



W.P.No.29492 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

RESERVED ON
20.12.2023

PRONOUNCED ON
26.02.2024

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.29492 of 2011

Dr.R.Vivekanandan

... Petitioner

Vs

1.The Secretary to Government,
Animal Husbandary and Fisheries Departmental,
For St.George,
Chennai – 600 009.

2.The Director of Animal Husbandary,
Block II, Central Office Buildings,
Teynampet, Chennai – 600 006.

3.The Director,
Institute of Veterinary and
Preventive Medicine, (IVPM),
Ranipet – 632 403,
Vellore District.

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the Government Letter No.711/AH-7/2005-4 dated 24.03.2005 issued by the Secretary to Government Animal Husbandry



W.P.No.29492 of 2011

and Fisheries (AH7) Department, Chennai the first respondent herein in continuing its earlier Letter No.20380/AH7/2002 dated 19.02.2002 quash the same and direct the first respondent herein to relax the rule relating to acquisition of Ph.D. qualification in favour of the petitioner for promotion to the post of senior Research Officer as has been done in similar cases by the Government and notionally promote the petitioner to the post of Senior Research Officer for the year 2000 – 2001 with all consequential attendant service and monetary benefits including the revised pensionary benefits and disburse all the arrears within a short date that may be fixed by the Hon'ble Court and pass such further orders.

For Petitioner : Mr.A.L.Somayaji
Senior Counsel
for Mr.K.Rajkumar

For Respondents : Mr.S.Ravichandran
Additional Government Pleader

ORDER

The Writ Petition has been filed challenging the proceedings in the Government letter No.711/AH-7/2005-4 dated 24.03.2005 issued by the first respondent in confirming its earlier letter dated 19.02.2002 and to direct the first respondent to relax the rule relating to acquisition of Ph.D qualification in favour of the petitioner for promotion to the post of Senior Research Officer for the year 2000-2001 with all consequential attendant and



W.P.No.29492 of 2011

monetary benefits including revised pensionary benefits.

WEB COPY

2. Heard, Mr.A.L.Somayaji, learned Senior Counsel for Mr.K.Rajkumar, learned counsel appearing for the petitioner and Mr.S.Ravichandran, learned Additional Government Pleader appearing for the respondents.

3. The learned Senior Counsel appearing for the petitioner would submit that, the third respondent is an Institute of Veterinary and Preventive Medicine and it is a production unit of various vaccines functioning under the over all control of the Director of Animal Husbandry. He would contend that the petitioner had completed his bachelors degree in Veterinary Science (BVSC) in the year 1970 and was directly recruited as Veterinary Assistant Surgeon in the Tamil Nadu Animal Husbandry on 22.07.1971. In the year 1975, while the petitioner was in service, had completed his Masters degree in Veterinary Science in Bio Chemistry. He would contend that the petitioner on completion of P.G. degree was posted as Research Assistant on 09.06.1975. Thereafter the petitioner was promoted as an Assistant



W.P.No.29492 of 2011

Research Officer in the Institute on 22.11.1978 and as a Research Officer on 08.07.1997.

4. He would further submit that the petitioner was due for his promotion to the post of Senior Research Officer and the post is governed by the Tamil Nadu Animal Husbandry Service. He would contend that the original rules prescribed for the qualification to the post of Research Officer by promotion was that (i) B.V.Sc, (ii) post graduate Training in Animal Husbandry for a period of 9 months (iii) experience in the Animal Husbandry Department for a period of 10 years of which 2 years should be in clinical or research side. (iv) must have passed Account Test for executive officers.

5. He would further submit that in the year 1987 the service conditions were altered by issuing an amended special rules in G.O.Ms.No.1930 Agriculture (AH7) Department dated 08.10.1987 by which the post of Senior Research Officer has been introduced as Class II category 5 in the Special Rules for Animal Husbandry service. He would submit that as per the new service rules the method of recruitment for Senior



W.P.No.29492 of 2011

Research Officer post is by way of promotion from the post of Research

Officer, category 2 of Class III post. The qualification prescribed are that (i)

Ph.D in any one of the subject as prescribed therein (ii) experience in the

manufacture of Biological Products for a period of not less than 5 years (iii)

2 years service as Research Officer. He would contend that these conditions

of service were suddenly changed without giving any saving clause for the

incumbents who would aspire for promotion to the post of Senior Research

Officer. But there was a saving clause introduced in the Service Rules which

states that nothing in the Rules shall adversely affect any person holding the

post as on the date of issuance of the Rules.

