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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

WRIT PETITION NO.1964 OF 2007

AND

W.P.M.P.NO.1 OF 2007

Dr.Sheela Das

... Petitioner

.Vs.

1. The Pondicherry University,
Rep. By Deputy Registrar,
Pondicherry.
2. The University Grants Commission,
Bhadurshah Zagar Marg,
New Delhi - 110002.
3. The Secretary to Government of India,
Ministry of Health & Family Welfare
(Department of Health) C/II/138,
Chanakiyapuri,
New Delhi.

... Respondents

R3-Suo motu impleaded as per order
dated 26.08.2013 in M.P.No.1964 of 2007.

PRAYER:-

Writ Petition filed praying to issue a writ of Certiorarified Mandamus to quash the Office Order No.158, dated 19.08.2005 issued by the 1st respondent herein, after calling for the concerned records from it and consequently direct the respondents to promote the petitioner as Senior Medical Officer with effect from 11.03.1996, Chief Medical Officer (Non-functional Selection Grade) with effect from 11.03.2005, with all arrears of salary and other attendant benefits.

For Petitioner : Ms.R.Vaigai,
Senior counsel
For Ms.Anna Mathew



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For Respondents : Mr.P.R.Gopinathan
Standing counsel for R2

Ms.A.V.Bharathi, for R1

Mr.J.Madanagopal Rao,
Senior Central Government
Standing counsel for R3

ORDER

This writ petition is filed seeking to quash the Office Order No.158, dated 19.08.2005 issued by the 1st respondent and to direct the respondents to promote the petitioner as Senior Medical Officer with effect from 11.03.1996, Chief Medical Officer (Non-functional Selection Grade) with effect from 11.03.2005, with all arrears of salary and other attendant benefits.

2. The petitioner is a Doctor with MBBS qualification. She joined the services of 1st respondent as a Medical Officer in the pre revised scale of pay of 2200-4000, thereafter, scale of pay was revised on 23.03.1992 to 8000-13500. Later, she was promoted as a Senior Medical Officer.

3. The 2nd respondent - University Grants Commission (UGC) issued an order, dated 20.01.2003 by which the Dynamic Assured Career Progression (DACP) Scheme was implemented for the Medical Officers of Central Universities and Deemed to be Universities. As per the DACP Scheme, a General Duty Medical Officer/Medical Officer in the scale of Rs.8000-13500, on completion of four years of regular service will be promoted as Senior Medical Officer in the scale of Rs.10000-15200. Thereafter, the Senior Medical Officer with five years of regular service will be promoted as Chief Medical Officer in the scale of Rs.12000-16500 and after completion of 4 years of service in the Chief Medical Officer Grade, the officer will be promoted to Chief Medical Officer (Non-functional Selection Grade) in the pay scale of Rs.14,300-18,300.

4. Based on the DACP Scheme, by an order dated 30.07.2004, the 1st respondent/Deputy Registrar, Pondicherry University, promoted the petitioner to the post of Senior Medical Officer with effect from 11.03.1996 on completion of 4 years of regular service in the pay scale of Rs.10,000 - 15,200, subject to ratification by the Executive Council and approval of the University Grants Commission. In the said order, it is stated that the petitioner's date of next increment in the post of Senior Medical Officer shall be 01.03.1997.



5. According to the petitioner, she did not receive any communication regarding ratification by the Executive Council and approval by University Grants Commission as regards the DACP Scheme implementation in respect of her promotion to the post of Chief Medical Officer and on her due date of promotion on 11.03.2001, she was not given promotion to the post of Chief Medical Officer by the 1st respondent. Thereafter, she should have been given the scale of pay of Chief Medical Officer (non-functional Selection grade) on 11.03.2005 and that was also not given.

6. According to the petitioner, the impugned order dated 19.08.2005 promoting her to the post of Senior Medical Officer under Dynamic Assured career Progression scheme with effect from 05.04.2002 FN, carrying the scale of pay of Rs.10,000-325-15,200 is arbitrary and the scale of pay, the petitioner is entitled to is with effect from 11.03.1996 on completion of four years service as per the DACP Scheme. She has taken the ground that the respondent in implementing the DACP Scheme from 05.04.2002 is unreasonable and she is suffering monetary loss and also deprived of promotions. Learned Senior counsel for the petitioner, in support of her contentions placed reliance on the following decisions:-

