



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.13645 of 2016 and

W.M.P.No.11938 of 2016

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Dr.P.Kirubakaran

... Petitioner

-vs-

1.The State of Tamil Nadu,
Rep. by its Secretary,
Home Department (Police 18),
Fort St.George, Chennai-600 009.

2.The Director,
Forensic Science Department,
30-A, Kamarajar Salai,
Mylapore, Chennai-600 004.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the order of the 1st Respondent made in the proceedings G.O.Ms.No.825 dated 17.11.2015 and quash the same and consequently direct the respondent to extend all the benefits of the 3 advance increment, fixation of pay and other benefits for all purpose, including pension and other pensionary benefit.

For Petitioner : Mr.K.Sivaramalingam

For Respondents: Mr.P.Siva Shanmuga Sundaram
Spl. Govt. Pleader

O R D E R

This Writ Petition has been filed, challenging the order of the 1st Respondent dated 17.11.2015 made in G.O.Ms.No.825, by which the petitioner's request for granting three advance increment stood rejected. The Petitioner also sought a direction to the respondent to extend all the benefits of the three advance increment, fixation of pay and other benefits for all purpose, including pension and other pensionary benefit.

Brief Facts:

2. The Petitioner, while working as Scientific Officer, had obtained permission from the Directorate of Forensic Sciences Department in the year 1985 for pursuing Ph.D.Degree on part-time basis and in the year 1996, he was awarded Ph.D.Degree in Polymer Science by the University of Madras. The Petitioner, having acquired the said Degree, had requested to sanction



advance increment to him and in support of his demand, he also quoted the incident of one G.Thirunavukkarasu, who was sanctioned advance increment on the basis of the order of this Court dated 29.08.2013 passed in W.P.No.24006 of 2013 and the subsequent contempt petition. In the order dated 29.08.2013, this Court had directed that G.O.Ms.No.1159 P&AR (FR.II) Department dated 21.11.1984 shall be taken note of for grant of advance increment;

3. Against the said order, the Government had filed W.A.No.393 of 2014, in which, the Division Bench of this Court had directed the Government to consider the representation of the Petitioner herein by taking into account all the Government Orders and statutory rules prevalent therein, pursuant to which, his case was considered and rejected by the 1st Respondent. It is submitted that since the petitioner had acquitted Ph.D.Degree, he is entitled to advance increment, as, by means of G.O.Ms.No.1159, Personnel and Administrative Reforms (Fundamental Rule.II) Department dated 21.11.1984, there is a revival of G.O.Ms.No.843, Personnel and Administrative Reforms (F.R.I.) Department dated 05.09.1983 and in terms of Clause No.4 of G.O.1159, the benefit of advance increment needs to be extended to all Government Servants, including teachers. Therefore, it is prayed that the benefit of advance increment may also be extended to the petitioner.

4. Per contra, learned Special Government Pleader appearing for the Respondents has contended that though the petitioner had acquired Ph.D.Degree, the claim based on G.O.Ms.No.1159 dated 21.11.1984 cannot be entertained, as the benefit extended to the similarly placed person, namely, G.Thirunavukkarasu was based on the orders of this Court in order to avoid contempt proceedings. It is further contended that the Writ Appeal filed by the Government against the order dated 29.08.2013 was dismissed on the ground of laches and not on merits. Though the benefit of advance increment was restored in entirety, the persons, who are holding the particular post alone would be entitled to advance increment and it was pointed out that originally, the advance increment was paid on monthly basis and in G.O.1159, it was stipulated as follows:

"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."

5. It is stated that as there is a separate scheme / Government Order for sanctioning of advance increment to



teachers and though the Government Order is applicable to Home Department and the petitioner also working in the said Department, the order restricts the grant of advance increment only to Police Constables coming under the Home Department.

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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.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To:

1.The Secretary,
State of Tamil Nadu,
Home Department (Police 18),
Fort St.George,
Chennai-600 009.

2.The Director,
Forensic Science Department,
30-A, Kamarajar Salai,
Mylapore, Chennai-600 004.

+2cc to Mr.Dayalan, Advocate sr.62992
+1cc to Government Pleader sr.63840

W.P.No.13645 of 2016

mg(co)
nr 05/08/2019