



W.P.(MD).Nos.1980, 1971, 1542, 2058, 2102, 2121, 2174 and 2403 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.03.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).Nos.1980, 1971, 1542, 2058, 2102, 2121, 2174 and 2403 of 2024
and WMP(MD) Nos.1546, 1963, 1977, 2072, 2102, 2116, 2117,
2185, 2187, 2410, 2411, 5846, 5847, 5848, 5849, 5850,
5851, 5852 and 5853 of 2024

In WP(MD) No.1980 of 2024:

R.Raguraman

... Petitioner

Vs

1. The Director of Animal Husbandry and Veterinary Services,
Integrated Animal Husbandry and Fisheries Department Complex,
Veterinary Hospital Compound, Nandaman,
Chennai.
2. The Regional Joint Director of Animal Husbandry,
Madurai District.
3. The Assistant Director of Animal Husbandry,
Thirumangalam Division, Madurai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the 1st respondent, dated 04.04.2023 in his proceedings Na.Ka.no. 4260/M1/2022 and consequential order passed by



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the 3rd respondent, dated 28.04.2023 in his proceedings Na.Ka.no. 2573/Aa/2022 and quash the same as illegal and consequently direct the respondents to disburse the basic pay given to the petitioner prior to April 2023 without any reduction.

For Petitioner : Mr. R.Gandhi, Senior Counsel

For Respondents : Mr.P.Veera Kathiravan
Additional Advocate General

Assisted by
Mr.J.John Rajadurai
Government Advocate

COMMON ORDER

All the writ petitions have been filed seeking to quash the respective impugned orders of the respondent as illegal and unlawful and to direct the respondents to disburse the basic pay given to the petitioners without any reduction.

Factual Matrix:

2(i).The Government of Tamil Nadu issued G.O.Ms. No. 64 of 2008, dated 28.05.2008, Animal Husbandry, Dairying and Fisheries Department, for upgradation of 444 Grade-1 Veterinary sub centers to upgraded Veterinary sub centers and appointment of Junior Veterinary Assistant



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Surgeons with an object to provide quality veterinary health care service. The said G.O. was issued for the purpose of appointing Junior Veterinary Assistant Surgeons possessing a degree in Veterinary Sciences in these Upgraded Veterinary sub centers with a scale of pay of Rs. 5000-150-8000. The G.O. further mandated that the recruitment for the post of Junior Veterinary Assistant Surgeons would be done through Tamil Nadu Public Service Commission and the said Junior Veterinary Assistant Surgeons would report to the Veterinary Assistant Surgeons/Assistant Directors of Animal Husbandry having jurisdiction. The channel for promotion of the Junior Veterinary Assistant Surgeon in the Upgraded Veterinary sub centers would be through promotions to the post of Veterinary Assistant Surgeon. The G.O. further mandated to cause necessary amendments to the service rules in this regard.

(ii).On 25.02.2009, the Tamil Nadu Public Service Commission published a Notification for the direct recruitment of 59 vacancies to the post of Veterinary Assistant Surgeon, following which, on 28.02.2009, the Tamil Nadu Public Service Commission published a supplement Notification for the direct recruitment of 444 vacancies to the post of Junior Veterinary Assistant Surgeons. For both the posts of Veterinary Assistant Surgeons and Junior Veterinary Assistant Surgeons, the entire selection process such as



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qualification, syllabus and examination were one and the same. The candidates, who got 1st rank to 59th rank were appointed as Veterinary Assistant Surgeons, whereas, the candidates from 60th rank were appointed as Junior Veterinary Assistant Surgeons. That apart, a reserve list was also maintained by the Tamil Nadu Public Service Commission.