1. (2004) 9 SCC 65 [State of Tripura and others].
2. (2012) 12 Supreme Court Cases 666 [Hukum Chand Gupta Vs. Director General, Indian Council of Agricultural Research and others]
3. (2013) 2 SCC 29 [Haryana Power Generation Corporation Limited and others Vs. Harkesh Chand and others]
4. (1987) 4 Supreme Court Cases 31 [R.L.Marwaha Vs. Union of India and others]
5. (1993) 2 Supreme Court Cases 174 [T.S.Thiruvengadam Vs. Secretary to Government of India, Ministry of Finance, Department of Expenditure, New Delhi and others]

7. Heard the learned counsel for the petitioner and the learned counsel for the respondents 1 and 2.

8. As far as DACP Scheme for Medical Officers, is concerned, as per the University Grants Commission Guidelines, the promotional avenue available to CHS officers are extended to the Medical Offices of Central Universities and Deemed to be universities. The implementation of scheme as recommended by the 5th Central Pay Commission, the Ministry of Health and Family



Welfare, New Delhi and the University Grants Commission, New Delhi, has observed the same as follows:-

"In the General Duty Medical Officer (GDMO) sub Centre, Medical Officer (RS.8000-13500) will be promoted to Senior Medical Officer (Rs.10000-15200) on completion of 4 (four) years of regular service Senior Medical Officer with 5 (five) years regular service as Senior medical Officer will be promoted to the post of Chief Medical Officer (Rs.12000-16500) and after completion of 4 (four) years in Chief Medical Officer grade, Officer will be promoted to the post of Chief Medical Officer (Non functional Selection Grade) Rs.14300-18000). Thus on completion of 13 years of regular service in the GDMO sub centre of CHS Officer of GDMO sub Centre will be promoted to Chief Medical Officer (Non functional Selection Grade) Rs.14300-18300)".

In the scheme, it is stated that "in paragraph 4 of letter No.21/14/97-PC(H)/CHS-V dated 05.04.2002 of Ministry of Health & Family Welfare (Dept. of Health) Government of India that the Scheme of Dynamic Assured Career Progression shall take effect prospectively from the date of issue of orders."

9. The 1st respondent by letter dated 30.07.2004 communicated to the petitioner that on the basis of recommendations made by the Departmental Promotion Committee and approval accorded by the Vice-Chancellor, she has been promoted to the post of Senior Medical Officer under DACP Scheme with effect from 11.03.1996 completion of 4 years of regular service subject to ratification by the Executive Council and subject to UGC approval. Thereafter, the petitioner sent representations dated 04.08.2004, 15.01.2005 for consideration of her due promotion on 11.03.2001 under DACP and seeking implementation of scale of pay 10000-152000 with effect from 11.03.1996.

10. To the above mentioned representations of the petitioner, the 1st respondent clarified that award of Senior scale to Medical Officer can be implemented with effect from 05.04.2002 as it came into force w.e.f. 05.04.2002.

11. The petitioner again sent representations stating that she is eligible to get next promotion as Chief Medical Officer as due on 11.03.2001 and Chief Medical Officer (Non Functional Selection Grade) as due on 11.03.2005 and that the UGC guidelines in the matter of promotion has already been implemented for the Medical Officers of other Central Universities.



12. In the additional typed set of papers filed by the petitioner, it is seen that the 1st respondent by Office Order No.58 dated 03.06.2011, communicated to the petitioner that she is promoted to the post of Chief Medical Officer in the pay band of Rs.15600-39100 with Grade Pay of Rs.7,600/- with effect from 05.04.2007 under DACP Scheme, on completion of five years regular service in the post of Senior Medical Officer. The said order is extracted as under:-

"In pursuance of the UGC's Communication and based on the recommendation of Screening Committee and approval accorded by the Executive council, Dr.(Mrs.) Sheela Das, Senior Medical Officer, Health Centre, Pondicherry University is promoted to the post of Chief Medical Officer in the pay band of Rs.15600-39100 with Grade Pay of Rs.7,600/- with effect from 05.04.2007 under Dynamic Assured Career Progression Scheme i.e, on completion of five years regular service in the post of Senior Medical Officer.

She is eligible to draw other allowances as admissible under the rules from time to time. Pay fixation order in the promoted post will be issued separately. She should exercise her option within one month from the date of issue this order for fixing her initial pay in the higher post on the basis of Rule 21 of the Ordinances governing terms and conditions of service of Non-Teaching employees of Pondicherry University."

