

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

W.P.No.9707 of 2013

Dr. S. Peer Mohamed

... Petitioner

Vs.

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

.... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Mandamus directing the respondent to grant the petitioner full pay and allowance for the period from 15.02.2006 to 23.03.2008, recognizing the said period as period spent on duty for the purpose of pat, allowances, increments and pension benefits.

For Petitioner :Mr.R.Syed Mustafa

For Respondent :Mr.V.Gangadathan

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. 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.

2.The petitioner has applied for Ph.D., in the disciplines of Indigenous Medicinal Practice at Gandhi Gram Rural University, Dindigul, on part-time basis while he was working as Assistant Professor under the respondent / University. The Respondent / University in its letter dated 17.03.2004 granted permission to join the Ph.D., course at Gandhi Gram Rural University. The Petitioner was relieved from duties on the afternoon of 14.06.2006 on Extra Ordinary Leave without pay and allowances for the period from 15.02.2006 to 31.03.2008. Due to

the above, the petitioner was forced to convert the Ph.D., course from part-time to full-time. Hence the petitioner request for external deputation basis in India, as per guidelines laid down in Proc.No.10524/A1/2003 dated 06.06.2003.

3.The petitioner underwent Ph.D., course from 15.02.2006 to 23.03.2008 at the Gandhi Gram Rural University and obtained provisional certificate on 20.10.2008.

4.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.

5.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.

6.The petitioner joined duty as Associate Professor, the Respondent / University granted the petitioner with annual increment though he was denied with the salary and other allowances during the period he underwent for doing Ph.D., course. The Respondent / University by an order dated 02.08.2012 ordered recovery from the petitioner salary towards the increment given to him between 15.06.2006 to 23.03.2008. Challenging the above order of recovery, the petitioner filed WP (MD)No.11187 of 2012 before the Madurai Bench of this Court and an order of stay of recovery was ordered vide order dated 14.08.2012, by this Court.

7.The petitioner is entitled to full pay and allowances for the period 15.02.2006 to 23.03.2008.

8.Therefore, the petitioner is approaching this Court and filed the present writ petition to direct the respondent to pay full pay and allowance and to recognize the period spent on duty for the purpose of pay, allowances, increments and pension benefits for the period 15.02.2006 to 23.03.2008.

9.The first has respondent filed the counter affidavit by denying the entire allegation set out in the affidavit filed by the petitioner.

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

11.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.

12.It is submitted that the petitioner has applied for Ph.D., in the disciplines of Indigenous Medicinal Practice at Gandhi Gram Rural University, Dindigul, on part-time basis while he was working as Assistant Professor under the respondent / University. The Respondent / University by its letter dated 17.03.2004 accorded permission to join the Ph.D., course at Gandhi Gram Rural University. The Petitioner was relieved from duties on the afternoon of 14.06.2006 on Extra Ordinary Leave without pay and allowances for the period from 15.02.2006 to 31.03.2008. Due to the above, the petitioner was forced to convert the Ph.D., course from part-time to full-time. Hence a request was made by the petitioner request for external deputation basis in India, as per guidelines laid down in Proc.No.10524/ A1/2003 dated 06.06.2003.

13.It is further submitted that the petitioner underwent Ph.D., course from 15.02.2006 to 23.03.2008 at the Gandhi Gram Rural University and obtained provisional certificate on 20.10.2008. The petitioner next avenue of promotion is to the post of Associate Professor under Career Advancement Scheme. However, the first respondent refused to recognize the Ph.D., granted by the Gandhi Gram Rural University.

14.By filing 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.

15.It is further submitted that the petitioner joined duty as Associate Professor and the Respondent / University granted him with annual increment though he was denied with the salary and other allowances during the period in which he underwent for doing Ph.D., course. The Respondent /University by an order dated 02.08.2012, ordered recovery from the petitioner salary towards the increment given to him between 15.06.2006 to 23.03.2008. Challenging the above order of recovery, the petitioner filed WP(MD)No.11187 of 2012 before the Madurai Bench

of this Court and stay of recovery was order vide order dated 14.08.2012.

16.The petitioner was denied with pay and allowance and also denied to recognizing the period spent on duty for the purpose of pay, allowances, increments and pension benefits for the period 15.02.2006 to 23.03.2008.

17.It is also contented by the learned counsel for the petitioner in an identical circumstances, one Dr.Shafi Ulla, Professor and Head of District Husbandry and Economics, working at Veterinary College, Namakkal and another person Dr.Charth Chandra, Professor, TANUVAS, Chennai had been given the entire Pay and Allowances for the period of studying Ph.D., and that the said action of discriminating the petitioner alone is arbitrary and violation of Article 14 of the Constitution of India.

18.On the other hand, the learned counsel for the first respondent / University contented that the petitioner out of his own accord has undergone Ph.D., without any financial commitment to the University and he has undergone the said Ph.D., course on Extra Ordinary Leave without pay and allowance. The petitioner has initially joined Ph.D., programme on part time basis during 1993 and discontinued the same during 1994 to 1995. Therefore, the petitioner is not entitled for grant of study leave for higher studies.

19.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.

20.The present writ petition filed to direct the respondent to grant full pay and allowance and to recognizing the period spent on duty for the purpose of pay, allowances, increments and pension benefits for the period 15.02.2006 to 23.03.2008 to the petitioner.

