



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.04.2022

PRONOUNCED ON : 19.05.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.20551 of 2018

and

W.M.P. (MD)Nos.18295 and 18296 of 2018

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- 1.M.Thiruthani
- 2.T.Geetha
- 3.K.Soundararajan
- 4.M.Krishnaveni
- 5.D.Santha Maria
- 6.S.Victoria
- 7.A.Manoharan
- 8.B.Malarvizhi

... Petitioners

-Vs-

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Health & Family Welfare Department,
Secretariat, Chennai-9.
- 2.The Commissioner of Indian Medicine
and Homeopathy,
O/o. The Commissionerate of Indian Medicine
and Homeopathy, Chennai-106.
- 3.The Principal,
Government Siddha Medical College,
Palayamkottai, Thirunelveli District.

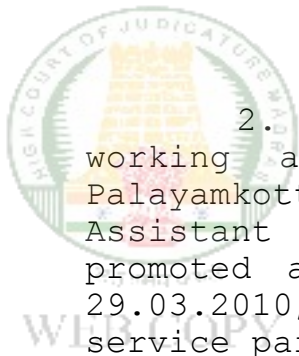
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned recovery order passed by the 3rd respondent in his proceedings in Na.Ka.No.7385/Ni.1/2014, dated 05.06.2018, insofar as the petitioners are concerned and quash the same as illegal.

For Petitioners	: Mr.C.Venkatesh Kumar, For M/s.Ajmal Associates.
For Respondents	: Mr.R.Baskaran, Additional Advocate General, assisted by Mr.S.Kameswaran, Government Advocate.

ORDER

This Writ Petition is filed to quash the impugned order of the third respondent dated 05.06.2018.



2. The brief facts of the case are that the petitioners are working as Professors at Government Siddha Medical College, Palayamkottai. Initially, the first petitioner was appointed as Assistant Medical Officer (Siddha) on 29.03.1988, thereafter, promoted as Lecturer on 24.11.2008, then promoted as Reader on 29.03.2010, subsequently, promoted as Professor on 08.10.2015. The service particulars of the 8 writ petitioners are as follows:-

<i>S.No.</i>	<i>Name of the petitioner</i>	<i>Assistant Medical Officer (Siddha) appointment date</i>	<i>Lecturer promotion date</i>	<i>Reader Promotion date</i>	<i>Professor Promotion date</i>
1.	<i>T.Geetha</i>	<i>28.03.1988</i>	<i>26.11.2008</i>	<i>29.03.2010</i>	<i>09.10.2015</i>
2.	<i>S.Victoria</i>	<i>23.01.1987</i>	<i>18.11.2008</i>	<i>29.03.2010</i>	<i>09.10.2015</i>
3.	<i>M.Tiruthani</i>	<i>29.03.1988</i>	<i>24.11.2008</i>	<i>29.03.2010</i>	<i>08.10.2015</i>
4.	<i>B.Malarvizhi</i>	<i>24.02.1992</i>	<i>19.11.2008</i>	<i>29.03.2010</i>	<i>08.10.2015</i>
5.	<i>M.Krishnaveni</i>	<i>08.03.1993</i>	<i>19.11.2008</i>	<i>29.03.2010</i>	<i>08.10.2015</i>
6.	<i>A.Manoharan</i>	<i>02.03.1992</i>	<i>24.11.2008</i>	<i>29.03.2010</i>	<i>08.10.2015</i>
7.	<i>D.K.Soundara rajan</i>	<i>19.01.1987</i>	<i>01.12.2008</i>	<i>29.03.2010</i>	<i>08.10.2015</i>
8.	<i>D.Santha Maria</i>	<i>29.03.1988</i>	<i>21.11.2008</i>	<i>29.03.2010</i>	<i>08.10.2015</i>

3. The contention of the petitioners is that as per Rules 3 (i)&(ii) of Adhoc Rules, the feeder category for promotion to the post of Professor is appointment by transfer from the post of Reader and by promotion from the category of Lecturer (Siddha).

4. The first respondent, vide proceedings dated 26.11.2013 issued certain instructions regarding the drawl of temporary / regular panels for appointment by recruitment by transfer / promotion to various posts within the purview of Tamil Nadu Public Service Commission (TNPSC). Based on the aforesaid instructions and proposal of the second respondent, the Government approved regular panel for the post of Professor (Siddha) for the year 2015-16, by proceedings in G.O.(2D)No.76, dated 04.09.2015 by following the aforesaid method. Based on the aforesaid method, the petitioners were promoted as Professor by transfer from the post of Reader.

5. The contention of the petitioner is that one Dr. N.Anbu was promoted as Professor by promotion from Lecturer and other persons were promoted as Professor by transfer from Reader. The respondent is submitting that the order was issued by the first respondent in the



proceedings of G.O.(D)No.1254, dated 06.10.2015, by which all the petitioners were intimated to join duty and the joining report has been communicated by the third respondent to the 2nd respondent on 28.10.2015.

