

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.5080 of 2016

Union of India, Ministry of Health & Family Welfare,
rep.by the Secretary to Government (Health)
New Delhi. Petitioner

-vs-

- 1.The Central Administrative Tribunal,
Madras Bench, rep.by its Registrar
High Court Campus, Chennai-600 104.
- 2.P.Prabhakar
- 3.The Director, Directorate of Health and Family Welfare
Services,
Puducherry.
- 4.The Secretary to Government (Health),
Chief Secretariat, Puducherry. Respondents

Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari to call for the entire records on the file of the first respondent relating to the impugned order dated 03.04.2013 and 21.02.2013 in O.A.No.606 of 2010 and to quash the same.

For Petitioner :: Mr.G.Rajagopalan,
Addl.Solicitor General of India for
Mr.Venkataswamy Babu
R1-Tribunal

For Respondents :: Ms.Y.Kavitha for
M/s.Giridhar & Sai Associates for R2
Mr.Syed Mustafa, Spl.GP (Pondicherry)
for R3 and R4

ORDER

(Made by HULUVADI G.RAMESH, J.)

The case of the second respondent is that he was initially appointed as Laboratory Technician Grade-I on 01.02.1971 and promoted as Technical Assistant on 05.06.1979. On 26.02.1983,

the post of Laboratory Technician Grade I was re-designated as Senior Laboratory Technician carrying the pay scale of Rs.380-560 (III CPC) which was subsequently revised to Rs.1320-2040 (IV CPC) and further revised to Rs.4500-7000 (V CPC). The second respondent was holding the promotional post of Technical Assistant, which carries higher educational qualification, higher duties and responsibilities than that of the feeder post of Senior Laboratory Technician. The promotional post of Technical Assistant carries the higher pay scale of Rs.425-700 (III CPC), which pay was subsequently revised to Rs.1400-2660 (IV CPC) and further revised to Rs.5000-8000 (V CPC). The pay of the post of Senior Laboratory Technician was revised initially as Rs.5000-8000, even though the said pay scale was not recommended under the V CPC. By communication dated 10.11.1998, the Government of Puducherry decided to prescribe higher pay scale of Rs.5500-9000 to the post of Technical Assistant. Also, by Office Memorandum dated 24.11.2000, the Secretary to Government (Health), New Delhi, recommended upward revision of pay scale to the post of Technical Assistant, since the feeder and promotional posts being placed in an identical revised pay scale. Even though the said Memorandum was accepted by the Government, the third respondent rejected the case of the second respondent herein by communication dated 30.05.2003. The said order was challenged by the second respondent before the Tribunal and an order was passed on 31.08.2007 in O.A.Nos.856, 857 and 861 of 2003 to rectify the said anomaly and to grant higher pay scale of Rs.5500-9000 with effect from 01.01.1996. On a challenge of the said order by the Government, before this Court, this Court, by order dated 11.03.2010, observed that the order dated 30.05.2003 of the third respondent has not been questioned and hence liberty was granted to challenge the said order.

2. Accordingly, the second respondent approached the Tribunal challenging the order dated 30.05.2003 and also seeking other consequential reliefs. After considering the facts and circumstances of the case, the Tribunal held that except rejecting the claim of the second respondent for upgradation of pay scale from Rs.5000-8000 to Rs.5500-9000, no valid reasons were given by the third respondent in the letter dated 30.05.2003. Observing so, the authorities were directed to revise the pay scale of the second respondent in the post of Technical Assistant (Lab) to Rs.5500-175-9000 with effect from 01.01.1996 and grant the corresponding pay scale pursuant to the VI Pay Commission Recommendations with arrears of pay and allowances and all other consequential benefits, by order dated 21.02.2013.

3. Challenging the said order, the present writ petition has been filed by the Government of India.

4. In the affidavit filed by the Under Secretary to Government (Health), Ministry of Health and Family Welfare, New Delhi, dated 08.02.2016, it is stated that the Government of

India, Ministry of Health and Family Welfare, New Delhi has sought some clarifications from the Government of Puducherry vide letter dated 18.07.2013 for examining the feasibility of upgradation of pay scale of Technical Assistant (Lab), in view of the directions of the Tribunal and that the Government has furnished the clarifications vide letter dated 01.06.2015 stating that action has been taken to merge the posts of Technical Assistant (Lab.) and Senior Lab Technician in view of the recommendations of the VI Central Pay Commission. The Service Association of both the cadres have agitated against the amalgamation of these posts stating that the feeder and promotional posts carries different nature of work and it should not be merged together and hence the Puducherry Administration could not take a decision immediately to furnish a suitable reply to the Government of India. It is stated that some more clarifications have been sought by the Tribunal and the Puducherry Administration furnished the same vide letters dated 28.09.2015 and 23.10.2015. Thus, it is stated that the posts of Technical Assistant (Lab.) and Senior Lab. Technician may not be treated as promotional and feeder posts, because the feeder post has already been given the higher scale of promotional post and the promotional post is in the same place as that of the feeder post. It is further stated that there are not much differences exist in the functions attached to the posts of Technical Assistant and Senior Lab. Technician.

5.The learned Additional Solicitor General of India appearing for the petitioner has submitted that the decision as regards fixing appropriate pay scale to the post of Technical Assistant (Lab.) has to be taken by the Government of Puducherry for setting right the anomaly.

6.The learned counsel for the second respondent has submitted that the post of Technical Assistant (Lab.) is the promotional post to the post of Senior Laboratory Technician and carries higher duties and responsibilities and higher educational qualifications. Further the post of Technical Assistant (Lab.) has been carrying higher pay scale than the post of Senior Laboratory Technician during the III, IV and V CPC. The Government of Puducherry has also recommended for upgradation of the pay scale for the post of Technical Assistant (Lab.), considering the nature of work. In such view of the matter, it is not proper to deny the said benefit to the second respondent, according to the learned counsel for the second respondent.

7.Heard the learned counsel on either side and perused the materials available on record.

8.It has been brought to our notice that the impugned order passed by the Tribunal has been stayed by a Division Bench of this Court and thereafter it was made absolute. As per the submissions made by the learned Additional Solicitor General of

India, the Tribunal ought not to have taken a decision on its own to extend the pay scale of Rs.5500-9000 to the second respondent, when the matter is pending with the Government of Puducherry for merging the posts of Senior Laboratory Technician and Technical Assistant (Lab.). According to his submission, the power to extend the pay scale on par with other Departments and to set aside any anomaly, rests only with the Government of Puducherry.

9. Taking into consideration the submissions made on either side, this Court directs the petitioner and the respondents 3 and 4 to take a decision for fixing appropriate pay scale to the post of Technical Assistant (Lab.) on par with other Departments, taking note of the duties and responsibilities of the post of Technical Assistant, which is stated to be higher than that of the post of Senior Laboratory Technician, and the guidelines framed by the Hon'ble Supreme Court, and to set right the anomaly, within a period of two months from the date of receipt of a copy of this order. After taking a decision, the case of the second respondent shall be considered, if he is so entitled, by way of granting promotion or revising the pay scale, in accordance with law.

10. The writ petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

KM

To

1. The Registrar,
Central Administrative Tribunal,
Madras Bench,
High Court Campus, Chennai-600 104.

2. The Director,
Directorate of Health and Family Welfare Services,
Puducherry.

3. The Secretary to Government (Health),
Chief Secretariat, Puducherry.

+1cc to Mr. Giridhar & Sai Advocate Sr.No.43331

+1cc to Mr. Venkataswamy, Advocate SR.No.43077

BR(CO)

sm:27.7.2018

W.P.No.5080 of 2016