(iii). While so, the Government of Tamil Nadu issued yet another G.O. Ms. No. 2, Animal Husbandry, Dairying and Fisheries Department, dated 5.1.2012 for the purpose of upgradation of Junior Veterinary Assistant Surgeons as Veterinary Assistant Surgeons by designating the upgraded sub centres as Veterinary Dispensaries. The said G.O. paved the way for abolition of the post of Junior Veterinary Assistant Surgeon and upgradation of the post of Junior Veterinary Assistant Surgeon to the post of Veterinary Assistant Surgeon on the ground that it creates disparity among the veterinary surgeons, who are equally qualified. As per the said G.O., as the post of Veterinary Assistant Surgeons and Junior Veterinary Assistant Surgeons have same qualification and same method of recruitment through Tamil Nadu Public Service Commission and assigned with similar nature of duties and responsibilities, but carry a different scale of pay in the pay band, which creates disparity and complication, to do away with such disparities and complications,



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the Government accepted the proposal of the Director of Animal Husbandry and Veterinary Services to upgrade 422 posts of Junior Veterinary Assistant Surgeons existing in the Animal Husbandry Department as Veterinary Assistant Surgeons with pay in the pay band -III (Rs.15,600-39,100 + Grade PayRs. 5,400) and designating the upgraded sub centres as veterinary dispensaries.

(iv)In the meanwhile, yet another G.O.2D No. 42, Animal Husbandry, Dairying and Fisheries Department dated 28.05.2013 came to be issued for the purpose of directly recruiting 117 candidates sponsored by the Tamil Nadu Public Service Commission from the reserve list of Junior Veterinary Assistant Surgeons for the year 2009 to be appointed in the post of Veterinary Assistant Surgeons in Animal Husbandry Department.

(v).Be that as it may, coming to the instant *lis* in hand, all the eight writ petitioners herein, pursuant to the recruitment Notification of Tamil Nadu Public Service Commission, dated 25.09.2009 and supplement recruitment Notification, dated 28.09.2009 for the post of Veterinary Assistant Surgeons and Junior Veterinary Assistant Surgeons, duly submitted their applications. Though all the petitioners were selected in the selection process, since their ranking was beyond 60th rank, they were appointed as Junior Veterinary Assistant Surgeons and were issued with appointment orders on various dates



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in the year 2010. On receipt of their respective appointment order, all of them joined on various dates during February, 2010. The probation of all the petitioners were declared on various dates during the years 2015, 2016 and 2017 respectively.

(iv).Following which, the third respondent after considering the Government orders and on completion of the probation period of these petitioners, revised their scale of pay vide proceedings, dated 18.04. 2017, 05.09.2017, 05.05.2016, 28.08.2018 respectively, notionally with effect from 08.04.2010 with monetary benefits. As per the revised scale, the petitioners' pay was revised and fixed as per pay band Rs.15,600-39,100 + Grade Pay Rs.5,400/- and they received arrears for the said period on 25.04.2017. Thereafter, from May, 2017 to April, 2023, they received salary, yearly increment and other monetary benefits based on the aforesaid revised scale of pay. For the past 6 years, the petitioners have received the said revised pay with all benefits.

(v).While so, the third respondent by his impugned proceedings, dated 04.04.2023, 16.04.2023 respectively issued the order refixing the basic pay of the petitioners and for recovery of excess payment stating that, in 2017 while fixing their scale of pay, mistake was committed and therefore, the excess



amount has to be recovered from them and that their scale of pay has to be revised. That apart, following which, yet another consequential impugned order also came to be passed on 28.04.2023, 22.08.2023, 28.08.2023 respectively in this regard. However, the said order has not been served upon the petitioners so far and those impugned orders of recovery came to be issued without putting the petitioners on notice. Hence, challenging the same, these writ petitions came to be filed.

3.For the purpose of clarity, the details of the petitioners' service are extracted here under in the tabular column:

W.P.No/Name of the writ petitioner	Date of recruitment notification by TNPSC	Date of supplement recruitment notification by TNPSC	Date of appointment order	Date of joining	Date of probation declaration order	Date of speaking order passed by the 3 rd respondent refixing the petitioner's salary and yearly increment
1542/2024 D.Gajendran	25.02.2009	28.02.2009	15.02.2010	19.02.2010	22.09.2016	Na.Ka.No. 1194/Aa/2017, dated 18.04.2017
1971/2024 L.Menaka	25.02.2009	28.02.2009	15.02.2010	18.02.2010	16.06.2017	Na.Ka.No. 537/Aa/2016, dated 05.09.2017
1980/2024 R.Raguraman	25.02.2009	28.02.2009	01.04.2010	08.04.2010	04.06.2015	Na.Ka.No. 1194/Aa/2017, dated 18.04.2017



