

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.13815 of 2009

Dr.Manimozhi

... Petitioner

Vs.

1. State of Tamil Nadu,
Rep. by its Secretary,
Environment and Forests,
Fort St.George, Chennai-600 009.

2. The Principal Chief Conservator of Forests,
Tamil Nadu Forest Department,
Panagal Buildings, Chennai-15.

3. The Chief Conservator of Forests & Director,
Aringnar Anna Zoological Garden, Vandalur.

4.The Deputy Director,
Aringnar Anna, Zoological Garden,
Vandalur.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarified Mandamus, calling for the records relating to the order of the 4th respondent Na.Ka.No.2170/05/Pa.1 dated 13.03.2006 and that of the consequential recovery of incentive increment in L.Dis.No.4582/2009/E1 dated 08.07.2009 to quash the same and consequently direct the respondents to revise and refix the pay of the petitioner by taking into account the incentive increment for all purposes.

For Petitioners : Mr.L.Chandrakumar

For Respondents : Ms.Thangavadhana Balakrishnan
AGP (for R1 to R3)

O R D E R

The petitioner is challenging the order dated 08.07.2009 passed by the Secretary, Environment and Forests, Chennai, in Na.Ka.No.2170/05/Pa.1 dated 13.03.2005, to with draw the incentive benefits granted to the petitioner.

2. The petitioner obtained graduation in M.Sc., Wild Life Biology. He also obtained M.Phil., during 1988. He joined the department as Biologist on casual basis. After 10 years of services, he was regularized as a Biologist with effect from 23.11.1998. He got his Doctorate in Zoology in the year 2001. By proceedings dated 28.11.2002, bearing No.4045/2002/E1 by the Deputy Director, Arignar Anna Zoological Park, Vandalur, Chennai, the petitioner was given three incentive increments, citing G.O.Ms.No.843/P&A Reforms FR(II) Dept dated 05.09.1983 and G.O.Ms.No.907/P&A Reforms FR(II) Dept 17.09.1986. By an order dated 13.03.2006 in Na.Ka.No.2170/05/01, the respondents withdrew the incentive increment citing audit objection. The basis of the audit objection was that the incentive increments under G.O.Ms.No.843/P&A Reforms FR(II) Dept dated 05.09.1983 could be given only to the departments mentioned in annexure-1 in the said G.O. Consequent to the withdrawal, the amounts were ordered to be recovered back from the petitioner by the impugned order. It is this order challenged in the instant writ petition.

3. Heard the counsel for the parties.

4. G.O.Ms.No.843/P&A Reforms FR(II) Dept dated 05.09.1983 provides for grant of incentive increments and acquiring higher qualifications. No doubt, it contains the annexure which gives the details of the department to which the G.O.Ms.No.843/P&A Reforms FR(II) Dept dated 05.09.1983 would be applicable. However, the learned counsel for the petitioner has drawn the attention of this Court to the G.O.Ms.No.1159, Personnel and Administrative Reforms (FR.II) Department, dated 21.11.1984, the said G.O. reads as under:-

"PERSONNEL AND ADMINISTRATIVE REFORMS (F.R.II)
DEPARTMENT G.O. (Ms) No. 1159

Dated: 21-11-1984.

Read : 1. G.O. (Ms) No. 531, Finance Department, dated 25.4.1963.

2. G.O. (Ms) No. 825, Personnel and Administrative Reforms (F.R.I.) Department, dated 6.7.1977.

3. G.O. (Ms) No. 1195, Personnel and Administrative Reforms (F.R.I.) Department, dated 27.10.1978

4. G.O. (Ms) No. 843, Personnel and Administrative Reforms (F.R.I.) Department, dated 5.9.1983.

ORDER:

In the Government Order 4th read above, the scheme of sanction of advance increments for acquisition of higher qualifications was replaced by the scheme of sanction of lumpsum grant. The orders took effect from 5.9.1983. Departments of Secretariat were requested to determine the

quantum of lumpsum / grant in lieu of advance increments in consultation with Personnel and Administrative Reforms and Finance Departments.

2. Several representations have been received requesting that the advance increment scheme may be continued, Government have carefully examined the request and have decided to revive the scheme of sanction of advance increments. Accordingly the Government direct. that the scheme of sanction of advance increments for acquisition of higher qualifications in vogue prior to 5.9.1983 be revived with immediate effect. The orders issued in the Government Order fourth read above and the clarifications issued there under from time to time be cancelled subject to the modification specified in para 3 below.

3. Such of the Officers who have already availed themselves of the lumpsum grant under G.O.Ms.No. 843, Personnel and Administrative Reforms (F.R.II) Department, dated 5.9.1983 and permitted to retain the benefit. However, if a person who has already drawn the lumpsum grant wishes to avail himself of the scheme of sanction of advances increment, he shall refund the lumpsum grant in one installment and then apply to the concerned authority for sanction of advance increment.

