

(2011) 09 MAD CK 0197

In the Madras High Court

Case No : Writ Petition (MD) No. 3573 of 2007

Dr. M. Nagoor Meeran, Associate Professor, Tamil Nadu
Veterinary and Animal Sciences University, Veterinary
University Training and Research Centre

APPELLANT

Vs

The Tamilnadu Veterinary and Animal Sciences University,
The State of Tamil Nadu and The Secretary to Government of
Tamil Nadu, Department of Animal Husbandry and Fisheries

RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:

Central Civil Services (Revised Pay) Rules, 1997 — Rule 7

Citation : (2011) 09 MAD CK 0197

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

**Advocate : Isaac Mohanlal, for the Appellant; S. Vijaya kumar Advocate for R-1
and S. Bharathi for R-2 and R-3 Government Advocate, for the Respondent**

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The Petitioner prays for issuance of a Writ, in the nature of Mandamus, directing the Respondents, to place the Petitioner as Associate Professor with effect from 18.08.1997, and Professor with effect from 18.08.2005, with all consequential benefits.

2. The pleaded facts read as under:

The Petitioner is serving as Associate Professor, Veterinary University Training and Research Centre, Thanjavur, and possesses the degree of Bachelor of Fisheries Science, M. Sc., (Agriculture), and Ph.D., in Aquaculture.

3. The Petitioner, initially, joined in the Tamil Nadu Agricultural University, Coimbatore, as Assistant Professor on 18.08.1984, with Post Graduate Qualification. The faculties of Animal Husbandry and Fisheries were with the Agricultural University. On 20.09.1989, Tamilnadu Agricultural University was

bifurcated, and the Petitioner was absorbed in the Tamilnadu Veterinary and Animal Sciences University on 01.01.1992. The Petitioner opted to be absorbed with Tamil Nadu Veterinary and Animal Sciences, being the Fisheries Graduate, and the faculty was brought under the control of the Tamilnadu Veterinary and Animal Sciences University.

4. In the year 1989, the University Grants Commission revised pay scales with retrospective from 01.01.1986, with an object to provide uniform emoluments, service conditions, and grievance removal mechanism throughout the Country in all the Universities, and Colleges affiliated thereto.

5. The recommendations of the University Grants Commission were adopted by the Government of Tamil Nadu, and a Government Order G.O. Ms. No. 208 dated 27.03.1989, was issued for regulating the scheme of appointment, scales of pay, qualifications, the mode of recruitment and the Career Advancement Scheme.

6. The Petitioner, on completion of eight years of service as Assistant Professor, was placed as Assistant Professor (Senior Scale) on 30.11.1992, and thereafter, transferred to the Veterinary University Training and Research Centre, Thanjavur on 28.02.1994. On 19.07.1996, the Petitioner was awarded Ph.D., in Aquaculture.

7. As per the UGC guidelines, adopted by the State of Tamil Nadu, the applications were invited in the year 1997, under the Career Advancement promotions. The Petitioner, being not eligible, could not apply. Thereafter, on 15.05.2001, the Tamilnadu Veterinary and Animal Sciences University, invited applications, for placement of Professors under the Career Advancement Scheme. The Petitioner submitted his application, for placement, as Associate Professor. The Petitioner was awarded the benefit under the Career Advancement Scheme with effect from 14.03.2002.

8. In July 1999, the University Grants Commission revised the scale of pay, which were to come into force after its acceptance by the Government. The G.O. Ms. No. 149 Animal Husbandry and Fisheries (AH 6) Department dated 06.07.1999, was issued implementing, the new pay scale retrospectively, with effect from 01.01.1996, and were also made applicable to the Career Advancement Scheme.

9. Under the revised norms, for the post of Associate Professor, it was stipulated, that total of nine years, as Assistant Professor, and Assistant Professor (Senior Scale) with Ph.D. In case of employee, not having Ph.D., combined service of 11 years was fixed, as Assistant Professor, and Assistant Professor (Senior Scale) for placement, as Assistant Professor (Selection Grade), which had the equivalent pay scale, as that of Associate Professor.

10. For promotion to the post of Professor, one was required to put eight years of service as Associate Professor with Ph.D., qualification and an Assistant Professor (Selection Grade) not possessing Ph.D., was required, to acquire the qualification, and thereafter, put in eight years of service.