6. He would submit that when the new rules were introduced there was a provision for deputation to undergo higher studies (to acquire Ph.D.)

with full pay. Later on in the year 1995 vide Government Letter

No.80360/A11/95 Finance department dated 27.09.1995 the clause was

deleted on the ground of financial constraints, on such basis, the petitioner

was not able to pursue Ph.D. On 24.07.2000, the seniority list of Research

officer was published and the petitioner was ranked at Serial.No.3 and the



W.P.No.29492 of 2011

third respondent has recommended the petitioner's name to the Government for relaxation of Ph.D qualification and to include him in 2000-2001 panel of Research Officer fit for promotion to the post of Senior Research Officer. The petitioner had sent representations to the Government to relax the rules relating to Ph.D in favour of the petitioner and to promote him as Senior Research officer. He would submit that the post of Senior Research Officer does not have higher responsibility, than the Research Officer, therefore, the requirement of Ph.D. qualification is not necessary to the post and the third respondent Institute is not a research institute, it is only a production unit of vaccine.

7. He would submit that the petitioner has filed O.A.No.6440 of 2001 before the Tamil Nadu Administrative Tribunal, Chennai and by order dated 26.11.2000, the Tribunal directed the Government to consider the claim of the petitioner and Government by its letter, dated 19.02.2002, the request of the petitioner for relaxation was rejected. He would further submit that the petitioner being aggrieved against the order of rejection had filed a petition for reconsidering his claim for relaxation before the same authority on



W.P.No.29492 of 2011

12.08.2002 and the first respondent did not pass any orders. Thereafter on 09.07.2004 and 07.01.2005 the petitioner has sent reminders. When these representations did not evoke any response, the petitioner had filed Writ Petition before this Court in W.P.No.38042 of 2004 seeking a direction to consider the representations made by the petitioner before the first respondent and this Court by order dated 21.12.2004, directed the first respondent to consider the representations given by the petitioner, within a period of twelve weeks. He would further submit that subsequently through a Government letter dated 24.03.2005, the reconsideration petition of the petitioner was rejected without assigning any reasons and he would contend that the panel prepared for filling up of the post of Senior Research Officer for the year 2004-2005 was shown as 'Nil'.

8. He would submit that the qualification to the post of Senior Research Officer was relaxed for three persons such as one Dr.Doraisamy, who have been given relaxation from acquiring Ph.D. for promotion to the post of Director of the third respondent institute, even though the rule is very categorical that Ph.D is the essential qualification for both Senior Research



W.P.No.29492 of 2011

Officer and Director. Secondly, one Dr.M.P.Rajendran, who did not acquire Ph.D. in the year 1988 when his turn came up for promotion to the post of Senior Research Officer, rules have been relaxed in his favour. Thereby, one Dr.Christopher who had possessed Ph.D. Qualification in Animal Bio Technology only, which is not the prescribed qualification for promotion to the post of Senior Research Officer. He would submit that the grievance of the petitioner is that if such rules have been relaxed for the above persons, then it should have been done for all those similarly placed persons who did not possess Ph.D. qualification after 01.01.1987.

9. He would further submit that one C.S.Saravanan, who was in the post of Research Officer, lacks basic educational qualification, he had possessed only M.Sc (Bio Chemistry) and Ph.D (Bio Chemistry) and he did not possess any service experience in vaccine production. He would submit that even after the deletion of the deputation for undergoing higher studies, the petitioner's junior one Abudeen Babujee Peter got relaxation to undergo higher studies with full pay and later got promotion to the post of Senior Research Officer by also relaxing 2 years of Research Officer service. He



W.P.No.29492 of 2011

would further submit that the respondents had revised the rule of relaxation on a pick and choose method and had deprived the benefits to the seniors like that of the petitioner and the same is in violation to Articles 14 and 16 of the Constitution of India.

10. He would submit that during the year 2005 the petitioner had serious health ailments and the petitioner has availed leave till 24.07.2006 and on 31.07.2006 the petitioner had attained the age of superannuation. He would submit that despite his health issues, the petitioner has filed this Writ Petition. Therefore the learned senior counsel would submit that the order rejecting the claim of the petitioner for relaxation of rules and for notional promotions to the post of Senior Research Officer and Director of the third respondent institute on par with his junior to be considered and that the petitioner is also entitled for the consequential relief for increase in his pensionary benefits and seeks to allow this Writ Petition.

11. The learned Senior Counsel appearing for the petitioner had also relied on the following judgments:



W.P.No.29492 of 2011

J.S.Yadav and others vs State of Haryana and Others, reported in (1990) 2 SCC 189 Paragraph Nos.6 to 9- held that the rules conferring power on Government to relax rules on being satisfied that operation of the rules causing hardship to any particular case.