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2058/2024 G.Suresh	25.02.2009	28.02.2009	15.02.2010	24.02.2010	10.09.2015	Na.Ka.No. 1789/Aa/2013, dated 05.05.2016
2102/2024 J.Vijayakumar	25.02.2009	28.02.2009	15.02.2010	-	31.03.2016	Na.Ka.No. 1598/Aa/2014, dated 28.08.2018
2121/2024 K.Andichamy	25.02.2009	28.02.2009	15.02.2010	19.02.2010	16.06.2017	Na.Ka.No. 537/Aa/2016, dated 05.09.2017
2174/2024 N.Arivalagan	25.02.2009	28.02.2009	15.02.2010	24.02.2010	16.06.2015	Na.Ka.No. 1599/Aa/2013, dated 05.05.2016
2403/2024 R.Karpagavalli	25.02.2009	28.02.2009	15.02.2010	19.02.2010	22.09.2016	Na.Ka.No. 1194/Aa/2017, dated 18.04.2017

Submission on the side of the petitioners:

4.The learned Senior counsel appearing for the petitioners Mr. Gandhi submitted that, all the impugned orders passed by the first respondent came to be issued without hearing the petitioners. That apart, the consequential impugned orders passed by the third respondent also came to be issued without hearing the petitioners. He further submitted that as per the Office Memorandum of Government of India in F.No.18/03/2015-Estt(Pay-I), dated 02.03.2016), if excess amount is paid for a period of more than 5 years before the order of recovery issued, such recovery is impermissible in law. He



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insisted, admittedly from 2017 ie., for the past 6 years all the petitioners are receiving the alleged excess amount and as such, the very initiation of recovery that too, without putting the petitioners on notice, is impermissible in law. He added that as per the order issued by the Government of Tamil Nadu in G.O.M.S. No. 286, dated 28.08.2018, if excess amount paid is made for a period of more than 5 years before the order of recovery issued, such recovery is impermissible in law. On that basis, he pressed for allowing the writ petitions.

Submission on the side of respondents:

5.Per contra, the second respondent has filed a counter affidavit and the learned Additional Advocate General Mr. Veerakathiravan submitted that G.O.Ms. No. 2, Animal Husbandry, Dairying and Fisheries Department upgrading the post of Junior Veterinary Assistant Surgeons as Veterinary Assistant Surgeons was issued on 05.01.2012. Hence, it would be very clear that the said G.O. will have only prospective effect ie., from the date of G.O. that is from 05.01.2012 alone. From reading of paragraph 6(iv) of the said G.O., it could be understood that the additional expenditure for the period from January to March 2012 would be provided in the revised estimate. He further



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added that, as per G.O.M.S. No. 2, dated 05.01.2012, the post of Junior Veterinary Assistant Surgeon carrying the scale of pay in the pay band - II Rs.9,300-34,800 + Grade Pay Rs.4,200/- was upgraded as Veterinary Assistant Surgeon carrying the scale of pay in pay band - 2 Rs.15,600-Rs.39,100 + Grade Pay Rs.5,400. He further submitted that the re-fixation of pay with the revised scale of pay should have been given only from the date of the said G.O. No. 2, that is, from 05.01.2012. But in respect of the writ petitioners, they have been mistakenly given such benefits from the date of their initial appointment as Junior Veterinary Assistant Surgeons ie., with effect from February 2010 itself. The learned Additional Advocate General further submitted that, the Veterinary Assistant Surgeons were carrying out major treatments and major surgeries, while the Junior Veterinary Assistant Surgeons, who were working in sub centres were carrying out only artificial insemination and minor treatment alone. However, the parity of pay scale was brought into by the Government only by a subsequent order in G.O.M.S. No.2, dated 05.01.2012 . Hence, the claim for parity of pay scale will take effect only from the date of the said order and the benefit of the order can be accrued only from the date of the said order by the employees ie., the petitioners and not from the date of their appointment as Junior Veterinary Assistant Surgeons. He further submitted that out of the



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422 Junior Veterinary Assistant Surgeons, who were selected by the Tamil Nadu Public Service Commission vide supplement Notification, dated 28.02.2009, only few like the petitioners were given a higher salary on a wrong computation from the date of their initial appointment and therefore, non recovery of excess salary from the petitioners would create an anomaly among the similarly situated co-employees. Hence, insisting upon the point that when the appointment being different, parity of salary cannot be claimed as a matter of right and he pressed for dismissal of the writ petitions.