11. The Petitioner was promoted, as Associate Professor on 14.03.2002, under UGC Career Advancement Scheme, though he had attained the eligibility on 18.08.1997 as per the U.G.C. Norms 1986 and on 19.07.1996 as per U.G.C norms 1996.

12. The grievance of the Petitioner, therefore, is that he was denied more than four years, and seven months of promotional service, as Associate Professor, by promotion on 14.03.2002.

13. The pleaded case is, that on the representation filed, Petitioner was informed by the Registrar of the Tamilnadu Veterinary and Animal Sciences University, that he could apply for career advancement, as and when the applications were invited by the University. The next promotion post of Petitioner was that of the Professor.

14. In the year 2005 -2006, the University considered the candidates for promotion as Professors, but the case of the Petitioner was not considered under the Career Advancement Scheme, since his service in the cadre of Associate Professor was counted from 14.03.2002, though he was entitled to be considered with retrospective effect from the date of attainment of eligibility, which was the norms followed by other Universities of Tamil Nadu, including Tamil Nadu Agricultural University and ICAR.

15. The grievance of the Petitioner is, that if he was promoted as per the UGC Norms, he was to become Associate Professor on 19.07.1996, and placed above his juniors. It is pleaded that due to the anomaly created in computation of service, the Petitioner was pushed back in seniority, and placed on par with his juniors.

16. On 18.06.2004, Tamilnadu Veterinary and Animal Sciences University invited applications for promotion to post of Professors. The Petitioner submitted application on 07.07.2004 with a request to consider his case for promotion, as per the provisions of the Government Order regarding Career Advancement Scheme 1996. The Petitioner was eligible to be considered for placement, as Professor under the Career Advancement Scheme, as he had put in more than 17 years of service. In terms of the Government Order implementing UGC 1996 recommendations, the Petitioner was entitled to be promoted as Professor with total of 17 years of service altogether i.e., as Assistant Professor and Associate Professor. The Government orders provided that the promotion under the Career Advancement Scheme was to be effected, as per the procedure already followed in University, and the benefits were to accrue from the date of attainment of service eligibility, even though the selection was on a later date.

17. The Petitioner filed a representation with the Registrar, Tamilnadu Veterinary and Animal Sciences University, to consider his application dated 07.07.2004, for being promoted as Professor, but his application was not considered, which forced the Petitioner, to file another representation on 01.12.2005, seeking retrospective promotion from the date of attaining eligibility.

18. The Petitioner was transferred back to the Veterinary University Training and Research Centre, Thanjavur on 19.12.2005. The applications were again invited in January 2006. The Petitioner submitted his application on 24.01.2006, which was followed by the representation dated 24.02.2006. The representation of the Petitioner was not considered. The Petitioner submitted yet another representation on 01.06.2006, seeking promotion from due date i.e., the date of attaining eligibility, as per the U.G.C recommendations adopted by the State Government.

19. On the facts stated herein above, the Petitioner prays for the following relief:

In these circumstances, the Petitioner humbly prays that this Hon"ble Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order or Direction in the nature of a Writ, directing the Respondents herein to place him as Associate Professor with effect from 18.08.1997 and place him as Professor with effect from 18.08.2005 with all attendant benefits in the respective cadre from the date of such placements and pass such further or other suitable Order / Orders as this Hon"ble Court may deem fit and proper in the circumstances of the case, and thus render justice

20. The writ petition is opposed by the first Respondent / Tamilnadu Veterinary and Animal Sciences University, on the ground, that the Petitioner has placed reliance on the Government Orders, pertaining to the Tamil Nadu Agricultural University, which are not applicable to the first Respondent. The case of the first Respondent is, that the Tamilnadu Veterinary and Animal Sciences University was formed, by bifurcating Tamil Nadu Agricultural University, and segregating the Veterinary and Fisheries faculties. The University as well as UGC / ICAR provides for career advancement promotion, for the employees of the University. In terms of the Scheme, the University has the Act, Statutes, Regulations and Rules duly approved by the Government of Tamil Nadu.

21. The case of the first Respondent is, that the Government of Tamil Nadu vide G.O. Ms. No. 149 Animal Husbandry and Fisheries (AH6) Department, dated 06.07.1999 revised the pay scale of the teaching staff of the University with Career Advancement benefits, as prescribed by UGC / ICAR, and there is no provision in the aforesaid Government Order, to adopt the career advancement scheme with retrospective effect for the teaching staff of the University.

