



W.P.No. 2069 of 2015

WEB COPY **IN THE HIGH COURT OF JUDICATURE AT MADRAS**

RESERVED ON : 09.07.2024

PRONOUNCED ON : 19.07.2024

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No. 2069 of 2015

&

W.M.P. No. 8776 of 2020

K.P.Nagarajan

... Petitioner

Vs.

1.State of Tamil Nadu represented
by its Secretary to Government
Health and Family Welfare Department
The Secretariat, Chennai – 5.

2.The Secretary to Government
Finance (Pay Cell) Department,
The Secretariat, Chennai – 5.

3.The Director of Public Health and Preventive Medicine,
Anna Salai, DMS Campus,
Chennai – 600 006.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India to call for the records of the 1st respondent and quashing the impugned order dated 21.07.2014 rejecting his representation dated 06.07.2012 and consequently direct the respondents 1 and 2 directing them to grant the scale of pay to the petitioner at the revised pay scale of Rs.15600 – 39100 with retrospective effect, re-designate his position as Director (Audio – Visual Programmes) / Director (Multimedia Research) as is prevalent in all Universities in the State of Tamilnadu within the stipulated time.

For Petitioner : Mr.K.P.Nagarajan
Party in Person.

For Respondents : Mr. E.Sundaram
1 to 3. Government Advocate.

ORDER

The petitioner had appeared before this Court as a party in person to articulate his grievance. The Writ Petition has been filed on the following premise.



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2. The petitioner has filed this Writ Petition seeking two remedies, (a) that he should be paid a basic scale of pay at Rs.15600 - 39100 instead of present scale of pay, namely, Rs.9300 – 34800 and (b) is to re-designate his post as Director (Audio Visual Programmes) / Director (Multimedia Research) or any other equal cadre in the light of his having served under the 3rd respondent department for over 23 years.

3. The petitioner would submit that he had joined the service as Audio Visual Operator in the DANIDA (Danish International Development Agency) Project functioning under the auspices of the Government of Tamil Nadu in the year 1991. The project was funded by Denmark Government. The object of the scheme was to train the staffs of the Health and Family Welfare Department of the Government of Tamil Nadu.

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4. The qualification that was prescribed for the said post at that point of time is Diploma in Electronics Engineering or B.E., in Electronics Engineering. After successfully facing the interview, the petitioner was selected to the post of Audio Visual Operator and he had qualified with Diploma in Electronics and Communication Engineering.

5. In the year 1994, Adhoc Rules were framed and the 1st respondent had by notification dated 08.12.1994 prescribed the following qualification for the post of Audio Visual Operator

(a) Diploma in Electronics and Communication

Engineering or in Film Technology.

(b) Experience for not less than 5 years in the operation, maintenance etc., of Audio Visual



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Equipments.

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6. The petitioner joined the service of the respondent in a pay scale of Rs.1600 – 50 – 2300 – 60 – 2660. In the year 1993 One Man Commission recognising the post as faculty has recommended basic pay scale of Rs.2,200/-. Similar posts with Diploma qualification with 5 years experience enjoyed scale of pay of Rs.2,200/-. The petitioner would flag this stage by stating that ***his scale of pay in the year 1991 ought to have been fixed at Rs.2,200/-***. Thereafter, the project was merged with the Health and Family Welfare Department vide letter dated 31.12.2003. Therefore, on the basis of the 5th pay commission recommendation the petitioner's basic salary was fixed at Rs.5300 – 150 – 8300.



7. The petitioner sent a representation dated 14.03.2008 requesting upgradation of his post and revision of his pay. By reply dated 14.05.2008, the Director had informed the petitioner that vide Government communication dated 07.03.2008 there was a proposal to re-designate his post as Audio Visual Officer or Technical Officer with a scale of pay of Rs.8000 – 275 – 12000.

8. It is also the grievance of the petitioner that on being absorbed in the 3rd respondent department, he found that there were regular appointments to the post of Audio Visual Operator in the 3rd respondent department which was filled up with persons who have qualified only upto 10th std. The petitioner would submit that he has completed Diploma with 5 years of experience in addition to qualifying himself by obtaining M.B.A., M.Phil and Ph.D. However, his post carries same nomenclature as that of a person who has only qualified upto 10th std. In other words despite obtaining academic excellence along side working experience he was being treated on par



with Audio Visual Operators who have just qualified upto 10th std and which entails his post being re-designated and his pay revised. This is the next stage that the petitioner would flag.

9. The petitioner has addressed these grievances vide his representation dated 06.07.2012, once again requesting for re-designation of his post and also to revise his pay scale on par with G.O.Ms.No.354, Health and Family Welfare dated 23.10.2009. This representation was made only on the basis of One Man Commission's representation and GOs.

10. The petitioner would submit that the qualification for Junior Engineers working for PWD is a Diploma in Engineering and the petitioner has also qualified to the same level. The Junior Engineer in the PWD department is promoted to Assistant Engineer. Thereafter, as AEE, EEE and SEE and finally to the post of Chief Engineer. The



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Medical profession also has the same promotional prospects.

However, none of these avenues are opening for the petitioner.

