



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
20.07.2021	09.08.2021

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A. (MD) No.1328 of 2019

Dr.K.Jothimurugan ... Appellant/Petitioner

-vs-

1. The Commissioner and
Director of Veterinary Services
Central Office Services
Anna Salai, Teynampet
Chennai-6
2. The Secretary to Government
Department of Animal Husbandry and Fisheries
Fort St.George, Chennai-9 ... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 14.06.2019, passed in W.P.(MD) No.2437 of 2012, on the file of this Court.

Prayer in WP(MD) . 2437/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of certiorarified mandamus call for records relating to the impugned order of the 1st respondent dated 26.01.2011 issued in the reference O.Mu no.67032/C-1/2011 and quash the same and direct the respondents to stepup the pay of the petitioner to the level of the pay of the petitioner's junion Dr.V.Veereswariah, and revise the refix the pension accordingly and to pay all the consequential arrears arising thereon and granting such further and other relief .

For Appellant : Mr.T.Pon Ramkumar
For Respondents : Mr.A.K.Manickam
Steate for Government Counsel



J U D G M E N T

T.S.SIVAGNANAM, J.

This Writ Appeal filed by the Writ Petitioner is directed against the order dated 14.06.2019, in W.P.(MD) No.2437 of 2012.

2.The appellant filed the said Writ Petition, challenging the correctness of the order passed by the first respondent, by which, the appellant's representation for stepping up of his pay on the ground that his junior was drawing more pay was rejected.

3.We have heard Mr.T.Pon Ramkumar, learned counsel for the petitioner and Mr.A.K.Manickam, learned Standing Counsel for Government, appearing for the respondents.

4.The appellant joined the service of the respondent department as Veterinary Assistant Surgeon on 18.08.1968 and awarded Selection Grade in the said post with effect from 01.10.1978 and subsequently, awarded Special Grade on 07.11.1989 and promoted as Assistant Director of Animal Husbandry on 05.05.1993 and subsequently, as Deputy Director of Animal Husbandry on 24.04.2000 and retired from service on attaining age of superannuation on 30.06.2000.

5.The appellant's claims that his pay has to be fixed from 12.01.1996 at Rs.11,625/- in the post of Assistant Director of Animal Husbandry on par with his junior Dr.V.Veerewaraiah, who joined the service on 17.01.1969 as Veterinary Assistant Surgeon and was awarded Selection Grade and subsequently Special Grade on 27.06.1989 and promoted as Assistant Director of Animal Husbandry on 12.01.1996 and then promoted as Joint Director of Animal Husbandry and subsequently as Joint Director of Animal Husbandry and retired on attaining the age of superannuation.

6.The appellant further claims that the said incumbent has joined services on 17.01.1969 and was a junior to the appellant till his date of retirement and therefore, in terms of Ruling (2) under FR 22(B), if a junior was drawing higher pay, then the pay of the senior should be stepped up. Accordingly, a representation was made and initially the first respondent recommended the claim of pay anomaly to the second respondent on the ground that both senior and junior must have been promoted from the same feeder category and the Scale of Pay of the senior and junior both in the pre-revised and revised rates must be equal and the reason for the anomaly should be on the basis of implementation of revised Scale of Pay. The second respondent, namely, the Government by order dated 01.10.2004 rejected the claim observing that the senior was drawing lesser rate of pay than his junior from time to time in the lower post of Special Grade Veterinary Assistant Surgeon. Therefore, the conditions stipulated in Ruling (2) under FR 22(B) are not satisfied



in the case and there is no justification for re-fixation of pay of the petitioner on par with his junior.

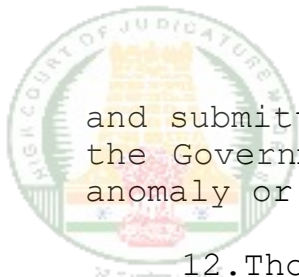
7.It is also the case of the appellant that the said incumbent joined service in 1969, whereas he joined the service in 1968 and the said incumbent was working in the feeder category, namely, Veterinary Assistant Surgeon, to the post Assistant Director of Animal Husbandry, in which post the appellant was working at the relevant point of time. Further, it is submitted that the anomaly has occurred on account of sanction of one increment of Rs. 325/- to the said incumbent as he had passed Account Test on 26.06.1989, whereas the appellant passed the account test on 06.11.1989 and the salary was revised in the case of the said incumbent with effect from 27.06.1989, whereas the same was done to the appellant only with effect from 07.11.1989. Therefore, the appellant would contend that during 1989, both the appellant and the said incumbent were drawing the same Scale of Pay and therefore, subsequently, the said incumbent cannot draw higher salary without admitting that he was the appellant's junior.

8.The learned Single Bench observed that the claim made by the appellant after lapse of 11 years from the date of retirement cannot be entertained and the authorities have rightly decided the claim under FR 22(B) and there is no error in the order impugned in the Writ Petition dated 26.12.2011.