22. The stand taken by the first Respondent is, that in terms of the Government Order, the Petitioner stood promoted as Associate Professor on 27.07.1998, and Professor on 01.01.2009.

23. The stand of the first Respondent is that G.O. Ms. No. 149 dated 06.07.1999 applicable to the Petitioner stipulated as follows:

The Government of India decided to accept the recommendations of the University Grants Commission and implemented the revision of Pay scales for college and University Teachers. The Indian Council of Agricultural Research

(ICAR) has recommended that the revised scales of pay as extended to ICAR Scientists might be extended to the corresponding teaching and research posts in all the State Agricultural / Veterinary Universities in India with effect from 01.01.1996. The ICAR on behalf of the Government of India, has agreed to provide financial assistance to the State Governments for implementing the revised UGC scales of pay

24. That the Government accepted the Career Advancement Scheme formulated by the University Grants Commission as accepted by the ICAR. In terms of the Government Order, based upon the length of service, Assistant Professor (Senior Scale), Assistant Professor (Selection Grade) to be promoted as Associate Professor and Associate Professor with a minimum of eight years of service for promotion as Professor. The stand of the first Respondent is that, if any, amendment is made by the UGC / ICAR, it is adopted by the Respondents from time to time.

25. That as per the Government Order, the Petitioner became eligible to be promoted as Associate Professor on 14.03.2002. The subsequent amendment issued vide G.O. Ms. No. 101 Animal Husbandry Dairying and Fisheries (AH6) Department dated 30.06.2010, enabled the individual for benefit due under the Career Advancement Scheme, for promotion from the date he becomes eligible even though selection was made at a later stage. The said Government Order reads as under:

The individual would become eligible for benefits due from Career Advancement scheme promotion from the date he becomes eligible, even though selection is made at a later date

26. In spite of the Government Order referred to above, the stand of the Respondents, is that ICAR implemented the Career Advancement Scheme with effect from 27.07.1998, and instructed the Universities, to give promotion with retrospective effect from 27.07.1998, as per ICAR norms. The stand of the Respondents therefore is, that in view of the ICAR norms, the effective date of Career Advancement is 27.07.1998, and not 01.01.1996.

27. The further case of the Respondents is, that as per ICAR Notification dated 06.12.2000, the Career Advancement Scheme was effective from July 1998. Reliance is also placed on the letter No. F.N.7(13)/2002-EP & D dated..07..02, from the Deputy Secretary (Education), addressed to all Vice Chancellors, stating therein, that ICAR Notification was effective from 27.07.1998. It was also directed in the letter, that the payment made by revising the pay from 01.01.1996, be recovered, and remitted back to the Government. The stand of the Respondents is, that the implementation of the Career Advancement Scheme with effect from 01.01.1996 was wrong.

28. It is also the stand of the Respondents, that it was in view of the clarification of ICAR, that the Petitioner though given elevation as Associate Professor on 14.03.2002, but the same was re-fixed with effect from 27.07.1998. It is also

the stand of the Respondents, that other Associate Professors / Professors similarly situated like the Petitioner were also given benefit of Career Advancement Scheme with effect from 27.07.1998 i.e., cut off date fixed by the ICAR.

29. That again in response to recommendations of VI Pay Commission, the State of Tamil Nadu issued a Government Order in G.O. Ms. No. 41 Animal Husbandary Dairying and Fisheries (AH6) Department dated 15.03.2010, providing therein as under:

Associate Professor completing three years of service in the AGP of Rs. 9,000/- and possessing a Ph.D., degree in the relevant discipline shall be eligible to be appointed and designated as Professor, subject to other conditions of academic performance as laid down by the UGC -ICAR and if any, by the University or the State Government. No teacher other than those with a Ph.D., degree shall be promoted, appointed or designated as Professor. The Pay Band for the post of Professors shall be Rs. 37,400 -67,000 with AGP of Rs. 10,000

30. The stand of the Respondents is, that the writ Petitioner attained the eligibility of service as Associate Professor on 27.07.1998 and thereafter, he is required to have eight years of service, to be promoted as Professor. Accordingly, the Petitioner attained the eligibility for being promoted as Professor on 01.01.2009, and was elevated as Professor with effect from 01.01.2009.