4. These orders will apply to Government servants including teachers.

5. Departments of secretariat are requested to take action in accordance with the orders in paras 1 to 4 above.

6. This order issues with the concurrence of Finance Department - vide its U.O.No. 4056/ FS/84, dated 9.11.1984.

(By order of the Governor)

T.V. ANTHONY

Secretary to Government"

5. The learned counsel for the petitioner therefore submits that after G.O.Ms.No.1159, was brought out the benefits of G.O.Ms.No. 843, Personnel and Administrative Reforms (F.R.II) Department, dated 5.9.1983 would be extended to everyone including the petitioner. The learned counsel for the petitioner also relies on the judgment of this Court dated 23.07.2019 in WP.No.13645 of 2016, Dr.P.Kirubakaran Vs. The State of Tamil Nadu, paragraph Nos. 6 to 12 of the said judgment reads as under:-

"6. The learned Government Advocate also quoted the judgment of the Hon'ble Supreme Court in the case of State of Bihar vs. Upendra Narayan Singh and Others, reported in 2009 (4) SCALE 282 to contend that if an illegality or irregularity has been committed in favour of any individual or group of individuals or a wrong

order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior Court for repeating or multiplying the same irregularity of illegality or for passing order.

7. It is the further argument of the Respondents that there is no provision either in the Fundamental Rules or in the General Rules for the Tamil Nadu State and Subordinate Services or in the Special Rules for the Tamil Nadu Forensic Science Subordinate Service governing the service conditions of the staff of the Forensic Sciences Department to sanction advance increment for acquisition of Ph.D.Degree qualification. The Government cannot be compelled to issue any administrative or executive order for sanctioning of advance increment to the petitioner. As the Petitioner is a Scientific Officer, he is not entitled to get any advance increment and a wrong order or benefit given to one G.Thirunavukkarasu would not entitle the petitioner to claim the same benefit.

8. Heard the learned counsel for the Petitioner and the learned Special Government Pleader appearing for the Respondents.

9. The facts reveal that the petitioner served as Deputy Director, Forensic Sciences Department at the time of his retirement in 2016 and during his service, he pursued his Ph.D.Degree after obtaining due permission from the Department and completed the same. Though the petitioner requested for advance increment, he was not granted any increment in terms of G.O.Ms.No.1159 P&AR (FR.II) Department dated 21.11.1984, by which, G.O.Ms.No.843, Personnel and Administrative Reforms (F.R.I.) Department dated 05.09.1983 was revived. A perusal of Clause No.4 of G.O.1159 unfolds the fact that the benefit of advance increment needs to be extended to all Government Servants, including teachers and a close reading of G.O.Ms.No.843 dated 05.09.1983 would go to show that it was issued for the purpose of grant of lumpsum amount as an incentive in order to enable Government Employees to pursue further education and acquire higher qualification. Even though it was contended by the Respondents that G.O.Ms.No.843 dated 05.09.1983 is applicable to the staff members working in Home Department, especially to Police Constables, such segregation of category is not found in the contents of

the said G.O., which merely stipulates that all the Government Servants, including teachers are entitled to advance, other the benefits of Clause No.4 of G.O.1159 would have become redundant.

10. This Court feels it appropriate to point out that the teachers have no role to play in the Personnel and Administrative Reforms Department and even assuming for the sake of argument that the word -teachers- has been wrongly referred in G.O.1159, as they have got a separate Government Order for claiming advancement increment, the intention of the Government is very clear that all the Government Servants must be granted the benefit. A harmonious reading has got to be given to both the Government Orders, namely, G.O.1159 and G.O.843 and if the intention of the Government was to give the benefit only to certain categories, then there is no need for inclusion of Clause No.4 in G.O.1159 and therefore, this Court is of the view that the benefit of advancement increment needs to be given to a person, who has completed Ph.D. in Forensic Sciences.

11. The Government, having utilized the services of the Petitioner in a proper perspective, cannot deny advance increment to the Petitioner, especially when such benefit was extended to Government Servants on earlier occasions by G.O.Ms.No.843, Personnel and Administrative Reforms (F.R.I.) Department dated 05.09.1983, which was revived subsequently. On a bare scrutiny of G.O.1159, no other interpretation can be given than the one that the intention of the Government was to extend the benefit to all Government Servants without any restriction in terms of staff category. Even though G.O.Ms.No.843, Personnel and Administrative Reforms (F.R.I.) Department dated 05.09.1983 restricted the grant to only one sect of people, the subsequent G.O.1159 has widened the scope and therefore, this Court is of the view that the Petitioner, who is a Ph.D.Holder is entitled to only one advance increment. At the same time, the petitioner is not entitled to three advance increments, as the petitioner had already been holding a P.G. qualification.

