
(2010) 11 MAD CK 0203

In the Madras High Court

Case No : Writ Petition No. 2573 of 2008

Dr. G. Thirunavukkarasu

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 3 MLJ 63

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : P.N. Prakash, for Norton and Grant, for the Appellant; S. Gopinathan, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—Heard Mr. P.N. Prakash, learned Counsel appearing for the Petitioner and Mr. S. Gopinathan, learned Additional Government Pleader appearing for the Respondents.

2. Challenging the impugned order dated 5.7.2007 in Letter No. 41732/POL. 18/07-2 passed by the 1st Respondent and seeking to quash the same and for a direction to the Respondents to grant him three advance increments for having acquired Ph.D. Degree in Forensic Science, the Petitioner has filed this writ petition.

3. According to the Petitioner, he completed M. Sc. in Forensic Science from the University of Madras in the year 1985 and joined the Tamil Nadu Forensic Sciences Department as Scientific Assistant Grade-II in the year 1985. Thereafter, he pursued higher studies with the permission of the 2nd Respondent, who is the Head of the Department and acquired Ph.D. Degree in Forensic Science from the University of Madras in the year 1999 and then, he reached the position of Scientific Assistant Grade-I. He would submit that a Government Servant is entitled to advance increments for acquiring higher

educational qualifications while in service and this scheme was envisaged in order to encourage Government Servants to continue their studies and update their skills in the relevant area of specialization.

3a. It is his further submission that in the Forensic Science Department, when Scientific Assistants with B. Sc., degree acquired higher qualification viz, M. Sc.,/ AIC degree after joining the service, they were sanctioned advance increments from the date of acquiring additional qualification as in the case of one Tmt. K. Sasikala Viswanath, Selvi M. Ramani and one Mr. R. Srinivasan, who were working as Scientific Assistants Grade-II. Therefore, the Petitioner gave a representation to the 2nd Respondent on 27.10.1999 praying for grant of advance increments and it was forwarded to the 1st Respondent and there was exchange of communications in that regard. Ultimately, the 2nd Respondent sent a letter dated 18.9.2002 to the Petitioner, wherein it was stated that the Government would consider his request after obtaining the Staff and Expenditure Reforms Committee Report (also called Swaminathan Committee Report). While so, the 1st Respondent received the said report in the year 2004-2005 and even thereafter, there was no response from the Respondents. Hence, the Petitioner made another representation to the 2nd Respondent on 16.10.2006. Since there was no consideration of the said representation by the 2nd Respondent, the Petitioner approached this Court in W.P. No. 6390 of 2007 and the same was disposed of on 22.2.2007 with a direction to the Respondents to consider the Petitioner's representation dated 16.10.2006 on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of the order.

3b. Thereafter, the 2nd Respondent pursued the matter with the 1st Respondent and the 1st Respondent vide letter dated 5.7.2007 stated that the proposal for granting three advance increments to the Petitioner cannot be conceded now and that the proposal may have to be considered by the next Pay Commission. The Petitioner came to know of the said letter of the 1st Respondent through the 2nd Respondent's letter bearing No. A5/33402 of 2005 dated 26.7.2007, signed on 30.7.2007.

3c. The Petitioner would also state that the Government, in its Letter No. 23270 of 1985 dated 6.5.1985 has stated that Government Servants who acquire additional qualifications will be entitled to Advance Increments, exception being where the Government has spent money on the Officer for acquiring higher/ special qualification or if the qualification is a pre-requisite for the post. The Petitioner's case is that he acquired Ph.D. Degree on his own and not at the expense of the Government nor is Doctorate in Forensic Science prescribed as the minimum/requisite qualification for the post of Scientific Assistants Grade-I. It is also his submission that many of his research papers in the field of Forensic Science have been published in Peer-viewed International Scientific Journals and National Scientific Journals.

3d. Therefore, according to the Petitioner, the order of the 1st Respondent is liable to be quashed on the ground that it is a non-speaking order, discriminative

in view of other similarly placed persons, suffers from arbitrariness and in violation of Article 14 of the Constitution of India and also contrary to the Government Order in G.O. Ms. No. 1159, dated 21.11.1984. Hence, this petition.

4. Respondents have filed counter affidavit. It is stated therein that the 2nd Respondent vide proceedings in C. No. A5/399 of 1991 dated 30.1.1991 had permitted the Petitioner to pursue the part-time research work for Ph.D. Degree the Forensic Sciences Department, Chennai by utilizing the available Government equipments, chemicals etc with the following condition:

...conducting part-time research work does not confer any preferential right in any matter whatsoever

4a. It is further stated in the counter that Government Servants are entitled to advance increments for acquiring higher educational qualifications while in service and there is no specific Government Order to sanction advance increments for acquiring Ph.D. degree under part time (i.e.) part time research work during working hours by using Government equipments and chemicals and also drawing full pay and allowances. It is submitted that Tmt. K. Sasikala Viswanath, Selvi M. Ramani and Tr.R. Srinivasan were granted advance increments for acquiring higher qualification than the prescribed. During their appointment, B.Sc. is the qualification for the post of Scientific Assistant Grade II and Tmt. Sasikala Viswanath was possessing M.Sc degree and hence, she was granted advance increments. The other two persons acquired AIC (All India Institute of Chemistry) degree (which is equivalent to M. Sc degree) on their own costs.