13. The University Grants Commission sent a letter dated 03.06.2011 to the Registrar, All Central Universities and UGC maintained Deemed Universities, in respect of extending DACP and other facilities for the Medical Officers of Central Universities and UGC maintained Deemed to be universities. The said letter also says that in its meeting held on 16th January, 2010, the UGC considered the extension of DACP and other facilities as recommended by the 6th Central Pay Commission for the Medical Officers working in Medical Colleges and Health Centres of Central Universities and UGC maintained Deemed to be Universities.

14. Subsequent to the above letter, the petitioner sent a letter dated 17.06.2011 accepting the promotion as Chief Medical Officer 'without prejudice' and submitted that her exact date of promotion to the post of Senior Medical Officer, Chief Medical Officer, and so on will be based on the verdict of the High Court, Madras.



15. The petitioner's contention is that she has been eligible for promotion to the post of Senior Medical Officer on 11.03.1996 and actual promotion given date is 05.04.2002; eligible for promotion to the post of Chief Medical Officer on 11.03.2001 and actual date of promotion given was 05.04.2007; eligible for promotion to the post of Chief Medical Officer (NFSG) on 11.03.2005 and SAG Grade on 11.03.2012 ie., on 7 years of service or 20 years of regular service including service rendered in the pre-revised scale and these two promotions were not given.

16. In the typed set of papers filed by the counsel for 1st respondent, the letter of Government of India, Ministry of Health and Family Welfare (Department of Health) dated 5th April, 2002 found place. In the said letter, paragraph 4 is as under:-

"4. The scheme of Dynamic Assured Career Progression shall take effect prospectively from the date of issue of orders."

Further, UGC also clarified to the Registrar, Pondicherry University, by its letter on March 2005, that DACP Scheme for Medical Officers can be implemented w.e.f. 5.4.2002 as it came into force w.e.f. 5.4.2002.

17. On the clarification sought by this Court, the UGC by its letter July 2013 addressed to The Deputy Registrar (Admn), Pondicherry University, clarified its stand that DACP Scheme was introduced and came into effect from 5th April 2002, only, it has no retrospective effect. The letter reads as follows:-

"With reference to your letter No.PU/ESTT/NT-10/2013-14/142 dated 10th July, 2013 on the above subject, I am directed to enclose herewith a copy of this office letter of even number dated 20th January, 2003 and Ministry of Health & Family Welfare (Department of Health letter No.F.21-14/97 PC(H)/CHS-V dated 5th April, 2002 and to say that the DACP Scheme was introduced and came into effect from 5th April, 2002 only, it has no retrospective effect. "

18. The 2nd Respondent filed counter affidavit and submitted that DACP Scheme was effected from 05.04.2002. The action taken by the Pondicherry University for grant of promotion under DACP Scheme w.e.f. 11.3.1996 is not in accordance with the DACP Scheme of Govt. of India as it is effected from 5.4.2002. UGC has clarified the matter to Pondicherry University that the DACP scheme of Govt. of India may be implemented w.e.f. 5.4.2002 and fixation of pay w.e.f. 5.4.2002. It is further submitted that



DACP scheme can be implemented w.e.f. 5.4.2002, therefore, the request of the petitioner for grant of DACP scheme from 1996 cannot be considered as it came into force w.e.f. 5.4.2002 and it cannot be implemented from back date. Learned counsel for the 2nd respondent, in support of his submission placed reliance on the decision reported in (1996) 10 SCC 536 [University Grants Commission Vs. Sadhana Chaudhary and others], wherein, the Honourable Supreme Court while dealing with the case relating to the validity of the exemption from the requirement regarding clearing the eligibility test that has been granted under the Circulars and notification held that "it cannot, therefore, be held that the exemption that has been granted by the amendment introduced in the 1991 Regulations by notification dated 21.6.1995 is violative of the right to equality guaranteed under Article 14 of the Constitution".

19. The 1st respondent also stated that DACP scheme being implementable only with effect from 05.04.2002, the petitioner's promotional avenue in terms of the scheme becomes applicable/extendable only with effect from 05.04.2002 and accordingly she has been promoted to the post of Senior Medical Officer with effect from 05.04.2002, taking into account the satisfaction of the requirement of completion of 4 years service in the post of Medical Officer. The petitioner will hence acquire eligibility to be promoted as Chief Medical Officer only on satisfactory completion of regular service of 5 years in the post of Senior Medical Officer from 05.04.2002 i.e., 05.04.2007 only. Thereafter on further satisfactory completion of regular service of 4 years in the post of Chief Medical Officer, the petitioner will become eligible to be promoted to the post of Chief Medical Officer (Non functional selection grade) ie., 05.04.2011.

