

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.28925 of 2017

Dr.A.Subramanian

... petitioner

Vs

1 The State of Tamilnadu  
rep. by its Secretary Department of Animal  
Husbandry and Fisheries Fort St. George  
Chennai-9

2 The Registrar  
Tamilnadu Veterinary and Animal Sciences  
University (TANUVAS) Madhavaram Milk Colony  
Chennai-51

... respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned Rules of the 2nd respondent in proceeding dated 10.12.2012 in U.O.No. 60456/R.I/2012 D.Dis. NO.17755/ R.1/2010 and Si.No.5.13(1)(e) of TANUVAS Service Rules and order of the 2nd respondent based on the said rule in proceeding dated 14.2.2017 in F.No.20107/A1/2016 and to quash the same as ultra vires the constitution of India and consequently direct the 2nd respondent to grant/fix the pay of the petitioner on par with that of his junior viz. Dr.V.S.Gomathy and grant all arrears of pay with effect from 1.1.2006

For petitioner :: Mr.R.Syed Mustafa

For respondents :: Mr.K.S.Suresh,  
Government Advocate,  
for 1<sup>st</sup> respondent  
Mr.S.Vijayakumar,  
for 2<sup>nd</sup> respondent

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The matter has been directly brought to the Division Bench by a pretence of challenging the vires of a rule brought about

by way of an amendment by the second respondent-university.

2. A clearer reading of the prayer in the writ petition, as has been rightly pointed out on behalf of the second respondent, will reveal that the vires of the rule may not have really been challenged.

3. The petitioner joined as an Assistant Professor on December 19, 1984. The petitioner was promoted to the post of Professor on December 19, 2001, and was in the Department of Animal Genetics and Breeding. The grievance of the petitioner is that a colleague who joined as Assistant Professor more than a month after the petitioner entered service and who later also went to become a Professor, was granted higher pay than the petitioner. The petitioner claims to have discovered that as a result of such higher pay, a person that the petitioner perceived to have been the petitioner's junior at the place of work, was drawing a higher pension than him.

4. The petitioner compares his case to that of Dr.V.S.Gomathy. Dr.V.S.Gomathy joined as Assistant Professor on January 21, 1985 about 33 days after the petitioner. Both Dr.V.S.Gomathy and the petitioner apparently retired on July 31, 2016. As on January 1, 2006, the petitioner's pay was fixed at Rs.53,390/- and that of Dr.V.S.Gomathy was fixed at Rs.52,120/-. However, since the increment due to Dr.V.S.Gomathy would accrue to her in January and the increment due to the petitioner would accrue to the petitioner in October, the petitioner claims that an anomaly arose resulting in Dr.V.S.Gomathy drawing Rs.300/- more than the petitioner at the time of retirement.

5. The petitioner refers to Rule 5.13(1) of the Tamil Nadu Veterinary and Animal Sciences University Service Rules that underwent an amendment in 2012. The erstwhile rule had five clauses. Two additional clauses were incorporated by the amendment brought about by a notification of December 10, 2012. The fifth clause brought in by way of amendment reads as follows:

"e) for this purpose, in the case of technical staff, the comparison for such equation shall be based on the employees in the same discipline."

6. It may also do well to see two other clauses in the same rule which appear to have remained materially unaltered by the amendment brought about in 2012. Clauses (a) and (c) of Rule 5.13(1) of the said Rules are quoted:

"a) both the junior and the senior University employees should belong to the same category and should have been promoted to the same post". (The word 'category' was

amended to 'cadre', but that is of no significance in the present context).

"c) the senior University employee at the time of appointment should have been drawing equal or more pay than the junior."

7. There is no dispute that Dr.V.S.Gomathy was in the Department of Veterinary Physiology. Thus, the petitioner and the said colleague belonged to two disciplines.

8. The petitioner contends that since both were Professors, meaning that both were in the same cadre, and the petitioner was the senior of the two, there could have been no question of the junior colleague drawing a higher pay when both of them retired from the same post of Professor on the same day. The petitioner says that it is an entirely different thing that the promotional avenues in two disciplines may have been different, whereupon it would have been possible for one to go ahead of the other, depending on the opportunities available in the relevant discipline. The petitioner insists that since the petitioner and the colleague were in the same cadre of Professor and the petitioner was the earlier to join service, the colleague could not have drawn a higher pay than the petitioner at the time of retirement.

9. There is no grievance in the present case that the petitioner was assigned a discipline that might have been less glamorous than the discipline to which the colleague was attached. There is no grievance on any other count, far less any grievance as to the opportunities of promotion. The only reason for the difference in the last pays drawn by the two employees appears to be by virtue of Dr.V.S.Gomathy getting an increment closer to her date of her joining and January being the first month of the year. The increment of the year was obtained later in the year by the petitioner in October and the lag continued from whenever such system was introduced.

10. The real challenge here has nothing to do with the vires of the Rule or any inequality let into the system by introduction of the amendment of December 10, 2012. Indeed, the fifth clause would apply to both clauses "a" and "c". In terms of clause "a" read with the caveat in clause "c", depending on the discipline that two colleagues who enter service in the same post contemporarily may find themselves in, there may be a disparity and no comparison may be made between them. Similarly, since the petitioner and Dr.V.S.Gomathy were in two different streams, by virtue of Clause "e", they could not be compared.

11. As to the challenge to the amendment, we notice that

such amendment was introduced in 2012 and the anomaly between the pays, if any, continued for several years and it is only after the petitioner's retirement or thereabouts that the writ petition came to be instituted, in the year 2017. There is no doubt that the writ petition was by way of an afterthought. However, nothing turns on the delayed filing of the writ petition, particularly since the explanation in such regard is that the order which had been challenged regarding the difference in pay was passed in 2017 or within reasonable time or shortly prior to the writ petition being instituted.

12. In fine, one must remember the adage that comparisons are odious. The petitioner in the Genetics Department and Dr.V.S.Gomathy in the Department of Veterinary Physiology may have been as different as chalk and cheese or apples and oranges.

13. There is no basis to the petitioner's claim and the same fails. W.P.No.28925 of 2017 is dismissed. There will be no order as to costs. Consequently, WMP No.31143 of 2017 is also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

- 1 The Secretary  
Department of Animal Husbandry and Fisheries  
Fort St. George, Chennai-9
- 2 The Registrar  
Tamilnadu Veterinary and Animal Sciences  
University (TANUVAS) Madhavaram Milk Colony  
Chennai-51

+1cc to Mr.R.Syed Mustafa, Advocate, S.R.No. 7230  
+1cc to Mr.S.Vijayakumar, Advocate, S.R.No. 7396  
+1cc to the Government Pleader, S.R.No. 7321

W.P.No.28925 of 2017

SR(CO)  
GN(18/02/2021)