converted to 50 marks. In the expert evaluation system which comprises 100% this mark will be taken as such.

14.The 1st respondent University also states that the minimum requirement of 5 Research Publications for elevation for the post of Associate Professor (CA) from stage 3 to stage 5 has been exempted by the Selection Committee as the API and PBAS system comes into force from 11.08.2011 progressively and the notification for the Career Advancement Scheme 2011 was issued on 25.10.2011 with cut off date as 30.09.2011. Therefore, the staff who had short fall in the Research Publications alone and fulfilled the other eligibility criteria has been given stipulated time for obtaining minimum requirement of 5 research publications. Therefore, the petitioner was not called for interview not merely for the reasons of qualifying service or short fall in minimum required Research Publications. As per the key for the allotment of marks as per the guidelines formulated by the Selection Committee based on the revised UGC norms and the marks obtained by the petitioner is as follows:

Sl.No.	Category	Maximum Marks allotted	Marks obtained by the petitioner
I	Teaching	10 marks	3.5
II	Research	10 marks	1.5

Sl.No.	Category	Maximum Marks allotted	Marks obtained by the petitioner
III	Extension (Activity organized)	10 marks	10
IV	Profession related contribution	25 marks	8
V	Publication (during qualifying service period)	20 marks	13.25
VI	Personal file (for last 3 years)	5 marks	2.75
VII	Interview	20 marks	7.5
	Total	100 marks	46.50*

The minimum of 50 marks out of 100 marks will qualify a candidate to become eligible for elevation to the Higher Academic Grade pay.

15.The 1st respondent University also states that the questions asked at the time of interview were not available in any University in any form. Therefore, the request made by the petitioner under the Right to Information Act could not be provided, since the interview has been conducted to gauge the person in interview in terms of ability to present depth of knowledge in their subject etc., and it is totally a scientific methodology which cannot be questioned by the petitioner. Therefore, the 1st respondent states that the prayer sought for in this writ petition by the petitioner is not valid, since the writ petition is not maintainable either in law or in facts, therefore, the 1st respondent seeks for dismissal of the writ petition.

16.I heard Mr.Syed Mustafa, learned counsel appearing for the petitioner and Mr.V.Gangadharan, learned counsel appearing for the respondents and perused the entire records.

17.The learned counsel for the petitioner submitted that the petitioner obtained degree in Master of Veterinary Science in Surgery from the first respondent / University in the year 1987. He joined as Assistant Professor in the Department of Veterinary under the first respondent on 01.05.1990. In the year 1998, he was conferred with the senior scale in the post of Assistant Professor, on completion of 8 years of service. Thereafter, he was granted Selection Grade in the year 2002 and promoted as Associate Professor under Career Advancement Scheme.

18.The first respondent/University issued a notification for the Career Advancement Scheme to the post of Professor for the year 2011 dated 25.11.2011 with the cut-off date as 30.09.2011.

19.The scheme of Career Advancement is to avoid stagnation in a particular post. In this case, as stated above, the petitioner was working as Assistant professor from 1990 and by order made in W.P.No.11500 of 2009 dated 02.09.2010 the petitioner was promoted as Associate Professor under Career Advancement Scheme. However, the petitioner has to satisfy certain norms to move forward to the higher post of Professor under the Career Advancement Scheme.

