

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.19934 of 2008

P.Govindarajan

... Petitioner

Vs.

1.The Commissioner and
Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai - 600 009.

2.Director of Public Health and
Preventive Medicine,
Chennai - 600 006.

3.The Public Analyst,
Food Analysis Laboratory,
Thanjavur.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of writ of Certiorarified Mandamus, to call for the records of the 1st Respondent impugned order dated 03.03.2008 bearing letter No.44702/C2/2003-07 and quash the same and further issue direction to the first respondent to step up pay of the petitioner post - Junior Analyst - Laboratory Technician, Grade on par with epidemic and cholera program.

For Petitioner: Mr.Haja Nazirudeen, Senior Counsel
for Mr.P.Haribabu

For Respondents : Mr.R.S.Selvam
Government Advocate

O R D E R

The present Writ Petition is filed for issuance of writ of Certiorarified Mandamus, to call for the records of the 1st Respondent impugned order dated 03.03.2008 bearing letter No.44702/C2/2003-07 and quash the same and further issue

direction to the first respondent to step up pay of the petitioner post - Junior Analyst - Laboratory Technician, Grade on par with epidemic and cholera program.

2. According to the petitioner, he was appointed as Laboratory Technician Grade-1 (Nutrition) during the year 1972, on the basis of certificate obtained from the Director of Medical Education and subsequently obtained additional qualification of B.Sc., degree. Similarly, one A.Kittappa and R.Ramachandraiah were appointed as Lab-Technician Grade-I in the year 1969 and 1971 respectively and posted to Laboratory Technician Grade-1 (Epidemic) and Laboratory Technician Grade-1 (Cholera Control Program) respectively. All the three posts carry the same scale of pay and qualification for appointment is one and the same. The scale of pay for all the three posts are one and the same, till IVth pay commission. In the Vth pay commission, the scale of pay for Laboratory Technician Grade-I (Epidemic) and (Cholera Control Program) was fixed at higher scale of pay than the Laboratory Technician Grade-I (Nutrition). The petitioner has given representation to the respondents pointing out this disparity. Even in the Vth pay commission, there was no disparity in relation to scale of pay. One man commission or official committee has no power to supercede the pay commission recommendations. The qualification and work done by the Laboratory Technician Grade-I (Nutrition), Laboratory Technician Grade-I (Epidemic) and Laboratory Technician Grade-I (Cholera Control Program) are one and the same. The authority has no 'locus standi' or to adopt different yardstick in petitioner's case, who possess same qualification and do work of same nature. The respondents failed to consider the petitioner's representation. The petitioner filed Original Application in O.A.No.3389 of 2003 and the same was subsequently transferred to this Court and renumbered as W.P.No.27505 of 2005. This Court by the order dated 14.02.2006, directed the first respondent to consider the petitioner's representation on merits. In pursuance of the order of this Court, the first respondent passed the impugned order.

3. The learned Senior Counsel appearing for the petitioner contended that the impugned order is not a speaking order. The respondent has not considered the various points raised by the petitioner in his representation and the first respondent erroneously rejected the representation of the petitioner on the ground of delay. The first respondent failed to see that the petitioner has given representation on 13.05.2002, wherein this Court by the order dated 14.02.2006 directed the first respondent to consider the representation of the petitioner on merits. After a lapse of nearly three years of the said order, the first respondent rejected the petitioner's representation on

the ground of delay. There is no delay on the part of the petitioner seeking pay parity. The order of the first respondent is erroneous and prayed for quashing the impugned order and allowing the Writ Petition.

4.The respondents filed counter affidavit and denied all the averments made by the petitioner.

5.Mr.R.S.Selvam, learned Government Advocate appearing for the respondents contended that the Educational Qualification and the nature of work done by the persons appointed in Laboratory Technician Grade-I (Nutrition), Laboratory Technician Grade-I (Epidemic) and Laboratory Technician Grade-I (Cholera Control Program) are different and therefore the scale of pay fixed for Laboratory Technician Grade-I (Nutrition), Laboratory Technician Grade-I (Epidemic) and Laboratory Technician Grade-I (Cholera Control Program) are in order and prayed for dismissal of the Writ Petition.

6.Heard the learned Senior Counsel appearing for the petitioner as well as learned Government Advocate appearing for the respondents and perused the entire materials on record.

7.It is the contention of the learned Senior Counsel appearing for the petitioner that the Educational Qualification and nature of work done by all the persons holding the three posts are one and the same. From the impugned order, it is seen that the first respondent has not considered the points raised by the petitioner in his representation and his representation was rejected on the ground of delay. The first respondent has not stated anything in the impugned order about the various grounds now raised in the counter affidavit. The respondents cannot improve the impugned order by giving reasons in the counter affidavit. This Court by the order dated 14.02.2006 directed the first respondent to consider the representation of the petitioner on merits and pass orders in accordance with law. The first respondent has not considered the contention of the petitioner that Educational Qualification and nature of work done by the persons working in the above mentioned three posts are one and the same. The first respondent has rejected the representation of the petitioner without considering the claim of the petitioner on merits and giving reason for not accepting the same.

8.In view of the same, without deciding the rival contentions on merits, the impugned order of the first respondent is set aside and remanded to the first respondent. The first respondent is directed to consider the representation of the petitioner as per earlier order passed by this Court on 14.02.2006, within a period of eight weeks and pass orders on

merits and in accordance with law, from the date of receipt of a copy of this order.

9.With the above direction, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Commissioner and
Secretary to Government,
Health and Family Welfare Department,
Fort St. George,
Chennai - 600 009.
- 2.Director of Public Health and
Preventive Medicine,
Chennai - 600 006.
- 3.The Public Analyst,
Food Analysis Laboratory,
Thanjavur.

+1cc to M/s.P.Hari babu, Advocate sr.51255
+1cc to the Government Pleader Sr.51695

सत्यमेव जयते

W.P.No.19934 of 2008

bp[co]
srg 23/07/2019

WEB COPY