6.Heard, the learned senior counsel for the petitioners Mr. Gandhi, the learned Additional Advocate General Mr. Veerakathiravan for the respondents and carefully perused the materials available on record.

7.Pursuant to the Notification, dated 25.02.2009 for the direct recruitment of 59 vacancies to the post of Veterinary Assistant Surgeon and supplement Notification, dated 28.02.2009 for the direct recruitment of 444 vacancies to the post of Junior Veterinary Assistant Surgeons, notified by the Tamil Nadu Public Service Commission, two categories of post came to be filled up viz., Junior Veterinary Assistant Surgeons and Veterinary Assistant



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Surgeons. The candidates, who scored first to 60th rank in the selection process were appointed as Veterinary Assistant Surgeons and the candidates from 61st rank were appointed as Junior Veterinary Assistant Surgeons. A reserve list was also maintained by the Tamil Nadu Public Service Commission for the recruitment of Junior Veterinary Assistant Surgeons during the year 2009. The writ petitioners are those candidates, who were ranked beyond 60 and were appointed to the post of Junior Veterinary Assistant Surgeons. All the writ petitioners were issued with appointment orders during the month of February and April, 2010 to the post of Junior Veterinary Assistant Surgeons and having accepted the appointment orders, they joined during February and April in the year 2010 and accepted lesser scale of pay of Rs.5000-150- 8000/- for the post of Junior Veterinary Assistant Surgeons, while the scale of pay applicable for the post of Veterinary Assistant Surgeons was Rs.6500-200-11,100/-. All the writ petitioners voluntarily accepted the post of Junior Veterinary Assistant Surgeons and worked continuously without any claim of pay parity and in due course of time, their probation was also declared during the years 2015, 2016 and 2017 respectively.



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8. In the meanwhile, the Government after careful consideration of the fact that the post of Veterinary Assistant Surgeons and Junior Veterinary Assistant Surgeons have same qualification and same method of recruitment through Tamil Nadu Public Service Commission and were assigned with similar nature of duties and responsibilities, but carry different scale of pay in the pay band, which creates disparity and complications, issued G.O.Ms. No. 2, Animal Husbandry, Dairying and Fisheries Department, dated 05.01.2012 upgraded the post of Junior Veterinary Assistant Surgeons as Veterinary Assistant Surgeons and also designated the upgraded sub centres as veterinary dispensaries.

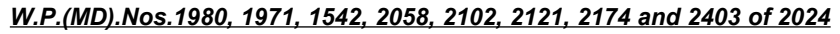
9. The third respondent after considering G.O.Ms. No. 449, Finance (Salaries division) Department, dated 31.12.2010 and G.O.Ms. No. 2, dated 05.01.2012, Animal Husbandry Dairying and Fisheries Department, on completion of the probation period of the petitioners, revised their scale of pay notionally with effect from 8.4.2010 ie., from the date of their appointment as Junior Veterinary Assistant Surgeon with monetary benefits. Following which, as per the revised scale, their pay was revised and fixed as per pay band Rs.15600-39100 + Grade Pay Rs.5400 and all the petitioners received their



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arrears for the above period for the said period on 25.04.2017. Further, from May, 2017 to April, 2023 they continuously received salary, yearly increment and other monetary benefits based on the said revised scale of pay.

10. Having received the salary and other monetary benefits for the past more than 6 years on the basis of the said revised pay with all benefits the impugned proceedings of the third correspondent in Na.Ka.no. 2573/Aa/2022, dated 28.04.2023 came to be issued thereby refixing the petitioners basic pay and also for recovery of excess payment stating that in 2017, while refixing their scale of pay, mistake was committed and therefore, the excess amount has to be recovered from them and their scale of pay has to be revised. Consequently, the first respondent has passed yet another impugned order vide proceedings in Na.Ka.no. 4260/M1/2022, dated 04.04.2023, following which, a communication was also issued by the second respondent vide proceedings in ROC No. 3107 /A/2022, dated 18.4.2023 respectively for the said purpose. Challenging the orders of the first respondent, dated 04.04.2023 and the third respondent, dated 28.04.2023, these writ petitions came to be filed.