12. In view of the foregoing discussions and observations, the Writ Petition is allowed and the impugned proceedings of the 1st Respondent dated 17.11.2015 made in G.O.Ms.No.825 is set aside. The

Respondents are directed to grant one increment to the petitioner for obtaining Ph.D. Degree, in a phased manner depending upon the qualification obtained by him, within a period of 45 days from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed."

6. The learned counsel for the respondents on the other hand, stated that the judgment dated 23.07.2019 can be distinguished on facts. It is contended that in WP.No.13645 of 2016 (supra), the department decided to withdraw the incentive increments, whereas in this case, only because of audit objections the amount is being recovered. The learned counsel for the respondents states that the Office of the Audit General should be made as a necessary party to adjudicate the issue involved in this case. This Court is not inclined to accept the arguments of the learned counsel for the respondents.

7. A perusal of the G.O.Ms.No.1159, dated 21.11.1984 would show that it have actually enlarged the scope of G.O.Ms.No. 843, Personnel and Administrative Reforms (F.R.II) Department, dated 5.9.1983 which restricted the benefit only to the departments mentioned in the annexure. This Court by an order dated 23.07.2019 in WP.No.13645 of 2016, has struck down the order withdrawing the grant of incentive increments to persons similarly placed to the petitioner. In view of the above, the writ petition stands allowed. The counsel for the petitioner states that there was a stay of the impugned order by this Court and therefore no consequential directions are necessary. The Writ Petition is allowed and the impugned order is set aside. No Costs.

Sd/-

Assistant Registrar

//True Copy//सत्यमेव जयते

Sub Assistant Registrar

To

1. The Secretary,
State of Tamil Nadu,
Environment and Forests,
Fort St.George, Chennai-600 009.

2. The Principal Chief Conservator of Forests,
Tamil Nadu Forest Department,
Panagal Buildings, Chennai-15.

3. The Chief Conservator of Forests & Director,
Aringnar Anna Zoological Garden, Vandalur.

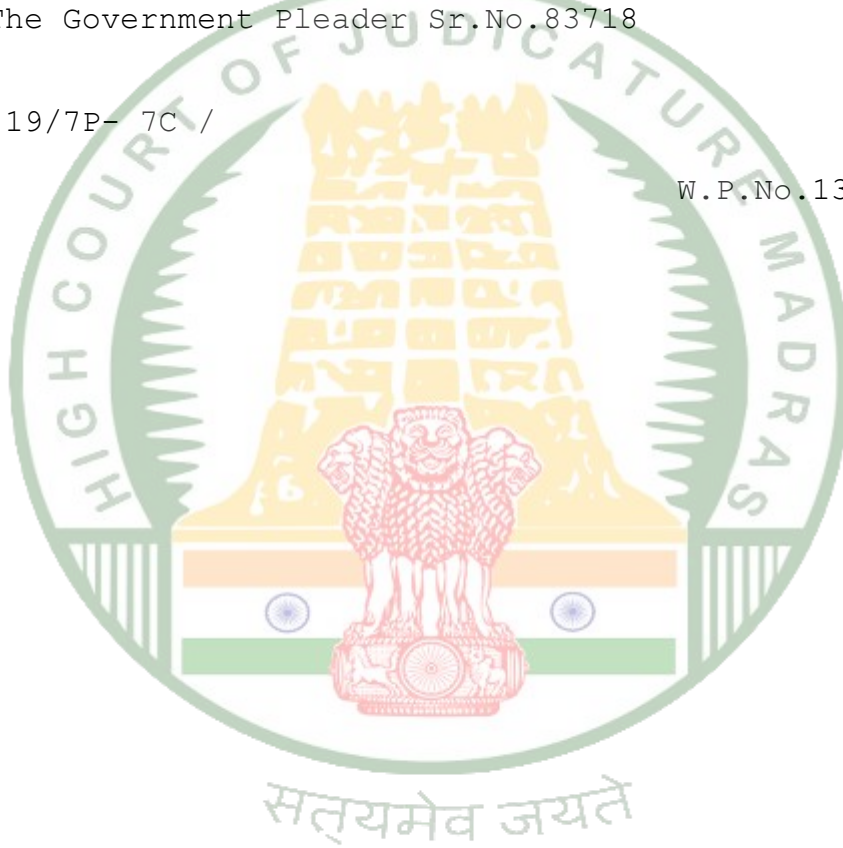
4. The Deputy Director,
Aringnar Anna, Zoological Garden,
Vandalur.

+1 cc to M/s.L.Chandrakumar, Advocate Sr.No. 82874

+1 cc to The Government Pleader Sr.No.83718

AKM/28.11.19/7P- 7C /

W.P.No.13815 of 2009



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