4b. The Petitioner's representation was sent to Staff and Expenditure Reforms Committee (in short "SERC") to obtain a report. The SERC's recommendations 40, 41, 42, 43 and 44 etc. are related to Forensic Science Department, in which no recommendation has been made so far by the Government with reference to sanction of advance increments. In the absence of such an order, advance increments for acquiring Ph.D. qualification cannot be sanctioned. In the meanwhile, the Petitioner approached this Court in W.P. No. 6390 of 2007 and prayed for quick disposal of his representation dated 16.10.2006 and the same was disposed of on 22.2.2007 with a direction to the Respondents to consider his representation on merits and in accordance with law within a period of eight weeks from the date of receipt of the order.

4c. The 1st Respondent has further submitted that after very careful examination of the representation dated 16.10.2006 of the Petitioner, the 1st Respondent issued orders vide Govt. Letter No. 41732/Pol. 18/2007-2 dated 5.7.2007 rejecting the request for grant of advance increments to the Petitioner and that his request may have to be considered by the next Pay Commission to be constituted. The 1st Respondent would submit that Government Servants are entitled to advance increments vide Government Letter No. 23270 of 1985 dated 6.5.1985 of P and AR (FR.II) Department, with the following condition:

Where the Government have spent money on any officer by giving him study leave and allowance or have treated the study period as duty with full pay and allowances for acquiring the special qualification or where the special qualification other than Account Test for Subordinate Officers Part-I is made essential for further promotion, he is not entitled to the benefit.

4d. According to the 1st Respondent, the averment of the Petitioner that he had acquired Ph.D. Degree on his own and not at the expense of the Government is contrary to the fact. Actually, the Petitioner pursued his part-time research work in the Forensic Sciences Department and has drawn full pay and allowances during the period of conducting research work for his Ph.D. degree. Moreover, he has utilized various Government equipments and chemicals for the research work. Hence, as per the Government Order quoted by the Petitioner, he is not eligible for advance increment.

4e. It is also the stand of the Respondents that no rights and entitlements of the Petitioner were denied, as no general order has been issued by the Government with reference to sanction of advance increment. In the absence of such an order, advance increments for acquiring Ph. D. Qualification cannot be sanctioned. Even though, the Government has suggested that the matter be referred to the next Pay Commission, the Petitioner has hastily approached this Court. Therefore, the Respondents pray for dismissal of the writ petition.

5. Mr. Prakash, learned Counsel appearing for the Petitioner has strenuously contended that as per the proceedings of the 2nd Respondent, dated 30.1.1991, the Petitioner was permitted to pursue the part-time research work for Ph. D. degree at the Forensic Sciences Department, Chennai under the guidance of Dr. G.J. Srinivasan, Assistant Director, Physics Division, Forensic Sciences Department, Madras. Therefore, doing a part-time work besides his normal duty cannot be construed that he had undergone the course with the Government money and acquired the special qualification and therefore, he is not entitled for any advance increments.

5a. Learned Counsel pointed out from the Government Order in G.O. Ms. No. 1159 dated 21.11.1984 that the scheme of sanction of advance increments for acquisition of higher qualification in vogue prior to 5.9.1983 was revived with immediate effect and it was clarified therein that such Officers who have already availed themselves of the lumpsum grant under G.O. Ms. No. 843, dated 5.9.1983 were permitted to retain the benefit. It was further made clear, that if a person who has already drawn the lumpsum grant wishes to avail himself of the scheme of sanction of advance increment, he shall refund the lumpsum grant in one instalment and then apply to the concerned authority for sanction of advance increment. It was specifically mentioned therein that the said order is applicable to Government Servants including Teachers. He would further contend that the scheme is applicable to Officers upto and inclusive of Second Level Officers below the Heads of Departments and the Petitioner being a Second Level Officer is eligible to avail the scheme of sanction of advance increment for a higher

qualification.

6. Per contra, learned Additional Government Pleader appearing for the Respondents would submit that the Petitioner has been permitted to undergo part-time studies with a condition that conducting part-time research work does not confer any preferential right in any matter whatsoever and also with a further condition that he should not utilize available Government equipments, chemicals, etc. in the Forensic Sciences Department. He would contend that the Petitioner had undergone studies by spending Government money for acquiring higher qualification. Hence, in the absence of any Government Order for granting advance increments for acquiring Ph. D. qualification, the Petitioner cannot ask for such sanction of advance increments.

