

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.02.2018

PRONOUNCED ON: 04.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.29259 of 2014

Tamilnadu Retired Livestock,
Inspectors' Association(Regn. No.54 of 2005),
rep. by its Secretary Mr.G.K.Kothandaraman,
No.25/5B, Bajanai Kovil Street,
Ganapathipuram,
Tambaram- 600 059 ... Petitioner

Vs

- 1.The Secretary to Government,
Department of Animal Husbandry,
Diaries and Fisheries, D2,
Fort St. George,
Chennai 600 009.
- 2.The Director of Animal Husbandry and
Veterinary Services, Block II,
Central Office Building, DMS Complex,
Chennai-600 006. ..Respondents

Prayer:- 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 relating to the order passed by the first respondent in Government Letter No.7627/Kapa-7/2013-6 dated 01.04.2014, quash the same and consequently, direct the respondents to fix the pay of the members of the petitioner's Association in the post of Senior Veterinary and Livestock Supervisor in terms of Fundamental Rule 22(b) and further direct the respondents to pay arrears with 12% interest from the date of promotion till the date of realization.

For Petitioner : Mr.V.Chandrasekaran

For Respondents : Mrs.R.Janaki, AGP

ORDER

This petition has been filed under Article 226 of the Constitution of India seeking for issuance of a writ of certiorafied mandamus to call for the records relating to the order passed by the first respondent vide Government Letter No.7627/Kapa-7/2013-6 dated 01.04.2014 rejecting the request of the petitioner Association for fixation of pay to the post of Senior Veterinary and Livestock Supervisor under 22(B) of the Fundamental Rule(herein after referred to as ''the rules'') and to further direct the respondents to pay arrears with 12% interest from the date of promotion till the date of realisation.

2. It appears that 153 members of the petitioner Association, stated to have retired from service in the post of Senior Veterinary and Livestock Supervisor. While they were working as Senior Veterinary and Livestock Supervisors, their scale of pay having not been fixed under Rule 22 -B of the Rules after their promotion to the said post, a representation was made by them to the second respondent. The second respondent had recommended their case to the Government for fixation of their scale of pay under 22 -B of the Rules as they were entitled to the same. However, the Government though in respect of similarly situated Senior Veterinary and Livestock Supervisors had fixed the scale of pay, taking into consideration the order passed by this Court in W.P.No.9451 of 2007, but rejected the prayer made by the petitioner Association vide impugned order dated 01.04.2014 in spite of settled position of law to extend such benefit to a non petitioner similarly situated as held in W.P.No.25136 of 2012 dated 11.07.2013. Therefore, the same has been challenged to be illegal, arbitrary and contrary to the provisions of law in this writ petition with a prayer to quash the same and consequentially fixed their pay extending the benefit of Rule 22-B and release the monetary benefit.

3. In the counter affidavit filed by the respondents, it is admitted that the petitioners who were promoted to the aforesaid post, but they were denied with the claim inasmuch benefit of 3% increment on the pay including grade pay can only be extended on promotion with effect from 01.01.2006. Therefore, Fundamental Rule 22 B has not been made applicable after 01.01.2006. In view of the order passed by this Court in the afore said writ petition in the case of one Thiru N.Kunjappan, Senior Veterinary and Livestock Supervisor (retired), who is similarly placed employee, was extended the benefit of 5% pay fixation vide Government Letter No.7627/Kapa-7/2013-6 dated 01.04.2014 as provided under 22- B of the Rules but there being no such direction in favour of the 153 members of the petitioner Association, that they are not entitled to 5% benefit under 22 -B of the Rules, hence their prayer in this regard is without any substance, therefore, the impugned order needs no interference. The order

passed in W.P.No.25136 of 2012 in the case of (C.B.Prabakaradu and Others Vs. The State of Tamil Nadu and Others) dated 11.07.2013 directing the Government to extend the benefit of higher start of pay with effect from 01.06.1988 to the petitioners and non-petitioners therein, in view of the anomaly in fixation of pay and extending such benefit to the persons, who had not approached this Court is concerned, the same being not relatable to the Rule 22 -B of the Rules, the petitioner's claim that the benefit extended to Thiru N.Kunjappan to similarly situated employees of the petitioner's association, even if they had not approached this Court, is without any substance and as such this writ petition filed is liable to be dismissed.