20.It is further submitted that the selection committee headed by the second respondent as its Chairman has been inimical towards the petitioner and no question was put to him by any of the member of the Selection Committee on academic subject or on any general subject and it is left to Respondents in what manner the merits were accessed. In a reply dated 31.07.2012 to the right to Information Act, the first respondent has replied that the information is not available on any form of records in the university with regard to the questions asked by the seven members selection committee which includes the Vice-Chancellor and answer given by the candidates and stage wise marks given for the interview held on 05.03.2012. The selection committee consisted of seven members and during the course of interview each member would have granted separate marks for the candidates and the database of the score card of individual member were not available with the Respondents / University shows that the interview was not conducted in a fair manner. Furthermore, the statements of mark would reveal that the petitioner has scored high marks in all the other categories except the interview. On contrary, one Dr.Mala Shammi who has comparatively scored less marks than the petitioner in other categories was awarded high marks in the interview which goes to prove that the petitioner was discriminated by the Respondents. On perusal of marks obtained by the said DR. Mala Shammi would reveal that she was awarded extra 2.25 marks in the teaching category. Under the teaching category there are two heads 1. Course taught - 1 mark for each course and 2. Worked in clinical service - 1 mark for each year of service. The said Dr.Mala Shammi was awarded with 3 marks for the title course handled at 1 mark per course but there is no proof for one course and in the duration of clinical service from 29.06.2007 to 30.09.2011 (51 months) 4.25 marks has to be given at 1 mark for each year of service but 5.5 marks was awarded in which 1.25 marks were given extra which proves that she was awarded 2.25 marks in excess.

21.It is further submitted that the petitioner was victimised by the Respondents in the course of his employment. The first respondent/ University issued a circular dated 02.02.2009 calling for application from the eligible persons to apply for Career Advancement of Assistant Professor to Associate Professor. The first respondent/ University sent an interview card dated 11.05.2009, directing the petitioner to appear for the interview on 22.05.2009. In the meantime, the first respondent /University passed an order dated 19.05.2009, refusing to grant the petitioner Career Advancement on the ground that the Ph.D., obtained by him cannot be equated on par with the degree issued by the first respondent / University for academic and promotion purpose in the disciplines of Veterinary Surgery and Radiology, as opined by the committee constituted for the purpose. Challenging the above order, W.P.No.11500 of 2009 was filed and the same was ordered on 02.09.2010 as the writ petition is allowed and the first respondent /University is directed to grant the petitioner, Career Advancement as Associate Professor along with all benefits including arrears payable on granting the benefits.

22.The petitioner filed another writ petition challenging the 1st respondent order of recovery dated 02.08.2012 increment granted for the period 15.02.2006 to 23.03.2008 in WP(MD) No.11187 of 2012 before the Madurai Bench of this Court and by order dated 14.08.2012 the order passed by first respondent dated 02.08.2012 was stayed. The petitioner filed writ petitions one after the other to get his legal remedies from the respondent, when he was bonafidely entitled for the same in each of the occasions. It is the contention of the learned petitioner counsel that the respondent were largely prejudiced by the act of the petitioner to get all his legal right as he is entitled by virtue of court orders. And that is precisely the reason why low marks were awarded in the interview so as to enable the petitioner to be disqualified to the post of Professor when all the other similarly placed persons were promoted under Career Advancement Scheme.

23.The petitioner was fully qualified to be promoted as professor under Career Advancement Scheme for the interview held on 05.03.2012. It is not a case of regular promotion wherein based on the seniority which affects either the junior or the senior. As stated above, scheme of Career Advancement is to avoid stagnation in a particular post. The selection committee headed by the second respondent has awarded very low mark in the interview and deliberately disqualified the petitioner to the post of Professor vide order dated 30.03.2012, which leads to the filing of the present writ petition.

24. On the other hand, the learned counsel for the first respondent /University contented that the University Grants Commission in its regulations dated 30.06.2012 has prescribed the minimum qualification for academic staff in University and Colleges for maintenance of standard in higher education. It has been clearly mentioned that the minimum percentage required for promotion under Career Advancement Scheme is 50% out of 100%. A minimum of 50 marks out of 100 marks will qualify a candidate becoming eligible for elevation to Higher Grade Pay. Further the questions asked at the time of interview were not available in the University in any form as it is a scientific methodology which cannot be questioned by the petitioner.

25. It is not in dispute that the first respondent awarded the degree in Master of Veterinary Science in Surgery to the petitioner in the year 1987. Based on the same, he joined as Assistant Professor in the Department of Veterinary under the first respondent on 01.05.1990. He was granted senior scale and Selection Grade in the year 2002 and promoted as Associate Professor under Career Advancement Scheme. He wants to elevate to the post of Professor under Career Advancement with effect from 10.01.2011.

