

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

CORAM :

The Hon'ble Mr.AMRESHWAR PRATAP SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.A.No.3976 of 2019

Dr.P. Kirubakaran

....Appellant/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, Kamaraja Salai,
Mylapore,
Chennai - 600 004

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent against
the order passed in W.P.No.13645 of 2016 dated 23.07.2017.

W.P.No.13645 of 2016:

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. M.s. 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 benefits.

For Appellant

: Mr.G. Jayachandran

For respondents

: Mr.V. Jayaprakash Narayanan
Government Pleader

JUDGMENT
(delivered by SUBRAMONIUM PRASAD, J.,)

The Writ Appeal arises out of an order passed in W.P.No.13645 of 2016 dated 23.07.2017, whereby, the learned Single Judge dismissed the writ petition wherein the petitioner had prayed for grant of three advance increments, fixation of pay and other benefits for all purposes, including pension and other terminal benefits.

2. The petitioner/appellant was working as Scientific Officer in the office of the Directorate of Forensic Science Department. After entering into employment, the appellant took permission and pursued his Ph.D degree. The petitioner was awarded Ph.D degree in Polymer Science by the University of Madras.

3. The appellant requested for sanction of three advance increments on the completion of his Ph.D course. The Director, Forensic Science Department by letter dated 17.04.1998 forwarded his petition and recommended for sanction of three advance increments.

4. Since the request of the appellant was not sanctioned, the appellant filed W.P.No.24006 of 2013 for a Writ of Mandamus directing the respondents to sanction three advance increments. This Court, by an Order dated 29.08.2013 disposed of the Writ Petition by directing the respondents to consider the representation of the appellant in the light of the various Government Orders. The Government challenged the said order by filing W.A.No.393 of 2014. A Division Bench of this Court by judgment dated 18.03.2014 disposed of the writ appeal holding that the order of the learned Single Judge does not cause any prejudice to the appellant herein or the State.

5. The Government thereafter by G.O.Ms.No.825 Home (Police.XVIII)Department dated 17.11.2015 rejected the request of the appellant stating that the appellant on completing his Ph.D degree is not entitled to any advance increments. The appellant has challenged the aforementioned order by filing instant writ petition.

6. The learned Single Judge by the impugned order dated 23.07.2019 has held that the appellant is entitled only to one advance increments on getting his Ph.D degree. It is this order, which is under challenge, in this writ appeal.

7. Heard learned counsel for the parties.

8. The learned counsel for the appellant would place reliance on G.O.Ms.No.843 Personnel and Administrative Reforms (F.R.II) Department dated 05.09.1983. Learned counsel contended that prior to G.O.Ms.No.843, the employees were being given a lumpsum amount without regard to the scales of pay on acquiring higher qualifications. Learned counsel contended that the Government laid down the following conditions on the question sanction of increments/lumpsum payments:

5. The Government direct that the grant of lumpsum amount ordered in para 3 above will be subject to the following conditions:-

i) The scheme is applicable to officers upto and inclusive of second level officers below the Heads of Departments.

ii) Persons who had acquired the special qualifications for which the lumpsum amount can be granted prior to their appointment to a particular post wherein the lumpsum amount can be granted are not eligible for the lumpsum grant.

iii) If the higher qualifications i.e. Post-Graduate degree or Diploma is prescribed as one of the requisite qualification for appointment to any post or where the scale of pay for such post is prescribed taking into account the special qualifications, no lumpsum amount will be granted to those acquiring the special qualifications.

iv) Where the Government have spent money on any officer by giving him study leave and allowance or treating the study period as duty with full pay and allowances for acquiring the special qualifications, he is not entitled to this benefit.

v) So far as Master of Business Administration qualification is concerned:-

(a) an officer will be entitled to the lumpsum grant, only if his services can be utilised in a post where the qualification will be useful and not otherwise and

(b) this lumpsum grant for Master of Business Administration qualification will be given, in addition the earlier advance increment benefit enjoyed for having acquired Post-Graduate qualification in Agriculture, Engineering, Medicine etc. or the lumpsum grant given under the present scheme for acquiring such Post-Graduate qualification.

vi) As regards acquisition on Ph.D. qualification, the lumpsum grant payable will be difference between the grants admissible for the Post-Graduate and Ph.D. qualification and it shall not be allowed exclusively

in addition to the lumpsum already granted for the Post-Graduate qualification.

vii) In respect of those for whom Post-Graduate qualification is made essential for further promotion no lumpsum grant will be granted for acquiring that Post-Graduate qualification.

viii) So far as Account Test for subordinate officers Part I is concerned, the lumpsum grant shall be paid only where the passing of the test is prescribed on a condition for continuance in a post or for promotion in higher post."

9. Learned counsel for the appellant stated that after G.O.Ms.No.843, the Government passed G.O.Ms.No.1159, Personnel and Administrative Reforms (F.R.II) Department dated 21.11.1984, under which it was stated that if a person who has availed the benefit of lumpsum grant under G.O.Ms.No.843, wants to avail the benefit of G.O.Ms.No.1159, he would have to refund the lumpsum grant and then apply for sanction of advance increments. Learned counsel for the appellant states that since he has not availed the benefit of G.O.Ms.No.843, he is entitled to the three advance increments to which he is entitled to on acquiring his Ph.D degree. He would also rely on Division Bench of this Court dated 03.10.2019 in W.A.No.3378 of 2019 (State of Tamil Nadu and another vs Dr.P.Kirubakaran) by which the State Government had challenged the impugned order, by which the appellant had been granted one advance increment.

10. Per contra, learned Government Pleader supported the impugned order dated 17.11.2015 and contended the petitioner is not entitled to any advance increments.

11. The challenge by the State Government to the impugned order has failed in W.A.No.3378 of 2019. The short issue that arises for consideration here is as to whether the appellant would be entitled to three advance increments on his acquiring Ph.D degree or the appellant would be only entitled to one advance increment.

12. Advance increment is an incentive given to persons, who after entering into service, pursue higher educational qualifications in order to be more equipped and to perform better while discharging duties. The Government gives maximum of three advance increments on acquiring an educational qualification. The appellant was already possessing M.Sc degree while entering into service. He has acquired Ph.D degree after entering into service. The argument of learned counsel for the appellant that there is no prohibition to give three advance increments on acquiring Ph.D degree cannot be accepted. The appellant has not pointed out that advance increments can be

given even for degrees acquired prior to entering into service. The purpose of grant of advance increments is to improve the quality of work by the employees after they enter into service with the minimum qualification required for the posts. The appellant is therefore entitled to only one advance increment for Ph.D degree which he has acquired after entering into service.

13. In the absence of any other materials, which would justify the grant of advance increments to the appellant, this Court is not inclined to interfere with the order passed by the learned Single Judge.

14. Accordingly, the writ appeal is dismissed. No costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

sr/pkn

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, Kamaraja Salai,
Mylapore,
Chennai - 600 004

+2 Ccs to Mr.G. Jayachandran, Advocate sr 101349.

+1 CC to Govt. Pleader sr 102552, 102538.

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KJ(CO)
SP(02/03/2020)