

A. Ravi and Others Vs. Indian Council of Medical Research Represented by the Director General, Dr. V. Ramalingaswami Bhavan, New Delhi and Others

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Court : Chennai

Decided On : Jun-30-2016

Judge : A. Selvam & P. Kalaiyarasan

Appeal No. : W.P.No. 26273 of 2010

Appellant : A. Ravi and Others

Respondent : Indian Council of Medical Research Represented by the Director General, Dr. V. Ramalingaswami Bhavan, New Delhi and Others

Judgement :

(Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking an order to issue a writ of certiorarified mandamus, calling for the records relating to the order of the third respondent, dated 04.05.2009 relating to O.A.No.820 of 2006 and quash the same and consequently, allow the O.A.No.820 of 2006.)

P. Kalaiyarasan, J.

This writ petition has been filed, seeking a writ of certiorarified mandamus to call for the records relating to the order of the Central Administrative Tribunal (third respondent), dated 04.05.2009 made in O.A.No.820 of 2006 and quash the same and consequently, allow the O.A.No.820 of 2006.

2. The case of the petitioners in nutshell is as follows :

(i) The writ petitioners were appointed as Laboratory Attendant between 1992 and 1999, pursuant to the notification, calling for applications for the said post, whereunder necessary qualification was Matric / SSLC with previous experience in Lab. The petitioners are having the said requisite qualification. The Fifth Pay Commission, while dealing with similar posts, recommended that wherever the qualification for the post was of High School (SSLC / Matric / 10th standard), the scale of pay should be Rs.3050-4590 instead of Rs.2650-4000. Pursuant to the said recommendations, the first respondent issued directions that the scale of pay of Rs.3050-4590 be granted to the writ petitioners.

(ii) The petitioners' representation was considered, pursuant to the direction of the Central Administrative Tribunal, in O.A.No.849 of 2001. The second respondent, by an order, dated 22.11.2002, granted the scale of Rs.3050-4590 to the petitioners. In the meanwhile, the Recruitment Rules were framed in the year 2000, specifying the minimum educational qualification for the post as 8th standard and not SSLC pass. Based on the Recruitment Rules, some persons including Arumugam were promoted as Laboratory Attendant from various posts. They approached the third respondent, Tribunal, by way of filing O.A.No.489 of 2005, seeking higher scale of pay, i.e., 3050-4590.

(iii) The Tribunal, while rejecting the contention, by its order, dated 28.02.2006, observed that only the minimum qualification prescribed in the Recruitment Rules is relevant for the fixation of scale of pay for the post. The second respondent, by an order, dated 26.10.2006, reduced the petitioners' pay scale to 2650-4000. Challenging the said order, the petitioners preferred O.A.No.820 of 2006 before the third respondent and that application was dismissed, by order, dated 04.05.2009, with a direction that pay scale already granted shall not be recovered from the applicants. Therefore, the present writ petition has been filed.

3. In the counter filed by the respondents 1 and 2, it is averred that as per the Recruitment Rules, the qualification is prescribed as middle pass and the possession of higher qualification than prescribed in the Recruitment Rules for the post does not entitle the holder of the post to a pay scale different from one

prescribed for the post. The facts regarding the qualification, appointment and the framing of Recruitment Rules in 2000 and promotion to certain persons from other cadres as Laboratory Attendant, as per Recruitment Rules and the dismissal of their Original Application, seeking higher scale of pay are all admitted. Therefore, the writ petition has to be dismissed.

4. Earlier, a Division Bench of this Court, by order, dated 13.03.2012, allowed the writ petition and set aside the order passed by the Tribunal in O.A.No.820 of 2006. The respondent herein took the matter to the Supreme Court. The Hon'ble Supreme Court in Civil Appeal No.705 of 2014 allowed the appeal, holding that this Court does not either formulate the points that fall for consideration leave alone deal with the same effectively and remanded back the matter to this Court, to decide the writ petition on merits. Thus the writ petition is again before this Court now to decide it on merits.

5. Learned counsel appearing for the writ petitioners submits that the benefit given to the petitioners was cancelled without affording an opportunity to them; that the same scale of pay is being followed in all other Institutions under the first respondent and that the Tribunal has not seen the requirement of minimum qualification at the time of entry into service of the petitioners is only SSLC and not 8th standard.

6. Learned counsel appearing for the respondents 1 and 2 per contra contends that fixation of pay is the domain of the Executive and that for one post there cannot be different pay scale and that the Tribunal has rightly dismissed the application, after analysing the rival contentions.