26. As rightly contended by the learned counsel for the petitioner, the promotion to the post of Professor is an elevation to Higher Academic Grade pay under Career Advancement Scheme and it is not a regular promotion. The said scheme is introduced and implemented in alteration to regular promotion by granting up-gradation to an employee who stagnating in a particular cadre for want-off a regular post. The said scheme is only a beneficial scheme for an employee and that the required conditions are that he should possess eligible qualification and required years of service in accordance with scheme. The selection criteria contemplate for promotion by Career Advancement is only a qualifying process unlike competitive in case of regular promotions where the post are identified and limited as against disproportionate strength of employees aspiring for those limited posts. In so far as case on hand is an issue pertaining to promotion by Career Advancement and the respondent/ University has right made it qualifying process of bench mark of 50 out of 100 as it is observed above Career Advancement is not in relation to physical posts. The respondent/ University has adopted a process evaluating a merit of a candidate under various heads along with an interview in the ratio of 80:20, respectively.

27. The impugned order dated 30.03.2012 deals about four candidates denied/not been selected for the appointment of Professor in the next higher academic grade pay of Rs.10,000/- in the pay band (PB 4) of Rs.37000-67000 whereby the petitioner

was also one and has been indicated as not selected with effect from 10.01.2011. This necessitate the petitioner to seek for marks awarded under each head along with the interview and that the respondent / University also furnished the said details as extracted below:-

Sl. No.	Name of the candida te	Tea- chin g	Rese- arch	Exte- nsio n	Profe- ssion relat ed contr i- butio n	Publ i- cati on	Pers - onal File	Inte r- view	Tota l	Statu s of Selec t-ion
		(10 mark s)	(10 mark s)	(10 mark s)	(25 marks)	(20 mark s)	(5 mark s)	(20 mark s)	(100 mark s)	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1.	Dr.Mala Shammi	8.5	-	5.7	12.2	9.75	2.75	12.0	50.9	Selec ted
2.	Dr.S.Pe er Mohamed	3.5	1.5	10.0	8.0	13.2 5	2.75	7.5	46.5	Not Selec ted
3.	Dr.C.Ra m-ani	10.0	1.0	6.5	16.5	20.0	3.75	14.0	71.7 5	Selec ted
4.	Dr.Ravi Sundar George	8.25	6.5	10.0	16.0	14.0	1.25	12.5	68.5 0	Selec ted

28.It is evident on the plain reading of the above that Sl.Nos. 3 and 4 have invariably scored more marks in almost all the heads including the interview. But in so far as Sl.No.1 whose consideration was relied by the petitioner as an act of discrimination has scored nil mark in the field of research and 5.7 towards extension and 9.75 towards publication as against 1.25, 10, 13.25 scored high by the petitioner, respectively. In so far as personal file is concerned both the petitioner and Dr.Mala Shammi scored equal marks and in the remaining heads Dr.Mala Shammi scored relatively less marks. In the interview Dr.Mala Shammi scored 12 marks whereby the petitioner was awarded 7.50 marks thereby both of them were granted total marks of 50.9 and 46.5 out of 100 and that Dr.Mala Shammi was given Career Advancement on the criteria of crossing the qualifying mark of 50. If the interview marks are excluded for both the petitioner and Dr.Mala Shammi, then the total mark scored by both of them would be 38.4 and 39, respectively, which reflects

the petitioner scored 0.6 marks more than the said Dr. Mala Shammi. It is needless to say that the 80 marks granted for various heads would be supported by necessary documents and in-fact as rightly contented by the petitioner in para 13 of the above that Dr.Mala Shammi was awarded with extra 2.25 marks in teaching category and all these heads are supported by documents. The respondent /University if at all would have an discretion of selecting or not selecting a candidate could be within the head of interview for which obviously high mark of 20 is awarded as against settled dictum of Hon'ble Supreme Court awarding a minimum mark either 10 or 15. Even assuming the awarding of 20 marks for interview is not relatively unreasonable but the process so adopted for the 20 marks should all the more be fair and to an extent of transparency more so a committee of seven members are involved.