20. It is further stated that it is not correct to state that in other Universities even prior to 05.04.2002, DACP scheme was implemented. It is not for the petitioner to decide her promotional movement from one cadre to the next and the same is not an automatic process merely on the basis of years of service. The petitioner's assumption that she should have been automatically promoted from one stage to the next stage is not correct. DACP Scheme can be implemented only with effect from 05.04.2002 as clarified by UGC and confirmed by the Executive Council of the University. The promotion to the next cadre is not a vested right and the same cannot be claimed as a matter of right.

21. It is further stated in the counter that the DACP scheme itself came into being only with effect from 05.04.2002 vide Order No.21/14/97 PC(H)/CHS-V, dated 05.04.2002 of Department of Health, Ministry of Health and Family Welfare, Government of



India and letter No.F.30/9/99-(CU), dated 20.01.2003 of UGC. Paragraph 4 of the order clearly states that the Scheme of DACP shall take effect prospectively from the date of issue of orders. Hence, the claim of entitlement of the petitioner with effect from 11.03.1996 does not arise.

22. The first respondent also stated that the original scheme was formulated by the Ministry of Health and Family Welfare and the same was adopted and implemented by UGC for central Universities only in the year 2002, hence the claim of the petitioner is baseless. The UGC has adopted Government of India's DACP scheme for Medical Officers in the University system. The first paragraph clearly reads as "The Commission in its meeting held on 27th December, 2002 considered the DACP scheme and other facilities for the Medical Officers of Central Universities and Deemed to be Universities and decided that the Medical Officers in the university system shall be as per the rules and regulations/promotional avenues available to Central Government Health Service (CGHS) Officers." The letter nowhere talks about retrospective implementation of the decision and it has been subsequently clarified by UGC that it will be effective only from 05.04.2002.

23. It is also pointed out by the 1st respondent that the implementation of the scheme with effect from 05.04.2002 will not be negating the purpose of time bound promotion and higher scale, as the promotional avenue for the medical officers in the respondent university is being implemented as directed by the UGC and as approved by the Executive Council of the university and the claim of the petitioner to pre-date the promotion to her advantage and convenience is untenable. The clarification letter of the Co-ordinator, UGC is clear that DACP scheme for Medical Officer's can be implemented with effect from 05.04.2002, since it came into force with effect from 05.04.2002.

24. In the counter affidavit, it is very specifically stated that the DACP scheme under which the petitioner is claiming arrears of pay scale itself came into force only on 05.04.2002 and as such is implementable only with effect from 05.04.2002 as categorically clarified by the UGC. The claim for retrospective implementation is in violation of the scheme itself. The contention that on completion of 13 years, one has to be appointed as Chief Medical Officer (Non functional selection grade) is completely misconceived and misconstrued. The impugned order clearly and specifically stated that the promotion is subject to ratification by the Executive Council and approval of the UGC.

25. A careful perusal of the averments made in the affidavit, additional affidavit, additional typed set of papers



filed by the writ petitioner on the one hand and the counter affidavit filed by the respondents 1 and 2 on the other hand, would go to show that the Government of India, Ministry of Health & Family Welfare (Department of Health), issued a scheme dated 5th April 2002 to all participating units of the Central Health Services based on the recommendation in CHS promotion to various grades as under:-

" 2(i) In the General Duty Medical Officer (GDMO) sub cadre, Medical Officer (Rs.8000-13500) will be promoted to Senior Medical Officer (Rs.10000-15200) on completion of 4 (four) years of regular service. Senior Medical Officer with 5 (five) years of regular service as Senior Medical Officer will be promoted to the post of Chief Medical Officer (12000-16500) and after completion of 4 (four) years in Chief Medical Officer grade, officer will be promoted to the post of Chief Medical Officer (Non Functional Selection grade) (Rs.14300-18300). Thus on completion of 13 years of regular service in the GDMO sub cadre of CHS, Officer of GDMO sub cadre will be promoted to Chief Medical Officer (Non Functional Selection Grade) (Rs.14300-18300). "

26. Even though in paragraph 4 of the said order issued by the Central Government, says that the Scheme of Dynamic Assured Career Progression shall take effect prospectively from the date of issue of orders, while taking into account the date of the DACP Scheme which is issued on 05.04.2002, by which date the petitioner already completed four years of service as Senior Medical Officer and another five years of service as Chief Medical Officer and eligible for the post of Chief Medical Officer on 11.03.2001 itself, on the date of implementation of DACP scheme by the Ministry of Health and Family Welfare Department for Medical Officers i.e., 05.04.2002, the petitioner is eligible for grant of promotion counting her past service as per the DACP Scheme.