as to:

- Analysis with respect to the first issue:**

12. The learned Additional Advocate General claims that out of 422 similarly situated employees, only few like the writ petitioners were given a higher salary on a wrong computation from the date of their initial appointment. But in fact, though TNPSC published Notification, dated 25.02.2009 for the



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direct recruitment of 59 vacancies to the post of Veterinary Assistant Surgeon and a supplement Notification, dated 28.02.2009 for the direct recruitment of 444 vacancies to the post of Junior Veterinary Assistant Surgeons, the entire selection process for the said two Notifications were one and the same. The selection of both Veterinary Assistant Surgeon as well as Junior Veterinary Assistant Surgeon was based on the same qualification, same mode of recruitment involving similar nature of work but carrying different scale of pay. Only based on the rankings, the first 60 rank holders were accommodated and given with appointment orders to the post of Veterinary Assistant Surgeons and those rank holders from 61st rank were appointed as Junior Veterinary Assistant Surgeons. However, a reserve list was maintained by TNPSC in the post of Junior Veterinary Assistant Surgeon. The Petitioners were appointed as Junior Veterinary Assistant Surgeons during February, 2010. In the meanwhile the Government of Tamil Nadu vide G.O.Ms. No. 2 of 2012, dated 05.01.2012 considering the various disparities among the Veterinary Assistant Surgeons and Junior Veterinary Assistant Surgeons to do away with the said disparity, abolished the post of Junior Veterinary Assistant Surgeon and upgraded the same to the post of Veterinary Assistant Surgeons.



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13. Interestingly, on 28.05.2013, the TNPSC sponsored 117 candidates from the reserve list of Junior Veterinary Assistant Surgeons for the year 2009 ie., the petitioners batch candidates for the direct appointment of Veterinary Assistant Surgeon and the same was approved by the Government of Tamil Nadu vide G.O 2D No. 42 of 2013. Subsequently on declaration of the petitioners' probation, the third respondent passed a speaking order refixing the petitioners salary and yearly increments considering their service as Veterinary Assistant Surgeon from the date of joining on 05.09.2017. The salary and monetary benefits enjoyed by all the petitioners on the basis of the aforesaid refixation of their salary came to be interfered by the impugned orders challenged in these writ petitions.

14. The impugned orders came to be passed by the third and first respondents respectively on the premise that the refixation of the pay of the petitioners with effect from their date of joining as Junior Veterinary Assistant Surgeons in February, 2010 is impermissible and the same ought to have been refixed only with effect from 05.01.2012 that is from the date of G.O.Ms. No. 2. The learned Additional Advocate General categorically submitted that of the total 422 similarly situated employees only a few like the writ petitioners were



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given a higher salary, on a wrong computation from the date of their initial appointment.

15. Though the Government claims that except the petitioners and few others out of 422 similarly situated employees, all the others have been receiving salary on the basis of the refixation, which has been effected from 05.01.2012 that is from the date of G.O.Ms. No. 2 and not from the date of their appointment. It is pertinent to mention here that the Government originally had two different posts namely Veterinary Assistant Surgeon and Junior Veterinary Assistant Surgeon and only later on due to policy change the Government sought to abolish the post of Junior Veterinary Assistant Surgeon merging the same and upgrading the same as Veterinary Assistant Surgeon.

16. The fulcrum of the contention of the Government is that since the petitioners have been upgraded from the post of Junior Veterinary Assistant Surgeon to the post of Veterinary Assistant Surgeons they cannot seek parity in scale of pay at par with the directly recruited Veterinary Assistant Surgeons. Having contended so, the Government subsequently appointed 117 candidates from the reserve list of the Junior Veterinary Assistant Surgeon for the year



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2009 as sponsored by the Tamil Nadu Public Service Commission vide proceedings, dated 28.05.2013 for the direct appointment of Veterinary Assistant Surgeon by issuance of G.O2D No. 42 of 2013, dated 28.05.2013. It is pertinent to mention here that all those 117 candidates, who were sponsored by the Tamil Nadu Service Commission from the reserve list of Junior Veterinary Assistant Surgeons for the year 2009 that is the petitioners batch candidates were obviously placed behind the merit list of the petitioners. The relevant portion of the said GO is extracted as follows:

Animal Husbandry, Dairying and Fisheries (AH7) Department
G.O (2D) No.42 *Dated:, 28.5.2013*
Vaigasi 14
Thiruvalluvar Aanda 2044

Read:

- 1. In G.O (Ms) No. 2, Animal Husbandry, Dairying and Fisheries (AH7) Department, dated 5. 1.2012*
- 2. G.O(Ms) No.23,Animal Husbandry. Dairying. and : Fisheries Department, dated 27.2.2009*
- 3. G.O(Ms) No. 137, Animal Husbandry; Dairying and: Fisheries. Department, dated 14.11.2011*
- 4. From the Secretary. Tamil Nadu Public Service Commission D.O, Letter.No, 1311/OTD-A4/2807, deted 73.2012 3*
- 5. From the Secretary, Tamil Nadu Public Service: Commission D.O: Lr.No. 1311/OTD-A4/2009, dated 21.8,2012.*
- 6. G.O(4D)No. 6,: Animal Husbandry Dairying and Fisheries Department, dated 13.9:2012*
- 7. From the Secretary, Tamil Nadu Public Service Commission D.O. Lr.No. 1311/OTD-A4/2009, dated 17.4,2013.*

ORDER:

In the Government Order first read above, all the post of umior Veterinary Assistant Surgeons (VAs): have been upgraded as Veterinary Assistant Surgeons (VAS) and also ordered that there will



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not lie any recruitment of Veterinary Doctors in the cadre of Junior Veterinary Assistant Surgeon in future. as the post of the Assistant Veterinary Surgeon / Veterinary: Assistant Surgeon have same qualification, same mode of recruitment and similar nature of work, but carry. different scale of pay which creates disparity and complications.

In the Government Order second read above, the Government have approved the list of 444 candidates selected by the Tamil Nadu Public Service Commission for appointment by direct recruitment as Junior Veterinary Assistant Surgeon for the year 2009. The Commissioner of Animal Husbandary and Veterinary services was also directed to issue appointment order to the above 444 candidates following certain guidelines. The Commissioner of Animal Husbandary and Veterinary Services has also issued appointment orders and all candidates joined duty”.

17.Having issued an order vide G.O.2D No. 42, dated 28.05.2013 for the appointment of the reserve list candidates in the petitioners recruitment batch, thereby, directly appointing them as Veterinary Assistant Surgeons, instead of Junior Veterinary Assistant Surgeon, despite those reserve list candidates scoring much less marks than the petitioners and were placed behind the petitioners in the merit list denying the same benefits to the petitioners, who are upgraded from the post of Junior Veterinary Assistant Surgeon to the post of Veterinary Assistant Surgeon would certainly create a disparity. The same would amount to creation of two grades with different scales in the cadre of Veterinary Assistant Surgeons, who are doing the same and similar work and hence, the same would be violative of the right to have equal pay for equal work.



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18. Though Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, the qualities or characteristic must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purpose of pay. However, in these cases the candidates, who were placed behind the petitioners in the waiting list has been sponsored by the Tamil Nadu Public Service Commission and the Government has duly appointed them directly to the post of Veterinary Assistant Surgeons. But the petitioners, who are upgraded from the post of Junior Veterinary Assistant Surgeons to the post of Veterinary Assistant Surgeons, who have been discharging the same nature of work has been deprived by the impugned order of recovery and refixation of the petitioners' basic pay negating their equal work, which would obviously entitle them for equal pay at par with the directly recruited Veterinary Assistant Surgeons.

19. The classification of posts and determination of pay structure obviously comes within the exclusive domain of the executive and normally the High Courts cannot sit in judicial review over the wisdom of the executive in