7. I have heard the learned Counsel on either side, perused the material documents and analyzed the provisions and various Government orders.

8. A careful analysis of the facts would reveal that the Petitioner had joined the Respondent Tamil Nadu Forensic Sciences Department as Scientific Assistant Grade-II in the year 1985 on completion of M. Sc. in Forensic Science and thereafter, with the permission of the 2nd Respondent, vide letter dated 30.1.1991, he pursued part-time research work for Ph. D. degree at the Forensic Sciences Department, Chennai under the guidance of Dr. G.J. Srinivasan, Assistant Director, Physics Division, Forensic Sciences Department, Madras, subject to the following conditions:

- (i) he should do the research work without detrimental to his normal official work
- (ii) no financial assistance shall be given for doing the research work
- (iii) he should abide by the rules and regulations laid down from time-to-time by the Forensic Sciences Department and the University of Madras including the payment of fees, etc
- (iv) he is liable to pay full compensation for any damage to the property of Forensic Sciences Department and do the research work at his own risk.
- (v) in case of any dispute, the decision of the Director, Forensic Sciences Department, Madras shall be the final
- (vi) he should pay a research fee of? 300/- per annum (payable in two instalments, I not later than 31st January and the II not later than 30th July) and a refundable Caution Deposit of Rs. 100/- at the time of his joining the course and
- (vii) conducting part-time research work does not confer any preferential right in any matter whatsoever.

9. Accepting the said conditions, the Petitioner underwent the research work and completed Ph. D. Degree in Forensic Science. Thereafter, he made a representation to the 2nd Respondent on 27.10.1999 praying for grant of

advance increments. Since his representation was not considered, the Petitioner approached this Court in W.P. No. 6390 of 2007 for a direction to the Respondents to dispose of his representation dated 16.10.2006 and this Court, by an order dated 22.2.2007 directed the Respondents to dispose of the Petitioner's representation dated 16.6.2006 on merits and in accordance with law. Thereafter, the matter was apprised by the 1st and 2nd Respondents and finally, a letter of communication dated 5.7.2007 was sent to the Petitioner stating that his request for advance increments cannot be conceded and that his proposal may have to be considered by the next Pay Commission.

10. From a perusal of the above material information, it appears that the claim of the Petitioner is based on the Government Order in G.O. Ms. No. 1159, dated 21.11.1984, as clarified by the letter dated 6.5.1985, wherein it is stated that the grant of advance increment will be applicable to officers upto and inclusive of Second Level Officers below the Heads of Departments. It is a clear case that the Petitioner herein is not the Head of Department and he is a Second Level Officer. It is also clear from the letter dated 6.5.1985 that sanction of advance increments is made to those who acquire the requisite qualification for appointment to any post and that it will not be applicable to those acquiring special qualification than the prescribed one. The Petitioner's case is that he joined the Forensic Sciences Department with M.Sc. degree and thereafter, he acquired Ph.D. degree.

11. In the above circumstances, it has to be seen as to whether the Petitioner has violated any of the conditions of the permission letter dated 30.1.1991. It appears from the pleadings as well as the material documents that the Petitioner has not violated any of the conditions and he has undergone the course without any detriment to his normal work and no financial assistance has been given to him for doing the research work except utilization of the equipments and chemicals in the Forensic Sciences Department for research purpose. It is further seen that he has complied with all the conditions. But, the only question raised by the Respondents is that the condition of permission to do the part-time research work does not confer any preferential right in any matter whatsoever and further, it is their contention that the Petitioner did the part-time programme using Government money and therefore, he is not entitled for advance increment.

12. On a perusal of the above Government Orders and the permission letter, dated 30.1.1991, it is crystal clear that the Petitioner has done the research work without any detriment to his normal office work and it is only a part time programme. In such circumstances, when the Petitioner has not utilized the Government money for his studies as per the terms and conditions of the Permission letter, the stand of the Respondents that the Petitioner is not entitled to advance increment for higher studies as he had undergone the course using Government money and had utilized the equipments and chemicals of the Forensic Sciences Department cannot be sustained, in view of the Government orders as well as the letter of communication dated 6.5.1985 and also in view of

the conditions of appointment.

13. In such view of the matter, the reasoning given by the Respondents that in the absence of any Government Orders, the claim of the Petitioner for advance increments cannot be granted, is not found to be justifiable on any counts and their stand that the Petitioner's claim has to be considered by the next Pay Commission is also unjustifiable. Therefore, the impugned communication suffers from legal infirmity as it goes against the Government scheme as well as the letter of Permission.

14. For the foregoing reasons, as the impugned order dated 5.7.2007 passed by the 1st Respondent suffers from legal infirmity, it is set aside and the writ petition is allowed with a direction to the 1st Respondent to consider the claim of the Petitioner for advance increments within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected M.P. No. 1 of 2008 is closed.