John Vallamattom and another vs Union of India, reported in (2003) 6 SCC 611, Paragraph Nos.61 to 64- all persons in similar circumstances shall be treated alike both in privileges and liabilities imposed, the classification should not be arbitrary; it should be reasonable and it must be based on qualities and characteristics and not any other who are left out, and those qualities or characteristics must have reasonable relations to the object of the legislation.

12. Countering his arguments, the learned Additional Government Pleader would submit that the petitioner was appointed as a Research Assistant on 27.02.1973 and promoted as a Assistant Research Officer on 22.11.1978 and subsequently promoted as a Research Officer on 08.07.1997. The petitioner retired from the service on 31.07.2006. He would contend that the rules of the third respondent/Institute pertaining to the promotion for the post of Research Officer were originally framed in the

10/21



W.P.No.29492 of 2011

Madras Animal Husbandry Service Rules and the same has been revised vide G.O.Ms.No.1930, Agriculture (AH7) Department, dated 08.10.1987 that was even before the date of the petitioner's promotion to the post of Research Officer dated 08.07.1997.

13. He would further submit that the rules for the recruitment to the post of Senior Research Officer were framed in G.O.Ms.No.1930 only on 08.07.1997 and the petitioner was promoted as a Research Officer, the feeder category for the post of Senior Research Officer which was nearly after 10 years thereafter framing of rules for the post of Senior Research Officer, the petitioner could have acquired the Ph.D., qualification in between 1987 and 1997 or even thereafter within the year 2000.

14. He would further submit that the provision for deputation of Officers to acquire Ph.D with full pay was not in existence at the time when the petitioner had being promoted as a Research Officer. He would contend that the Government vide its letter No.20380/AH7/2001, dated.19.02.2002 had stated the reasons for rejection of the request of the petitioner as to why his name did not include in the panel for the post of Senior Research Officer



W.P.No.29492 of 2011

for the year 2000- 2001, as they cannot relax the advanced educational qualification of Ph.D degree prescribed in the Special Rules for Tamil Nadu Animal Husbandry Service.

15. He would further submit that the reasons in the letter dated 19.02.2002 issued by the first respondent are that one Dr.J.Doraisamy was promoted as Senior Research officer during the year 1986 as per his qualification in M.V.Sc or Ph.D as per the Adhoc-Rules then existed and the same was done before issuance of G.O.Ms.No.1930 dated 08.10.1987. Secondly in the case of one Dr.M.P.Rajendran, the gap between the Adhoc Rules in force and with the introduction of Special Rules was very short, so considering the difficulty of passing Ph.D., degree within the short period, relaxation was given to him. Thirdly, in the case of one Dr.M.Christopher, he has acquired Ph.D. in Animal Bio-technology at the time of preparation of panel for the post of Senior Research Officer for the year 1999-2000 which is not the prescribed subject as per Special Rules. But the Government have decided to include the qualification of Ph.D. in Animal Bio-technology as one among the subjects in the Special Rules for



W.P.No.29492 of 2011

consideration of the Senior Research Officer panel. As the said proposal was under consideration of the Government from 1998 the Government has relaxed the educational qualification of Ph.D. in favour of Dr.M.J.Christopher.

16. He would further submit that necessary orders were issued in G.O.(Ms) No.80, AH & F, dated 25.05.2001 amending the Special Rules to include M.V.Sc in Animal Bio-technology for promotion to the post of Research Officer and Ph.D. in Animal Bio-technology for promotion to the post of Research Officer and to the post of Senior Research Officer. Hence there is no infirmity in the letters issued by the first respondent dated 19.02.2002 and 24.03.2005 and seeks to dismiss the Writ Petition.

17. I have heard the submissions on behalf of the respective parties and perused the materials available on record before this Court.

18. This Writ Petition had been filed in the year 2011, challenging an order passed by the Government in the year 2005 reiterating its earlier decision of the year 2002 by rejecting the request of the petitioner for grant



W.P.No.29492 of 2011

of relaxation of required qualification for promotion to the post of Senior Research Officer for the panel year 2000 – 2001 with all consequential benefits. It is also necessary to note that the petitioner had attained the age of superannuation on 31.07.2006. This fact has been admitted to by the petitioner in this Writ Petition.

19. It is also an admitted case that the petitioner does not possess the required qualification to be promoted as a Senior Research Officer. The petitioner's claim parity with certain other officers who had been granted exemption from the required qualification particularly Ph.D. degree.

