

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2018

CORAM

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

W.A.No.1029 of 2015
and
M.P.1 OF 2015

1. The State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Chennai 9
2. The Director of Medical and Rural Health Services,
DMS Compound, Teynampet,
Chennai 6 ..Appellants/Respondents

Vs.

Dr.K.Velusamy ..Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act,
against the order dated 11.06.2013 made in W.P.No.15350 of
2013.

Petition filed under Article 226 of the constitution of
India for the issuance of writ of certiorarified Mandamus to
call for the records on the file of the 2nd respondent in
connection with the order passed by him in
Ref.No.58493/E6/1/2011-2 dated 11.10.2011 and quash the same and
direct the respondents to pay Annual increments in the post of
Assistant Surgeon with effect from 01.04.1989 and the special
Grade scale of pay in the post of Assistant Surgeon with effect
from 01.04.1992 and continuously pay the same to the petitioner
by increasing his pension consequently with effect from
01.04.1998.

For Appellants : Ms.A.Srijayanthi
Special Government Pleader

For Respondent : Mr.R.Thirugnanam

J U D G M E N T

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The writ petition filed by the respondent long after his retirement claiming Special Grade scale of pay was allowed by the learned single Judge. The order is under challenge at the instance of the State.

2. The respondent joined the services as Assistant Surgeon in the Health department on 14.03.1971. He was promoted to the post of Senior Assistant Surgeon in the year 1981. Subsequently, on 3.3.1982, he was awarded with selection grade. There was a disciplinary proceedings initiated against the respondent and the same resulted in imposing punishment on him. The disciplinary authority imposed the punishment of stoppage of increment with cumulative effect for a period of three years. The punishment which was awarded on 19.03.1996 started from 01.07.1996 and it was over by 30.06.1999. The respondent retired from service on attaining the age of superannuation on 31.03.1998.

3. The respondent long after his retirement submitted a representation through Tamil Nadu State Legal Services Authority to the Director of Medical and Rural Health Services to pay him Special Grade and annual increments. The said request was rejected by the second appellant. Challenging the said order, the respondent filed the writ petition in W.P.No.15350 of 2013.

4. The learned single Judge rejected the request for annual increments on the ground that the respondent has taken earned leave without medical certificate for a period of 1250 days i.e. from 02.05.1989 to 05.09.1992. However, the learned single Judge directed the appellants to pay Special Grade pay to the respondent on completion of 20 years of service. The said order is under challenge in this intra court appeal.

5. There is no dispute that the representation was given by the respondent long after his retirement. The cause of action for filing the Writ Petition arose when he was not given Special Grade pay on completion of 20 years of service. There is no question of initiating the Writ Petition after retirement for grant of Special Grade pay with effect from 1992. This aspect was not considered by the learned single Judge.

6. When this appeal came up on 21 January 2018, having found that there was no representation given by the respondent during the currency of service, we directed the learned counsel for the respondent to produce the copy of the representation, in case such representation was made before retirement.

7. When the appeal is taken up for hearing today, the learned counsel for the respondent produced a copy of the representation stated to have been given on 27.02.2012. We have perused the said representation. It is found that the date, month and year were altered to make it appear as if the representation was given on 18.11.1994.

9. In view of the course of conduct adopted by the respondent, we are of the view that he is not entitled to invoke the equity jurisdiction under Article 226 of the Constitution of India. The learned single Judge proceeded as if there is a continuous cause of action for claiming the Special Grade. We are of the view that the learned single Judge was not correct in directing the appellants to grant Special Grade Pay after completion of 20 years.

10. The order dated 11 June 2013 is set aside. The Writ Petition in W.P.No.15350 of 2013 is dismissed.

11. In the upshot, we allow this intra court appeal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
The State of Tamil Nadu,
Health and Family Welfare Department,
Secretariat, Chennai 9
2. The Director of Medical and Rural Health Services,
DMS Compound, Teynampet, Chennai-6.

+1 CC TO MR.R.Thirugnanam, Advocate SR. No.14861
+1 CC TO The government Pleader SR.NO.15399

W.A.No.1029 of 2015

SSI (CO)
RMP (02/04/2018)