11. The promotions are based on G.O.Ms.No.354 dated 23.10.2009 and the same is based on experience. However, it is the grievance of the petitioner that despite having qualified (over qualified vis-a-vis persons who have only qualified the 10th std) and having the requisite experience his representation has been turned down by the 1st respondent by the impugned order dated 21.07.2014 and therefore the above Writ Petition has been filed.

12. A counter affidavit has been filed by the respondents in which it is submitted that for the post of Audio Visual Operator the qualification and method of recruitment as per the adhoc rules for the temporary post in the Tamil Nadu Public Health Subordinate Service



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was through direct recruitment or by recruitment by transfer from any other service and the qualification prescribed is SSLC, ITI in the Trade of Radio and Television with one year service, pay scale of Audio Visual Operator is in the scale of Rs.9300 – 34800 and Grade pay of Rs.4400/-.

13. It is the further contention of the respondents that under the scheme of DANIDA project two posts of Audio Visual Operator were sanctioned and as per adhoc rules framed under Go.Ms.No.813, Health and Family Welfare Department, dated 01.11.1994 method of appointment was by direct recruitment and recruitment by transfer from any other service and qualification was Diploma in Electronics and Communication Engineering or in film technology and an experience of not less than 5 years in the operation, maintenance and repair of Audio Visual Equipments like projector, Amplifier, TV, VCR etc., and the Pay scale was Rs.9300 – 34800 Grade pay of Rs.4400.

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14. It is also their contention that with the completion of the DANIDA project, the posts sanctioned for the project including that of the Audio Visual Operator had been absorbed into the 3rd respondent department in the same scale of pay. The respondents would further submit that a similar request has already been made by the petitioner in the year 1998, 2002 and 2008 which has been forwarded to the Government. It is submitted that this issue was placed before One Man Commission in the year 2010. The one man commission recommended the revision of the scale of pay from Rs.5300 - 8300 to 5500 to 9000 (pre revised) and the corresponding revised scale was Rs.9300 – 34800 with Grade Pay of Rs.4400/-. The One Man Commission had turned down the recommendation for re-designating the post of Audio Visual Operator as Audio Visual Officers or Technical Officer.

15. The respondents would submit that as on date there is no



post termed as Audio Visual Officer in the 3rd respondent department.

That apart, there is no necessity to create a fresh post. The petitioner on the date of his appointment only had qualification of Higher Secondary with Diploma in Electronics and Communication Engineering. After his appointment, he was permitted to acquire higher qualification with a specific condition that on his acquiring the qualification, he will not claim preferential rights for promotion to any post in the Directorate of Public Health and Preventive Medicines. However, contrary to the undertaking the petitioner has now come forward with the present Writ Petition.

16. The respondents would further submit that there is no justification in seeking higher pay or upgradation in the post since the scale of pay fixed for the post is being granted to the petitioner. That apart, though there is no promotional avenue for this post, the Government has protected the interest of such employees by awarding selection grade and special grade with monetary benefit of 3% + 3%



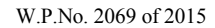
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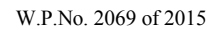
of the basic scale of pay.

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17. The party in person has reiterated his contention and he had submitted his arguments and in the course of arguments had stated that he has not received pay as per the pay commission recommendation. He had provided chart showing the payments that were received by him, which is extracted hereunder:

<i>Date</i>	<i>Scale of Pay Received</i>	<i>Recommendations / Remarks</i>
10.05.1991	1600 – 50 – 2300 – 60 – 2600	Appointment
01.01.1996	5300 – 150 – 8300	Fifth Pay Commission (G.O.Ms. No.165 Finance)
01.04.2001	6500 – 200 – 10500	Selection Grade
01.06.2006	9300 – 34800 – 4300	Sixth Pay Commission (G.O.Ms.No.234 – 2009)
26.08.2010	9300 – 34800 + 4400	One Man Commission Recommendation (G.O.297, Finance 26.08.2010)
01.06.2006	9300 – 34800 + 4600	Selection Grade.

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post from that of Audio Visual Operator to that of Audio Visual Officer.

21. The One Man Commission in the report submitted in the year 2010 has taken into consideration the above request and rejected it. This order has not been challenged by the petitioner herein and therefore the request for re-designation cannot be considered and has been turned down.

22. The petitioner who had undertaken not to seek preferential right on the ground of his additional qualification cannot now turn around and demand that he be given additional scale of pay in the light of his experience and in the light of the fact that others who are in the similar post do not have same qualification as he possess. The petitioner has entered the service knowing fully well that the post he occupies is non promotional one. Further, he also possessed a similar qualification, like the others; when he had originally joined the



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respondent. He has acquired academic knowledge by himself and that being the case he cannot claim additional benefits not available to persons similarly placed by him on the ground that he has acquired higher academic qualification.

23. Therefore, I see no reason to interfere with the impugned order. Accordingly, the Writ Petition is dismissed. Consequently, the connected Writ Miscellaneous Petition is closed. No costs.

19.07.2024

Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To,

1.State of Tamil Nadu represented
by its Secretary to Government
Health and Family Welfare Department
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2.The Secretary to Government
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3.The Director of Public Health and Preventive Medicine,
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P.T.ASHA, J.,

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