29.It is specific case of the petitioner that the interview held on 05.03.2012 no question was put to him by the members of selection committee and has made certain allegations against the Chairman of the committee. The said contention and allegation was not specifically denied by the respondent /University in their counter affidavit and instead conceded with the statement that the question asked at the time of interview are not available in any form and further proceeded holding that interview is a scientific methodology which cannot be questioned by the petitioner.

30.In my considered opinion the said contention of the respondent cannot be accepted in the light of factual details as furnished by the respondent /University as extracted above.

31.The respondents /University in a reply to the Right to Information Act and as well as in their counter affidavit it is admitted that the questions put-forth at the time of interview were not available in their University in any form and it is totally scientific methodology which cannot be questioned by the petitioner made clear that the interview was not conducted in a fair manner. The respondents/ University reply to Right to Information Act which is extracted hereunder:-

No.10941/R.3/2012, dated 31.07.2012

WEB COPY

Sl.No	Question	Reply
1.	The University Authority conducts interview for the post of Professor (CA) on 05.03.2012 and what all are the questions asked by the Vice-Chancellor Dr.Prabhakaran to Dr.M.Mahesh Krishnan, Dr.Malashammi, Dr.S.PeerMohamed, Dr.A.Srithar and Dr.C.Valli and the answer given by them and stage wise mark given to them. Give details for each and every person above mentioned.	The information is not available on any forms of records in the University.
2.	How many members are there in the interview board?	7 (seven) members
3.	How many marks given to the individuals? Give stage wise marks of all the candidates who had attended the interview.	Enclosed in the annexure

32.In fact, the learned counsel for the petitioner has rightly contented that the interview was conducted by the selection committee consist of seven members headed by the Vice-Chancellor of the University. Each member of the selection committee would be granting marks separately for the questions put-forth in the interview but to the contrary, the Respondents / University has stated that the questions were not available with them would clearly show that the petitioner was victimised in the process of selection to the post of Professor.

33.As rightly contented by the learned counsel for the petitioner that the petitioner was subjected to victimisation due to earlier round of litigations. Even in earlier selection process the petitioner was denied promotion to the post of Associate Professor and by virtue of this Court order made in WP.No.11500 of 2009 dated 02.09.2010, the petitioner was promoted as Associate Professor. The petitioner filed another writ petition in WP(MD)No.11187 of 2012 before the Madurai Bench of this Court and by order dated 14.08.2012 the order passed by first respondent recovery of increment granted for the period 15.02.2006 to 23.03.2008 dated 02.08.2012 was stayed.

34.In my considered view, the selection process to the post of Professor lacks transparency in the mode of conducting interview and the impugned order dated 30.03.2012 is not justifiable.

35.In the result:

(a) the writ petition is allowed and the impugned order in U.S.O.No.60237/R.3/2012/No.20266/R.3/2011 dated 30.03.2012 passed by the 1st respondent, is set aside;

(b) the first respondent /University is directed to grant the petitioner, Career Advancement as Professor with effect from 10.01.2011, along with all other consequential benefits including arrears payable on granting the benefits;

(c) the first respondent is directed to complete the said exercise within a period of six weeks from the date of receipt of a copy of this order.

36.Therefore, this writ petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Registrar,
Tamil Nadu Veterinary and Animal
Sciences University,
Madavaram Milk Colony, Chennai-51.

2. R.Prabhakaran,
Vice Chancellor,
Tamil Nadu Veterinary and Animal
Sciences University,
Madavaram Milk Colony, Chennai-51.

+1cc to Mr.R.Syed Mustafa, Advocate Sr. 74674

order made in
W.P.No.9207 of 2013

GMR (CO)
VR(01/11/2017)