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prescribing certain pay structure in a particular service. The bone of contention made by the learned Additional Advocate General is that the benefits of G.O.MS No. 2, dated 05.01.2012 could be extended to the petitioners only from the date of the said GO and the same will have only prospective effect and cannot be given retrospective effect from the date of appointment of the petitioners also cannot be negated. However, the said argument gets defeated by the subsequent decision of the Government to issue order of appointment to the reserve list candidates of the petitioners batch vide GO 2D No. 42, dated 28.05.2013 directly appointing them as Veterinary Assistant Surgeons. Thus, the recruitment Notification for the recruitment of Veterinary Assistant Surgeon, dated 25.02.2009 and the supplement Notification for the direct recruitment of the post of Junior Veterinary Assistant Surgeon, dated 28.02.2009 resulted in the recruitment of three categories of Veterinary Assistant Surgeons. First category is the most meritorious candidates, who got first to 60th rank and who were appointed directly as Veterinary Assistant Surgeons. The petitioners would fall under the second category, who were appointed as Junior Veterinary Assistants, since they were placed beyond 60th rank, during February, 2010, who were later upgraded to the post of Veterinary Assistant Surgeons, after abolition of the post of Junior Veterinary Assistant



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Surgeons by the issuance of G.O MS No. 2 of 2012, dated 05.01.2012. The third category of Veterinary Assistant Surgeons are those, who were appointed directly as Veterinary Assistant Surgeons from the waiting list of the post of Junior Veterinary Assistant Surgeons 2009 obviously, who had scored lesser marks than the petitioners. Thus, the less meritorious candidates being placed in a higher pedestal than that of the petitioners creates disparity among the three categories of the Veterinary Assistant Surgeons recruited under a single recruitment process vide Notifications, dated 25.02.2009 and 28.02.2009 respectively.

20.It is the considered view of this Court that the doctrine of equal pay for equal work is not an abstract doctrine and the same is capable of being enforced by a Court of law. In the instant cases, since all the three categories of Veterinary Assistant Surgeons as discussed *supra* are rendering equal work of equal value, equal pay must have been the Rule. However, the Government claims that of the second category of the Veterinary Assistant Surgeons except the petitioners and few others, the remaining 400 plus Junior Veterinary Assistant Surgeons recruited along with writ petitioners and later, upgraded as Veterinary Assistant Surgeons are drawing salary by refixation of their pay only



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from the date of G.O.Ms.No. 2, ie., from 05.01.2012 and not from the date of their respective appointment.

21.Consciously recording the said submission of the Government, I have no hesitation to hold that the second category of Veterinary Assistant Surgeons deserves equal treatment on parity with the first and third category of Veterinary Assistant Surgeons. Taking into account that all the three category of Veterinary Assistant Surgeons are governed by the same statutory rules and conditions of service. However, the powers of judicial review in the matters involving financial implications are very limited. The wisdom of the Courts in matters concerning finance is ordinarily not amenable to judicial review unless a gross case of arbitrariness or unfairness is established by the aggrieved party.

22.The Hon'ble Apex Court in the case of ***Union of India Vs Indian Navy Civilian Design Officers Association and another*** reported in ***2023 Live Law Supreme Court 129*** has held that, the powers of judicial review in the matters involving financial implications are very limited. The wisdom and advisability of the Court in the matters concerning the finance are



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ordinarily not amenable to judicial review unless a gross case of arbitrariness or unfairness is established by the aggrieved party.

23.In the cases in hand, the unequal treatment of the three categories of Veterinary Assistant Surgeon is obviously a gross case of arbitrariness and unfairness. However, in the absence of any specific date to give effect to the mandates of a Government order, any Government order would take effect only from the date of the Government order prospectively. Since the second category of Veterinary Assistant Surgeons have been upgraded from the post of Junior Veterinary Assistant Surgeons only on the issuance of G.O.Ms. No. 2, dated 05.01.2012, the benefits of the same cannot be extended retrospectively to the petitioners from the date of their appointment.

24.In view of the same the petitioners are at liberty to approach the respondents seeking refixation of pay with effect from their date of appointment in the manner known to law, if so advised.

Analysis of the second issue:-



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25. The Hon'ble Apex Court in the case of ***State of Punjab and others Vs Rafiq Masih (Whitewasher) reported in 2014 (08) SCC page 883*** has dealt with the case of recovery and the relevant portion of the same is extracted as follows:

“It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far



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outweigh the equitable balance of the employer's right to recover”.