31. It is, thus, submitted that the Petitioner does not have any case, for being elevated as Associate Professor with effect from 18.08.1997 and Professor with effect from 18.08.2005. The stand of the Petitioner is said to be against the Rules and Regulations prescribed by UGC / ICAR and also contrary to the Government Orders.

32. In view of the respective stand of the parties, the only question to be determined is whether UGC / ICAR recommendations adopted by the State Government will be applicable from 01.01.1996 or 27.07.1998 as per the stand of the Respondents?

33. In order to appreciate the controversy, it is necessary to refer to Government of India, Ministry of Human Resource Development (Department of Education) letter No. F-1-22/97-U. 1BR dated 27.07.1998, regarding revision of pay scale of teachers in the Central Universities following the revision of pay scales of Central Government employees, on the recommendations of the v. Central Pay Commission. The relevant portion of the said letter reads as under:

1. Pay Scales

A statement showing the existing and revised scales of pay is attached as Annexure.

The revised Scales of Demonstrators / Tutors is for the existing incumbents only. No fresh recruitment shall be made to the cadre of Demonstrators / Tutors.

2. Incentives for Ph.D / M. Phil

- (a) Four and Two advance increments will be admissible to those who hold Ph.D., and M. Phil degrees 13 respectively, at the time of recruitment as Lecturers.
- (b) One increment will be admissible to those teachers with M. Phil who acquire Ph.D., within two years of recruitment.
- (c) A Lecturer with Ph.D., will be eligible for two advance increments when he moves into Selection Grade as Reader.
- (d) A teacher will be eligible for two advance increments as and when he acquires a Ph.D., degree in his service career.

3. Career Advancement

- (a) Minimum length of service for eligibility to move into the grade of Lecturer (Senior Scale) would be four years for those with Ph.D., five years for those with M. Phil., and six years for others as a Lecturer, and for eligibility to move into the grade of Lecturer (Selection Grade) / Reader, the minimum length of service as Lecturer (Senior Scale) shall be uniformly five years.
- (b) For movement into grades of Reader and above, the minimum eligibility criterion would be Ph.D. Those teachers without Ph.D can go upto the level of Lecturer (Selection Grade).
- (c) A reader with a minimum of eight years of service will be eligible for consideration for appointment as a Professor.
- (d) For every upward movement, a selection process would be evolved, for which appropriate guidelines would be laid down by the UGC in consultation with the Government.

4. Rewarding the Merit

A super time scale of Rs. 12,000 -500 -24,500 will be given to such Professors of Eminence who are directly recruited and have completed 28 years of service. The eligibility criteria and the selection process will be determined by the UGC.

- (a) University Grants Commission would prepare a specific scheme in consultation with Government to reward and recognize meritorious teachers who may not have M. Phil or Ph.D but who have made outstanding contributions in teaching and research.

5. Allowances, effective date and fitment formula

The revised scales of pay as contained in the Annexure -I will be given prospective effect from the date of issue of this letter.

- (a) For the period from 01.01.1996 to the day on which these decisions take effect, pay will be fixed in the replacement scales recommended by the UGC 15 appointed Pay Review Committee as per Annexure -II.

(b) Pay with effect from 01.01.1996 in the revised scale of pay will be fixed after giving the benefit of one increment for every three increments earned in the pre-revised scales as stipulated in Rule 7 of Central Civil Services (Revised Pay) Rules 1997 and governed by other relevant provisions of Central Civil Services (Revised Pay) Rules 1997 as applicable.

(c) Pay in the revised scales of pay as at Annexure -I of this letter shall be fixed at the same stage with reference to the stage admissible vide para (c) above. In cases where the same stage is not available, the pay may be fixed at the stage next above the pay admissible vide para (c) above. The payment of arrears will be made in one installment.

(d) Teachers in Central Universities will be entitled to Dearness Allowance, House Rent Allowance, Transport Allowance, City Compensatory Allowance and other allowances at the same rates and dates as applicable to the Central Government employees.

34. This letter, is the basis of the stand of Respondents that the revised pay scale were effected from the date of issuance of a letter dated 27.07.1998.