20. It is an admitted fact that the special Rules prescribing qualification of Ph.D came to be introduced in the year 1987. The petitioner had not made any attempts to avail the relaxation given by the Government for doing Ph.D after the said special Rules came into force. The withdrawal of such an exemption came to be issued by the Finance Department only in the year 1995. Further, the petitioner had made a request for relaxation which was originally rejected in the year 2001 and again the petitioner



W.P.No.29492 of 2011

seems to have made a further request which also came to be rejected in the year 2002. Even after his request for relaxation was turned down, the petitioner had not made any attempt to pursue his Ph.D. Again the petitioner had made a representation for relaxation, which had also come to be dismissed in the year 2005. The petitioner has not challenged either any of the rejection orders immediately after they had been passed. Thereafter, the petitioner had also superannuated in the year 2006 and he had filed this Writ Petition only in the year 2011. This Court could have come to the aid of the petitioner, had he challenged it at the first instance or at least during the period of service. He had challenged the order of rejection at a very belated point of time. That apart, it is prerogative of the employer to grant relaxation of the Rules.

21. It is also pertinent to note that by a note dated 16.07.1993, the Secretary to Government, Personnel and Administrative Department had issued certain questionnaires to be considered while examining a proposal for relaxation of Special/ ad-hoc Rules in favour of the Government servant. Such relaxation sought for by the petitioner cannot be granted, as a matter of



W.P.No.29492 of 2011

right. Only when the questions that had been given in a note would come in favour of a Government servant, then only the question of relaxation could be extended to a Government servant.

22. A reading of the Government order relied upon by the petitioner in respect of grant of relaxation in favour of certain officers, it could be seen that it was a requirement that was necessary for grant of relaxation. In the case of the petitioner, there is no reasons assigned by the petitioner that he would fulfill the criteria to be granted with the relaxation. That apart, the petitioner after nearly a period of more than five years, after his superannuation, had approached this Court with a prayer to quash the order of rejection of relaxation and to direct the Government to grant relaxation and promote him with effect from 2000-2001 as a Senior Research Officer.

23. This Court is of the view that the petitioner is trying to make an attempt to get monetary benefit rather than ascertain his right for relaxation. Had the petitioner challenged the rejection of his relaxation at the first instance and had been unsuccessful, then such a claim could have been



W.P.No.29492 of 2011

considered and not in the present circumstances of this case.

WEB COPY

24. The learned Senior Counsel had placed heavy reliance on the two judgments of the Hon'ble Apex Court which reads as follows:-

(a) John Vallamattom and another vs Union of India, reported in (2003) 6 SCC 611, the learned counsel had relied upon particularly paragraph Nos.61 & 62 of the aforesaid judgment. With due respect to the learned Senior Counsel, the said paragraphs form part of a desenting judgment of the learned Judge in the aforesaid judgment. The majority of view was contrary to the views expressed by the learned desenting Judge. In such view, the said judgment cannot be relied upon for the purpose of this case.

(b) J.S.Yadav and others vs State of Haryana and Others, reported in (1990) 2 SCC 189, the learned Senior Counsel has placed reliance upon the paragraph No.6 particularly to contend that when a Rule confer a power to the Government to be dispensed with or to relax a requirement of any Rules, then such power should be exercised to mitigate the undue



W.P.No.29492 of 2011

harship in a particular case and deal with a case in just and equitable manner.

25. A further reading of the aforesaid judgment would also indicate that the power of relaxation should be exercised to mitigate an undue hardship or to meet a particular situation. Here the claim of the petitioner is to mitigate his undue hardship of not holding a Ph.D degree which may warrant relaxation. But, such relaxation should also be given only when there are no available candidates holding the required qualification. Further, the petitioner had also superannuated even prior to the filing of Writ Petition to invoke the principles laid down by the Hon'ble Apex Court in the said judgment. It is not the case of the petitioner that there were no candidates with the required qualification. Hence, in my view, the aforesaid judgments cannot also be pressed into service.

26. In such circumstances, I do not find any reasons to interfere with the orders impugned in this Writ Petition and entertain the relief as prayed for by the petitioner.

27. In fine, this Writ Petition is dismissed. However, there shall be



W.P.No.29492 of 2011

no order as to costs. Consequently connected miscellaneous petition is closed.

26.02.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

gba



W.P.No.29492 of 2011

To
WEB COPY

- 1.The Secretary to Government,
Animal Husbandary and Fisheries Departmental,
For St.George,
Chennai – 600 009.
- 2.The Director of Animal Husbandary,
Block II, Central Office Buildings,
Teynampet, Chennai – 600 006.
- 3.The Director,
Institute of Veterinary and
Preventive Medicine, (IVPM),
Ranipet – 632 403,
Vellore District.



WEB COPY



W.P.No.29492 of 2011

K.KUMARESH BABU.,J.

gba

A Pre-delivery order made in
W.P.No.29492 of 2011

26.02.2024