4. The learned counsel for the petitioner Association would submit that since the petitioners were similarly placed like Thiru N.Kunjappan, the writ petitioner in W.P.No.9451 of 2007, who was extended the benefit under Rule 22- B of the Fundamental Rules by extending 5% benefit in pay, even if they had not approached this Court by way of a separate writ petition, the first respondent could not have refused their prayer on the aforesaid ground. More particularly when in W.P.No.25136 of 2012 in the case of (C.B.Prabakaradu and Others Vs. The State of Tamil Nadu and Others) dated 11.07.2013, this Court has already held to extend such benefit to the non petitioners similarly situated or otherwise that will amounts to discrimination and not permissible under law. Therefore, the impugned order is liable to be quashed and the first respondent be directed to extend the benefit of fixation of pay on the promotion 153 members of the petitioner's Association under the Rule 22- B of the Rules by extending the benefit as given to Thiru N.Kunjappan, a similarly situated person within stipulated time.

5. Mrs.R.Janaki, the learned Additional Government Pleader appearing for the respondents does not dispute the fact that the present case of 153 members of the petitioner Association, who have been promoted to the post of Senior Veterinary and Livestock Supervisor are covered by the decision of N. Kunjappan passed in W.P. No.9451 of 2007 still they were not extended the benefit of Rule 22- B of the Rules. But, the petitioners being the non-petitioners in the aforesaid writ petition, they could not have been granted benefit of 22 -B of the Rules as extended to N. Kunjappan more particularly when after 01.01.2006 on the promotion an increment in the scale of pay have been granted in terms of the Pay fixation Rules. Therefore, the writ petitioner has no case and the writ petition is liable to be dismissed.

6. After hearing the learned counsel for the parties and going through the materials on record, this Court is of the view that though the members of the petitioner-association, who were promoted to the aforesaid post, are entitled to the benefit under 22-B of the Rules in fixation of their pay on such promotion, which was then on vogue, but the same was not done. The same is justified by the respondent that since after 01.01.2006, such benefits are not available, inasmuch as in the pay fixation rule thereafter on promotion how to fix the scale of pay, it has been specifically provided to grant 3% increment in pay including grade pay only. But, it is not in dispute that Thiru. N. Kunjappan is similarly situated with the 153 members of the petitioner-association and all of them were promoted before 01.01.2006. In such view of the matter, when the aforesaid Thiru N. Kunjappan was given the benefit under Rule-22- B of the Rules, in pursuance of the direction of this Court passed in W.P. No.9451 of 2007 and the same has reached its finality being never challenged by the respondent, the representation of the petitioner to extend such benefit to the 153 members of the petitioner-association, who are similarly situated could not have been rejected on the ground that after 01.01.2006 such benefit is not available. So also, the same could not have been refused on the ground that the petitioners were never the writ petitioners in the case of Thiru. N. Kunjappan in view of the law laid down by this Court in the case of C.B.Prabakaradu and Others (cited supra). The aforesaid approach of the State would multiply the litigations inasmuch as when a person has been extended the benefit of a Rule, persons who are similarly situated thereafter can also make representation to extend them the benefit and rejection of the same amounts to discrimination which is not permissible under Article 14 of the Constitution. It is only in this circumstances, when pursuant to an order passed by the Court oblivious to the rule/law even if the order has been implemented in respect of the persons approaching the Court, the authority can refuse to extend the benefit of such order to the non petitioners. The same is not the case here inasmuch as the prayer made in this writ petition challenging the impugned order of rejection of the representations to extend the benefit of Rule 22- B of the Rules as extended to Thiru Mr.Kunjappan in the writ petitions supra appears to have sanction of law.

7. Therefore, this Court is of the view that prayer made in the writ petition deserves to be allowed and, accordingly, this Court allows the same and quash the order of rejection of the representation of the petitioner-association impugned in this writ petition and consequentially directs the respondents to give a re-look on the said representation by extending the benefit of Rule 22- B of the Rules to the members of the petitioners association who are left out even though their

case is covered by the order passed in the aforesaid writ petition filed by Thiru N.Kunjappan. Such exercise must be completed within a period of three months from the date of production of the certified copy of this order. However, in the circumstances, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

To Sub Assistant Registrar

- 1.The Secretary to Government,
Department of Animal Husbandry,
Diaries and Fisheries, D2,
Fort St. George,
Chennai 600 009.
- 2.The Director of Animal Husbandry and
Veterinary Services, Block II,
Central Office Building, DMS Complex,
Chennai-600 006.

+1cc to Mr.V.Chandrasekaran, Advocaet SR.No.34490
sm:7.6.2018

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