6.The contention of the petitioner is that scales of pay for the post of Professor and Reader are identical and one and the same. The pay band for the said two posts is PB15600-39100 Grade Pay Rs.7600. As per the Fundamental Rule 22(1)(a)(i), a Government Servant on promotion / appointment to a higher post involving assumption of duties and responsibilities of greater importance than those attached to the post held by him, shall have option for fixation of pay under Fundamental Rule 22(1)(b)(i) and re-fixation of pay under Fundamental Rule 22(B) on the date of accrual of next increment in the lower post.

7.The Secretary to Government, Finance Department, in the proceedings in Letter dated 09.10.2012 issued certain clarification on Rule 10 of the Tamil Nadu Revised Scales of Pay Rules, 2009, regarding fixation of pay of employees on promotion to higher post carrying identical scales of pay and grade pay. Since Reader post, which is a lower post and Professor post, which is higher post are having identical scales of pay, the petitioners are entitled for benefit of one increment equal to 3% of the sum of the pay in the pay band, as per Rule 10 of the Tamil Nadu Revised Scales of Pay Rules, 2009. Therefore, the third respondent had granted one increment to the post of Professor. But without considering the same, the third respondent, vide impugned proceedings dated 05.06.2018 ordered recovery and directed the petitioners to pay increment granted in the promotional post of Lecturer on the ground that the Professor post has been granted by transfer of service.

8. According to the petitioners, as per Rules 3(i)&(ii) of Adhoc Rules, the feeder category for promotion to the post of Professor is appointment by transfer from the post of Reader and by promotion from the feeder category of Lecturer. Therefore, promotion has been made by transfer from the post of Reader and as such the stand taken by the third respondent is totally wrong. Aggrieved by the wrong interpretation of Rules, the present Writ Petition is filed.

9. The respondents have filed counter affidavit, stating that the necessary estimate of vacancy and panel proposals for the post of Professor (Siddha) for the year 2015-16 was sent to the Government for approval. The Government in turn have approved the estimate of vacancy for the post of Professor (Siddha) for the year 2015-16 as 2017. The Government have also approved the regular panel for the post of Professor (Siddha) by considering the method of appointment by transfer from the post of Reader as per Rule 3(i) of Adhoc Rules for the post of Professor in respect of the following 12 posts and by promotion from the category of Lecturer (Siddha)



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as per Rule 3(ii) of Adhoc Rules, for the year 2015-16 in respect of Dr.N.Anbu in the order of seniority indicated below:-

<i>Sl.No.</i>	<i>Name of the Reader by transfer</i>
1.	<i>Dr.S.Ramalakshmi</i>
2.	<i>Dr.M.Rajaprabakaran</i>
3.	<i>Dr.T.Geetha</i>
4.	<i>Dr.S.Victoria</i>
5.	<i>Dr.M.Thiruthani</i>
6.	<i>Dr.S.Kaniraja</i>
7.	<i>Dr.B.Malarvizhi</i>
8.	<i>Dr.M.Krishnaveni</i>
9.	<i>Dr.A.Manoharan</i>
10.	<i>Dr.R.Meenakumari</i>
11.	<i>Dr.D.K.Soundarajan</i>
12.	<i>Dr.D.Santhaaria</i>

<i>Sl.No.</i>	<i>Name of the Lecturer by Promotion</i>
1.	<i>Dr.N.Anbu</i>

10. Thereafter, the Government have issued posting orders to the Medical Personnel as Professors, vide G.O.(D)No.1254, Health and Family Welfare Department, dated 06.10.2015. However, due to oversight, it has been indicated that "on their regular promotion as Professor", the petitioners have been appointed in the Government Siddha College instead of "by method of appointment by transfer". This error will not confer any right to the petitioners for fixation of pay in the post of Professor. Since the petitioners were holding the post of Reader, the petitioners have been considered for the post of Professors by method of appointment by transfer only, as per Adhoc Rules. Those promoted from the post of Lecturers to the post of Professors alone are entitled for fixation of pay. As the petitioners were holding the post of Readers, they have been considered to the post of Professors by method of appointment by transfer only. As per Adhoc Rules they are not entitled for fixation of pay as per Fundamental Rule 22(1) (a) (i) or 22(b).

11. The Government have issued clarification for fixation of pay of employees on promotion to the higher post carrying identical scales of pay and grade pay in letter No.48211/Pay Cell/2012-1, Finance (Pay Cell) Department, dated 09.10.2012:

"As per rule 10 of the Tamil Nadu Revised Scales of Pay Rules, 2009, employees on promotion to



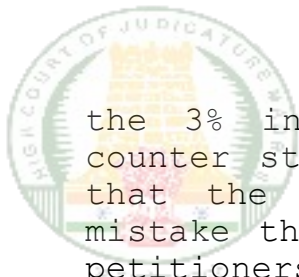
higher posts are entitled for the benefit of one increment benefit equal to 3% of the sum of the pay band and the existing grade pay computed and rounded off to the next multiple of 10 and the same will be added to the existing pay in the pay band. On the same analogy, it is clarified that the employees **on promotion to higher posts on identical scales of pay** i.e., in the same pay band and same Grade Pay in the revised pay structure are also entitled for the benefit of one increment equal to 3% of Basic Pay (Pay + Grade Pay) in the lower post."