7. The undisputed facts are that the petitioners were appointed as Laboratory Attendant with the qualification of SSLC, pursuant to the notification, calling for applications for the said post, prescribing qualification of SSLC. Subsequent to their appointment, Recruitment Rules were framed in 2000 and the minimum qualification for the above post, i.e., Laboratory Attendant is prescribed as 8th pass. Considering the representations of the petitioners, the first respondent recommended to the second respondent, to revise the pay of the petitioners to Rs.3050-4590 w.e.f. 01.01.1996. The above recommendation, dated 07.11.2001 is

as follows :

"Laboratory Attendant : It is recommended that scales Laboratory Attendants recruited with High school as essential qualification may be revised to Rs.3050-4590 w.e.f. 1.1.1996 as per paragraph 66.165. This should be applicable to all Institutes with similar recruitment rules."

8. The above recommendation for revision of pay was made by considering the representations of the petitioners, as per orders of the Central Administrative Tribunal in O.A.No.504 of 2001 and O.A.No.844 of 2001.

9. In the meanwhile, persons with the qualification of 8th pass from various feeder categories were also promoted. Four of such persons, i.e., Arumugam and others claimed the higher scale of pay on par with the present petitioners, as they are having the minimum prescribed qualification and they were holding the same post. According to them, they are entitled to the scale of pay approved for that post. Their claim was rejected by the Central Administrative Tribunal. Realising the mistake, the first respondent, responding to the letter of the second respondent, requested to withdraw the higher pay scales given to Laboratory Attendant possessing the higher qualification in its letter, dated 12.10.2006, as follows :

"I am directed to invite a reference to your letter No.VCRC/Estt./OA489-05/2006/1519, dated 31.3.2006 on the above subject mentioned above and to request you to withdraw the higher pay scales of Rs.3050-4590 given to Lab. Attendants possessing the higher qualifications of High School as per the judgment given by the CAT Madras Bench."

10. This withdrawal order was under challenge before the Central Administrative Tribunal and the Tribunal held that the impugned order, dated 12.10.2006 of the first respondent will prevail and further, directed not to recover the salary of the applicants therein already granted as per letter No.VCRC.ADMN/PAY-REVISION/2002-2003/689, dated 22.11.2002.

11. There is no dispute that the pay scale fixed for the post of Laboratory Attendant is 2650-4000, as per the V Pay Commission recommendations. The

internal anomaly committee had recommended the higher pay scale of RS.3050-4590 w.e.f 01.01.1996 for the post of Laboratory Attendant recruited with High School as essential qualification. Subsequent to the appointment of the petitioners, essential qualification for the post of Laboratory Attendant has been prescribed as 8th pass in the Recruitment Rules.

12. Though it is contended that the same scale of pay is being followed in all other Institutions under the first respondent, no material has been placed to substantiate the same.

13. In service law, a person appointed to a particular post with minimum prescribed qualifications, is entitled to the pay in the scale approved for the post. There cannot be different scale of pay for the same post.

14. It is well settled that the Court can interfere, if there is violation of Article 14 and 16 of the Constitution. The Hon'ble Supreme Court in **Union of India v. T.V.L.N.Mallikarjuna Rao**, reported in **(2015) 3 SCC 653** held in paragraph 27 as follows :

"27...Difference in pay scales based on educational qualifications, nature of job, responsibility, accountability, qualification, experience and manner of recruitment does not violate Article 14 of the Constitution of India."

It has been further held in paragraph 26 as follows :

"The classification of posts and determination of pay structure comes within the exclusive domain of the executive and the Tribunal cannot sit in appeal over the wisdom of the executive in prescribing certain pay structure and grade in a particular service. There may be more grades than one in a particular service."

15. In the instant case, denial by the authority for the higher scale of pay, i.e., 3050-4590 based on educational qualification for a particular post, namely Laboratory Attendant, for which the prescribed minimum qualification has been refixed from High School to 8th standard pass does not violate Article 14 of the Constitution. Further, as per the above ruling, determination of pay structure comes within exclusive domain of executive and therefore, the Tribunal has rightly

rejected the claim of the petitioners. The authority, having ordered and disbursed the higher scale of pay to the petitioners for a particular period, has been rightly directed not to recover the same by the Tribunal. We do not see any reason to interfere with the findings and conclusion of the Tribunal.

16. In fine, the writ petition fails and accordingly, the same is dismissed. No costs.

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