21.As rightly contented by the learned counsel for the petitioner that the petitioner initially sought permission for undergoing part-time Ph.D., course at Gandhi Gram Rural University. The Respondent granted full-time permission instead of part-time permission. Due to which, the petitioner was denied with the pay and allowance for leave period underwent for doing Ph.D., and to recognize the leave period for pension benefits.

22.As contented by the learned counsel for the petitioner that the posts beyond the entry grade post of Assistant Professor in hierarchy contemplate Doctorate as the compulsory qualification both for regular promotion and promotion by Career Advancement and that every Assistant Professor in order to have advancement in their career have to compulsory acquire the qualification by availing study leave in a manner known to law. The respondent / University except on administration exigency cannot deny an employee to acquire his eligibility for his Career Advancement. Hence as far as practicable, the University should provide with pay benefit during course of study in order to undergo the study with ability to do so. The respondent University has come out with an counter contending that the petitioner has availed leave for acquiring Ph.D., twice on part-time basis on 1993 and 1998, however discontinued due to personal reason. Eventhough, the conduct of the petitioner has never been questioned by the respondent / University but the petitioner past conduct of discontinuing cannot be a permanent bar for undergoing the said course in the future.

23.It is not the case of the respondent that he availed the entire three years of study leave earlier and upon discontinuing did not report for duty is the specific contention of the petitioner that immediately on discontinuing twice earlier. He rejoined the duty immediately and that the service rendered by the petitioner in the respondent / University during the period of study leave granted earlier cannot be counted as leave availed with pay overlooking the fact that he has worked to the respondent / University and not studied. The concept of study leave with pay would be only with an object that he should not have any financial difficulty for his livelihood and to concentrate on his study with absolute free of financial commitment. The said concept akin to that of granting subsistence allowance to a delinquent employee during the period of his suspension in order to face charges and enquiry with both physical and mental ability all the concepts are in consonance with the settled principle of natural justice and also safeguarding his fundamental right of livelihood before being penalized legally. The said contention of the petitioner could not be reverted by the respondent / University by furnishing the break up leave availed on earlier two occasions and as well remains un-reverted.

24.In fact, the learned counsel for the petitioner has rightly contented that as per rules 84 annexure of Study Leave Rules Of Tamil Nadu Leave Rules 1933 is extracted hereunder:

"study leave may be granted to a Government Servant with due regards to the exigency of public service to enable him to undergo, in or out of India, a special course of study

consisting of higher studies or specialized training in a professional or a technical subject having a direct and close connection with the sphere of his duty”

25.As rightly contented by the learned counsel for the petitioner that the respondent / University issued a guideline in U.S.O. No.20101/A1/2003.Rc.No.10524/A1/2003 dated 06.06.2003 is extracted hereunder:-

- i.External deputation will apply only for undergoing Ph.D., programme within the country.
- ii.Period of deputation shall not exceed three years.
- iii.Number of candidates to be deputed per year shall be limited to three, out of which two will be from Veterinary and Basic Science faculties and one from Fisheries Science faculty.
- iv.The eligibility criteria is based on seniority among those who have completed five years of service. However, University reserves the right of deputation according to the needs availability of qualified staff in a particular disciplines and prevailing conditional of the University.
- v.The responsibility of securing admission for higher studies is vested with the applicant.
- vi.During the period of deputation the candidates will be paid only the salary and no separate deputation allowances will be paid.
- vii.If the period of absence exceeds three years, it will be treated as leave to which he /she is eligible or loss of pay as the case may be.
- viii.In the event of candidates discontinuing the deputation programme on their own for reasons other than academic, the period of deputation will be treated as leave to which he /she is eligible or loss of pay as the case may be.
- ix.During the period of deputation the staff may be considered for elevation to senior/selection grade under Career Advancement, but not for any recruitment in the University.
- x.Those candidates deputed for higher studies under this category, will not be eligible for internal deputation at a later date.
- xi.The scholar on deputation may receive any other fellowship, if secured by themselves, in addition to salary paid by the University, under intimation to the University.

xii.Those carrying a fellowship with them, may be given preference among the eligible candidates.
As per above notification, the respondent should have accorded permission to the petitioner on deputation basic with all monetary benefits. But in a discriminatory manner, the petitioner was allowed to undergo Ph.D., on full-time programme without granting any monetary benefits to him for the period 15.02.2006 to 23.03.2008 he underwent for pursuing Ph.D., programme.

26.Considering the above facts, the petitioner relief for the Extra Ordinary Leave (without pay and allowances) for the period from 15.02.2006 to 23.03.2008 spent for Ph.D., research programme at Gandhi Gram Rural University is treated as external deputation with in India as per the guidelines issued in U.S.O.No.20101/A1/2003. Rc.No. 10524/A1/2003 dated 06.06.2003.

27.In the result:

(a) the writ petition is allowed;

(b) the first respondent /University is directed to recognize the period spent by the petitioner on duty for the purpose of pay, allowances, increments and pension benefits for the period from 15.02.2006 to 23.03.2008 and all other consequential benefits to the petitioner;

(c) the said exercise shall be done by the first respondent within a period of six weeks from the date of receipt of a copy of this order.

28.Therefore, this writ petition is allowed on the above terms. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vs

To

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

+lcc to Mr.V.Gangatharan, Advocate Sr. 75051

+lcc to Mr.R.Syed Mustafa, Advocate Sr. 74674

order made in
W.P.No.9707 of 2013

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