26.The Government of Tamil Nadu in G.O.Ms. No. 286, dated 28.08.2018 of the Finance Pension Department has issued orders with respect to recovery of wrongful / excess payments made to the employees / pensioners / family pensioners and the relevant portion of the said Government order, which is applicable to the facts and circumstances of these cases, extracted as follows:

“4. In view of the law declared by the Courts, the Government directs that the Administrative Departments of Secretariat, Heads of Department and Head of Offices are advised to deal with the issue of wrongful / excess payments made to Government servants / Pensioners / Family Pensioners in accordance with the decision of the Hon'ble Supreme Court in Civil Appeal No. 11527 of 2014 (arising out of SLP (C) No.11684 of 2012) in State of Punjab and others etc vs Rafiq Masih (White Washer) etc as detailed below.

(i). In all cases where the excess payments on account of wrong pay / pension / family pension fixation, grant of scale without due approvals, promotions without following the procedure, or in excess of entitlements etc come to notice, immediate corrective action must be taken.

(ii). In a case like this where the authorities decide to rectify an incorrect order, a show-cause notice may be issued to the concerned employee / pensioner / family pensioner informing him/her of the decision to rectify the order which



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has resulted in the overpayment, and intention to recover such excess payments. Reasons for the decision should be clearly conveyed to enable the employee / pensioner / family pensioner to represent against the same. Speaking orders may thereafter be passed after consideration of the representations, if any, made by the employee / pensioner / family pensioner.”

27.The dictum established by the **White washer's** case that, recovery from the employees, when the excess payment has been made for a period in excess of five years before the order of recovery is impermissible would squarely cover the *lis* on hand, since the recovery orders came to be issued by the respondents 1 and 3 after making an alleged excess payment for more than 7 years. That apart, violating the directions / mandates of G.O.Ms. No. 286, dated 28.08.2018 the impugned order of recovery came to be issued by the 1st and 3rd respondents by a cryptic non speaking order without putting the petitioners on notice. For these two reasons, this Court has no hesitation to set aside the impugned order passed by the 1st respondent vide proceedings in Na.Ka.no. 4260/M1/2022, dated 04.04.2023 and the consequential order passed by the 3rd respondent, dated 28.04.2023 vide proceedings in Na.Ka.no. 2573/Aa/2022 and accordingly, both the orders stand quashed.



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28. Though the principle of equal pay for equal work is not expressly declared by our Constitution to be a fundamental right, Article 14 of the Constitution enjoins the State not to deny any person equality before the law or the equal protection of laws and Article 16 declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

29. In these batch of writ petitions, the petitioners, who were employed originally as Junior Veterinary Assistant Surgeon were later upgraded to the post of Veterinary Assistant Surgeon, on the ground that it creates disparity by a shift in policy of the Government by issuance of G.O.Ms. No. 2, dated 05.01.2012. Though the petitioners and 422 similarly situated employees have been upgraded to the post of Veterinary Assistant Surgeons, the Government has consciously refrained from giving pay parity to the said class of Junior Veterinary Assistant Surgeons at par with the directly recruited Veterinary Assistant Surgeons. The request of the petitioners to share the equal benefits for their equal work of equal value under Article 14 of the Constitution enjoins the state not to deny any person equality before law or the equal protection of laws. At the same time, I am afraid if I could overlook the



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constrains arising out of or connected with the availability of State resources.

Therefore, unduly burdening the State for implementing the constitutional mandates would create problems which the State may not be able to stand.

Therefore, with judicious restraint with the hope and trust that the instrumentality of the State must realize that it is charged with a big trust, this Court consciously refrain from directing the respondents to disburse the basic pay given to the petitioners prior to April 2023 without any reduction.

30. Accordingly the writ petitions are partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

26.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
PNM



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To

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1. The Director of Animal Husbandry and Veterinary Services,
Integrated Animal Husbandry and Fisheries Department Complex,
Veterinary Hospital Compound, Nandaman,
Chennai.
2. The Regional Joint Director of Animal Husbandry,
Madurai District.
3. The Assistant Director of Animal Husbandry,
Thirumangalam Division, Madurai District.



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L.VICTORIA GOWRI, J.

PNM

**COMMON ORDER IN
W.P.(MD).Nos.1980, 1971, 1542, 2058, 2102, 2121, 2174 and 2403 of 2024
and WMP(MD) Nos.1546, 1963, 1977, 2072, 2102, 2116, 2117, 2185, 2187,
2410, 2411, 5846, 5847, 5848, 5849, 5850, 5851, 5852 and 5853 of 2024**

26.03.2024