12. The aforesaid clarification will apply only in the event of promotion from the lower post to the higher post and not in the case of appointment by transfer of service. In other words, the post of Reader and Professor are considered as on par and it is not lower post and higher post and the duties and responsibilities are one and the same. The post of Professor is considered as one of the qualification for posting as Head of Department only, otherwise the post of Reader and Professor is one and the same. Hence, the claim of the petitioners is not in accordance to the Adhoc Rules. Hence, the respondents pray to dismiss the Writ Petition.

13. Heard Mr.C.Venkatesh Kumar, for M/s.Ajmal Associates, the learned counsel appearing for the petitioners, Mr.R.Baskaran, the learned Additional Advocate General appearing for the respondents and perused the records.

14. On perusing the records it is seen that the Government framed Special Adhoc Rules for Siddha Medical College. In the Adhoc Rules, the posts of Reader and Professor are kept on par with same scale of pay. The post from Lecturer to the Professor is considered as promotion and the post from Reader to Professor is considered as transfer. The person, who is holding the post of Professor, alone will be considered for the post of Head of the Department. But the person, holding the post of Reader, will not be considered for Head of Department. The post of Reader and Professor are considered on par and it is not lower post and higher post and the duties and responsibilities are one and the same. The post of Professor is considered as one of the qualification for posting as Head of Department only, otherwise the post of Reader and Professor is one and the same. Hence, the claim of the petitioners is not in accordance to the Adhoc Rules.

15. The contention of the petitioners is that since the post of Reader to Professor is considered as promotion and in the promotion order it has been stated that "on their regular promotion as Professor", the petitioners have been appointed in the Government Siddha College instead of "by method of appointment by transfer" and based on the same the petitioners claim that they are entitled to



the 3% increment in their pay band. The respondent have filed counter stating that due to oversight, the respondents has stated that the appointment is on regular promotion. Hence, for this mistake the petitioners cannot claim to grant 3% increment to the petitioners.

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16. On perusing the adhoc rules it is seen that the posts of Reader and Professor are considered as one and same with same scale of pay. Since the respondents have stated that the said fixation was due to oversight, this Court is of the considered view that the mistake in the order of promotion cannot be the criteria for granting the 3% increment. As per the Adhoc Rules, the petitioners were granted promotion by way of transfer and hence the promotion by transfer to the post of Professor from Reader is not a promotion from lower post to higher post.

17. The learned counsel for the petitioners submitted that according to the Rule 10 of Tamil Nadu Revised Scale of pay Rules 2009, the employees on promotion to higher post are entitled to benefit of one increment. Therefore, the posts of Reader (lower post) and the Professor (higher post) are having identical scales of pay and the benefit of one increment equal to 3% is also applicable to appointment by transfer to the post of Professor from Reader. This claim of the petitioners was strongly opposed, stating that for same scale of pay, the clarification, which was issued will apply only in the event of promotion from the lower post to higher post and not in the case of appointment by transfer of service where the post of Reader and Professor is considered on par, more so, when the same scale of pay is fixed for both Reader and Professor. Since Rule 10 of Tamil Nadu Revised Scale of pay Rules 2009, is a general rule, the clarification is applicable only wherever the general rule is followed.

18. In the present case, since in the Adhoc Rules which is a special rules, the posts of Reader and Professor are placed on par with the same scale of pay, the general rule cannot be applicable. Therefore, the clarification issued by the Finance Department in letter No.48211/Pay Cell/2012-1, Finance (Pay Cell) Department, dated 09.10.2012 is applicable in the event of promotion from lower post to the higher post and it shall not be applicable in the case of appointment by transfer. This Court is of the considered opinion that if there is General Rule then the Clarification issued ought to be read along with the General Rule. If there is Special Rules, then the clarification issued under general rule will not be automatically applicable. Since in the present case there is Special Adhoc Rules the Clarification issued under General Rules will not be automatically applicable.

19. Therefore this Court is of the considered opinion that wherever the special rule is applicable, the general explanation or clarification, which is applicable to the general rule, cannot be



applied. Hence, the petitioners have not made out any case. Hence, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Vacation Officer

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/ /2022

Sub Assistant Registrar(CS)

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To

- 1.The Secretary to Government,
State of Tamil Nadu,
Health & Family Welfare Department,
Secretariat, Chennai-9.
- 2.The Commissioner of Indian Medicine
and Homeopathy,
O/o.the Commissionerate of Indian Medicine
and Homeopathy,
Chennai-106.
- 3.The Principal,
Government Siddha Medical College,
Palayamkottai, Thirunelveli District.

+1 CC to M/s.SPL.GP (SR-24034[F] dated 23/05/2022)

W.P. (MD) No.20551 of 2018

19.05.2022

MGJ(28.05.2022) 7P 5C