



W.P.(MD)No.8481 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.03.2024

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CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD)No.8481 of 2013

and

M.P.(MD)Nos.1 & 2 of 2013

- 1.Union of India rep. by,
The Secretary to Government,
Ministry of Health and Family Welfare,
New Delhi.
 - 2.The Secretary,
Department of Health Research,
Government of India and
The Director General,
Indian Council of Medical Research,
Post Box No.4911, Ansari Nagar,
New Delhi – 110 029.
 - 3.The Director-in-charge,
Centre for Research in Medical Entomology,
(ICMR), No.9/4, Sarojini Street,
Chinna Chokkikulam,
Madurai – 625 002.
Tamil Nadu.
- : Petitioner

Vs.



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1.T.R.Mani

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2.The Registrar,

The Central Administrative Tribunal,
Chennai Bench.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the records in respect of the order of the Hon'ble Tribunal in O.A.369 of 2011 dated 28.03.2012 passed by the second respondent herein and quash the same.

For Petitioner : Mr.K.Govindarajan
Deputy Solicitor General of India
For Respondent No.1 : Mr.S.Anwar Sameem

O R D E R

[Order of the Court was made by **D.KRISHNAKUMAR, J.**]

This Writ Petition has been filed seeking to quash the order made in O.A.No.369 of 2011 dated 28.03.2012, passed by the second respondent herein.

2.Heard Mr.K.Govindarajan, Deputy Solicitor General of India and Mr.S.Anwar Sameem, learned Counsel appearing for the first respondent.



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3.It is the case of the first respondent / writ petitioner that he was posted as Research Assistant at GCMU, New Delhi and thereafter he was redesignated as Assistant Research Officer and transferred to VCRC, Pondicherry in the year 1975. Thereafter, the first respondent was promoted to the post of Senior Technical officer in the year 1985 and transferred to CRME, Madurai and held the said post in the said place till his retirement on 31.07.2007. According to the first respondent, he has not availed any promotion during his service period or any upgradation of pay for more than 22 years. Based on the recommendation to introduce the recruitment and assessment scheme of technical and scientific staff in ICMR, the said scheme was implemented for the scientific staff with retrospective effect from 01.07.1984 and there is some discrimination among the scientific and technical staff [Group – A], resulting in the Group-A Scientists approaching the Hon'ble Supreme Court, raising the ground that there is discrimination with regard to promotion of medical and non-medical cadre of Scientists in the Ministry of Health.

4.Pursuant to the direction of the Hon'ble Supreme Court, the “Department of Health (Group 'A' Gazetted Non-Medical Scientific and Technical Posts) INSITU Promotion Rules, 1990” was brought into force from 15.11.1989. The said INSITU Rules which



apply to the Department of Health under Ministry of Health is also applicable to organizations attached or subordinate thereto and ICMR is attached to the Department of Health Research under the Ministry of Health and Family Welfare. As per the INSITU Rules, there is a scope for promotion for one category and there is a scope for upgradation of pay for another category. Therefore, the first respondent made several representations to the petitioners herein for grant of benefit under the above two schemes, but they all ended in vain. Thereafter, the first respondent filed a writ petition in W.P.No.12800/1997 and this Court directed the respondents therein to consider his representation and pass orders within 12 weeks. Pursuant to the same, he was given final upgradation under the ACP Scheme and the approval of the Ministry of Health was accorded for adopting the scheme of INSITU promotion. Thereafter, various legal proceedings have been challenged before the Tribunal and finally based on the directions of the Tribunal, the first respondent's application was considered in the light of the INSITU Rules, 1990.

5. According to the first respondent, the third petitioner has recommended to the second petitioner to refix the pay and consequently revive the pension and also recover the payment made to the first respondent on the ground that ACP scheme has been wrongly fixed. Challenging the said order, the first respondent



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filed O.A.No.989 of 2009 before the Central Administrative Tribunal and the same was allowed on 26.04.2010, with a direction to the respondents therein to refix the pay and pension of the applicant after giving sufficient opportunity and hearing the applicant. Again, an impugned order has been passed by the petitioner department dated 21.12.2010, without giving opportunity to the first respondent. Hence, he filed O.A.No.369 of 2011 before the Tribunal and the Tribunal in its order dated 28.03.2012 observed that there is no clerical error in the letter issued by the Department. On the aforesaid ground, the said Original Application came to be allowed and hence, the writ petitioner department has preferred the present Writ Petition.

6. Learned Counsel for the first respondent has filed a memo stating that there is no instructions from the first respondent.

7. We have gone through the papers and based on the submission made by the learned Deputy Solicitor General of India appearing for the petitioner department and based on the available materials, we pass this order.

8. The petitioner department has issued a letter on 05.10.2009, regarding wrong fixation of pension amount to the first



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respondent and thereafter, based on the aforesaid letter, subsequent proceedings has also been issued by the petitioner department by sending communication to the Director General, Indian Council of Medical Research for taking necessary action for revising the scale of pay and for revising the pension. Further decision has been taken by the Director General of Indian Council for Medical Research and pay has been refixed and also the pension was refixed by the Council based on his last pay drawn. A communication was sent to the first respondent on 21.12.2010 revising the pension with effect from the month of December, 2010 onwards. That order was challenged before the Tribunal in O.A.No. 369 of 2011 and the same was allowed on 28.03.2012, on the ground that there is no clerical or arithmetical error.

9.The earlier proceedings clearly indicates the revision of scale of pay as well as the pension amount to the first respondent. On perusal of the aforesaid communication clearly shows that the said communication and the decision taken for the revision of scale of pay and pension dated 20.05.2010 and subsequent proceedings of the petitioner department has not been communicated to the first respondent. Further, the impugned order dated 21.12.2010 is also a non-speaking order and they have not complied with the earlier order passed by this court in O.A.No.989 of 2009, since no opportunity has been granted to the first respondent before passing



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the impugned order. Even as per the circulars relied upon by the petitioner department, there is no clerical error. Hence, we are not inclined to entertain this Writ Petition.

10.With the aforesaid observation, this Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

[D.K.K.,J.] & [R.V.,J.]
19.03.2024

Neutral Citation : Yes/No

Index : Yes/No

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To
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and

R.VIJAYAKUMAR, J.

MR

ORDER MADE IN

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