27. In any event, the claim of the petitioner that she is eligible for promotion on 11.03.2001 and therefore, her pay scale to be fixed as per the DACP scheme by 11.03.2001 itself, cannot be accepted.

28. The order of the 1st respondent dated 19.08.2007 show that the petitioner has been promoted to the post of Senior Medical Officer under Dynamic Assured Career Progression Scheme with effect from 05.04.2002 fore noon. However, on the said date, she has completed 10 years of service. As per DACP Scheme, the petitioner put 4 years of regular service of Medical Officer

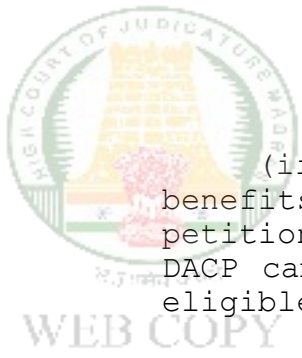


required for promotion of Senior Medical Officer and also put 5 years service rendered in the Senior Medical Officer grade. On the date of implementation of scheme by Central Government, the scheme is meant for all participating units of the Central Health Service. The implementation of Dynamic Assured Career Progression Scheme to the Medical Officers is based on the University Grants Commission guidelines and the University Grants Commission in letter No/F.30-9/99 (CU) dated 20.01.2003 envisaged the implementation of Dynamic Assured Career Progression Scheme and other facilities for the Medical Officers of Central Universities and Deemed to be Universities as per the rules and regulations/promotional avenues available to CGHS offices. Therefore, the claim of the petitioner that she should be promoted to the post of Chief Medical Officer on 11.03.2001 is not correct but from the date of implementation of Scheme dated 05.04.2002 and the Scheme came into force on 05.04.2002, the service put by the petitioner fit for the post of Chief Medical Officer to be taken into consideration. Therefore, she is not eligible for getting the scale of pay for the post of Chief Medical Officer on 11.03.2001 but on the date of DACP coming into force, i.e., on 05.04.2002, she is eligible for promotion to the post of Chief Medical Officer and the scale of pay attached to it.

29. Even though paragraph 4 states the DACP shall take effect prospectively from the date of issue of orders, as per the Scheme implementation by the Ministry of Health and Family Welfare which is based on V Central Pay Commission recommendation, the DACP came into force on 05.04.2002. Even as per the counter affidavit of 2nd respondent, in paragraph 5, it is stated that UGC with the approval of Commission vide its letter No.F.30-9/99 (CU) dated 20.01.2003 implemented the Dynamic Assured Career Progression Scheme in all Central Universities/Deemed to be Universities. The said Scheme was effected with effect from 05.04.2002. Therefore, the petitioner who completed qualified service in the post of Senior Medical Officer on 05.04.2002, is eligible for promotion to the post of Chief Medical Officer and therefore, the promotion given to her to the post of Chief Medical Officer with effect from 05.04.2007, by the 1st respondent, is not correct and as per the Scheme, the date of promotion shall be with effect from 05.04.2002.

30. In view of the above observations, Writ Petition is Partly Allowed with the following directions:-

(i) Writ petitioner is eligible for promotion to the post of Chief Medical Officer on 05.04.2002 on the date of DACP Scheme came into force.



(ii) The 1st respondent shall calculate the monetary benefits and other attendant benefits, if any, eligible to the petitioner taking the date of notional promotion on the date DACP came into force on 05.04.2002 on which date the petitioner eligible for the post of Chief Medical Officer.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Deputy Registrar,
The Pondicherry University,
Pondicherry.
2. The University Grants Commission,
Bhadurshah Zagar Marg,
New Delhi - 110002.
3. The Secretary to Government of India,
Ministry of Health & Family Welfare
(Department of Health) C/II/138,
Chanakiyapuri,
New Delhi.

+1cc to Ms.A.V.Bharathi, Advocate, S.R.No.44225

W.P.NO.1964 OF 2007

PCH(CO)
PBS/25/10/2021