9.The grounds, which were canvassed before the learned Writ Court, were reiterated before us and it is submitted that there was no delay and laches on the part of the appellant in approaching the Court as the claim made by the appellant was rejected on 26.12.2011.

10.The facts noted above, which are not in dispute, show that the appellant retired from service on attaining the age of superannuation on 30.06.2000 and while in service, the appellant appears to have not made any representation and in the affidavit filed in support of the Writ Petition, the date of representation is mentioned as 19.10.2011. Though the appellant would state that he has made representations earlier, those representations are not matter of record. Thus, after a period of 11 years the appellant had made claim that there was a pay anomaly and the same has to be rectified.

11.The appellant's claim in the representation was largely based upon the recommendations made by the first respondent, who was the Director of the Department vide communication dated 24.06.2004. This according to the appellant is actually a positive recommendation and therefore, there was no justification for the Government to reject the same. We have carefully perused the recommendations dated 24.06.2004, which is in the nature of a report submitted by the first respondent to the Government, namely, the



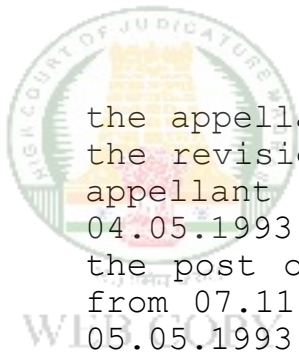
and submitting service records of the appellant. In any event, it is the Government, which has to consider as to whether there is a pay anomaly or not.

12. Though the appellant was appointed an year earlier than the said incumbent, Dr.V.Veereswariah, he was drawing Rs.3,000/- from 27.06.1989 in the post of Special Grade Veterinary Assistant Surgeon, whereas the appellant drew Rs.3,000/- only from 07.11.1989 ie., on the date of award of Special Grade in the post of Veterinary Assistant Surgeon. Thus, from 27.06.1989, the said incumbent Dr.V.Veereswariah was drawing higher Scale of Pay, even before the introduction of revised Scales of Pay and promotion as Assistant Director of Animal Husbandry. The difference in pay was on account of award of Special Grade in the post of Veterinary Assistant Surgeon, which can be awarded to the candidate who successfully completes the Account Test. Admittedly, the appellant had completed the Account Test on 08.11.1989, which is a requisite qualification for being eligible for the award of Special Grade. Therefore, the pay of the appellant was fixed at Rs.3,000/- from 07.11.1989 in the post of Special Grade Veterinary Assistant. This, according to appellant has resulted in pay anomaly.

13. The argument of the learned counsel for the appellant is that pass of Account Test is a criteria only for promotion and not for the purpose of awarding Special Grade and therefore, there was no justification to deny stepping up of pay of the appellant on par with his junior.

14. Firstly, we need to see as to whether the pass in Account Test is a condition precedent for awarding of Special Grade. The Government in G.O.Ms.No.68, Personnel & Administrative Reforms (Per-M) Department, Dated 23.01.1986, accepted the recommendations of the Tamil Nadu Fourth Pay Commission and directed that the guidelines already issued in various orders stand superseded and fresh guidelines were to be followed while moving the Government employees to Selection/Special Grade. The Government Order specifically states that the same criterion as for promotion should form the basis hereafter for granting Selection Grade/Special Grade on completion of 10/20 years of service. If such is the position, the claim made by the appellant that regardless to the date on which he passed the Account Test, he should be granted Special Grade is an argument, which is to be rejected.

15. Further, to establish a case of anomaly in the Pay Scales, the appellant should first establish that he was drawing higher pay than or equal to the pay of the junior in the pre-revised scale from time to time. In the case on hand, even though the junior was holding lower post of Special Grade Veterinary Assistant Surgeon from 27.06.1989 to 01.01.1996, he was drawing higher rate of pay than the appellant. This was due to the fact that the normal date of



the appellant is 1st October of every year and this was reflected in the revision of Scale of Pay with effect from 01.01.1996. Thus, the appellant was drawing lesser rate of pay from 27.06.1989 to 04.05.1993 as he had passed the Account Test belatedly and moved to the post of Special Grade Veterinary Assistant Surgeon with effect from 07.11.1989. Therefore, the appellant had drawn lesser pay from 05.05.1993 to 01.01.1996 in the higher post of Assistant Director of Animal Husbandry than his junior. Therefore, the conditions stipulated in Rule 2 FR 22(B) had not been satisfied. Hence, the order dated 26.12.2011, passed by the first respondent, rejecting the claim of the appellant for stepping up of his pay on par with his junior is fully justified. We find no ground to interfere with the said order.

16.For the above reasons, the Writ Appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To:

1. The Commissioner and
Director of Veterinary Services,
Central Office Services,
Anna Salai, Teynampet,
Chennai-6.
2. The Secretary to Government,
Department of Animal Husbandry and Fisheries,
Fort St.George, Chennai-9.

+1 CC to M/s.T. PON RAMKUMAR, Advocate (SR-25654[F] dated 09/08/2021)

W.A. (MD) No.1328 of 2019

09.08.2021

GC (17.08.2021) 5P 4C