35. This stand belied by the letter No. F.1-22/97-U.I Government of India, Ministry of Human Resource Development (Department of Education), New Delhi dated 06.11.1998, stipulating therein as under:

In continuation of this Ministry's Letter of even number dated 27.07.1998 and in supersession of the letter dated 12.09.1998 on the subject mentioned above, I am directed to say that the letter relating to revision of pay scales of University and College Teachers was further consider by the Government and it has been decided to make certain modifications in the Scheme already notified by the Government vide our letter dated 27.07.1998. The modifications made in the existing Scheme are as under:

Pay Scales:

i. The revised scales mentioned in Annexure -I of our letter dated 27.07.1998 shall be effective from 01.01.1996. Accordingly, the Annexure II enclosed with the letter referred to may be treated as withdrawn.

ii. The fixation of pay of Lecturers (Selection Grade) / Readers in the pre-revised scale of Rs. 3700-125-4590-150-5700/- who were selected strictly in accordance with the rules and Regulations framed by the UGC and who were in position as Lecturers (Selection Grade)/ Readers as on 01.01.1996, will be made in a manner that they get their pay fixed at the minimum of Rs. 14,940/- in the revised scale of Rs. 12000 -420 -18300 as and when they complete five years in the grade

36. The doubt, if any, as to the date of effective implementation of the revision of pay scales stood clarified, when it was made effective from 01.01.1996, and rightly adopted by the State Government, qua the Tamil Nadu Agricultural

University, while revising the pay scale, and granting benefit under the Career Advancement Scheme.

37. The Government of Tamil Nadu, adopted the recommendations of UGC vide G.O. Ms. No. 149 dated 06.07.1999. The only difficulty was that while in G.O. Ms. No. 270 Agriculture (AU) Department dated 08.10.2011 issued by the Government of Tamil Nadu, it was stipulated as under:

3.2. The revised Career Advancement Scheme will take effect from 01.01.1996 onwards. The promotions under Career Advancement Scheme will be done as per procedure already followed in the University and all the benefits for the individual will be given from the date of attainment of service eligibility of the individual though selection is done at a later date

38. This clause was not incorporated, while implementing the revised pay scale, in the case of employees of the Tamilnadu Veterinary and Animal Sciences University. Even in absence of any clarification, in view of the orders of the Government of India dated 06.11.1998, the benefits were to be granted from 01.01.1996. The Petitioner is entitled to be placed as Associate Professor with effect from 18.08.1997 and Professor with effect from 18.08.2005, as prayed for.

39. The doubt, if any, stood clarified vide G.O. Ms. No. 101 Animal Husbandry, Dairying and Fisheries (AH6) Department dated 30.06.2010 which reads as under:

The following amendments are issued to the G.O.(MS) No. 149 Animal Husbandry, Dairying and Fisheries (AH6) Department dated 06.07.1999.

Amendment

i. After the existing paragraph (iv) under CAREER ADVANCEMENT SCHEME the following paragraph shall be added as paragraph (v).

V) The individual would become eligible for benefits due from Career Advancement Scheme promotion from the date he becomes eligible, even though selection is made at a later date

ii. The existing paragraph (v) shall be renumbered as paragraph (vi)

40. Therefore, the benefit under the Advancement Scheme is to be given from the date of eligibility, even if selection is made on a later date. The letter No. F.N.7(13)/2002 -EP & D of the Indian Council of Agricultural Research, New Delhi is based on wrong interpretation of the Circular, and issued in ignorance of the letter No. F.1-22/97-U.I Government of India, Ministry of Human Resource Department, (Department of Education), New Delhi dated 06.11.1998, therefore, cannot advance the case of the Respondents. It is only an administrative order, being contrary to Regulations deserves to be ignored.

41. Once it is not disputed that the revision of pay scale effective from 01.01.1996, and further more, the benefit was due from the date of eligibility

and not from the date of selection, the stand of the Respondents in denying the benefit to the Petitioner from the date of eligibility, therefore, cannot be sustained. The stand of the Respondents that revised pay scale / Career Advancement Scheme was to apply from 27.07.1998 also cannot be accepted.

42. Consequently, this writ petition is allowed, a writ in the nature of Mandamus is issued, directing the Respondents to place the Petitioner as Associate Professor with effect from 18.08.1997 and as Professor with effect from 18.08.2005 with all consequential benefits. The needful be done within two months of the receipt of certified copy of this order.

No costs.