

12 IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON:24/09/2014

DATED: 25/02/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.35145 of 2007

Dr.U.T.Manisundar

Petitioner

Vs.

1.University of Madras,
Rep. by its Registrar,
University of Madras,
Chepauk, Chennai - 600 005.

2.The Director,
Institute of Distance Education (IDE),
University of Madras,
Chepauk,
Chennai - 600 005.

3.The Chiversity Grants Commission,
represented by its senetary,
New Delhi.

(R3-Impleaded as per order dated 22.02.2013
by PRSJ in W.P.No.35145 of 2007)

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Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus or any other Writ, order or direction to call for the records relating to the impugned official communication F1(B)/Estt./Tech/2007/1446, dated 10.10.2007 passed by the first respondent and quash the same and to direct the 1st respondent to promote the petitioner as Joint-Director under the 2nd respondent as per the recommendation of the Task Force of Distance Education Council dated 06.09.2000 and the representation of the petitioner dated 23.10.2007, with back wages and all monetary benefits.

For Petitioner : Mr.K.Venkataramani (Senior Counsel)
for Mr.A.G.Rajan
For Respondents : Mr.Mani Sundar Gopal for R1 and R2
Mr.P.R.Gopinathan for R3

O R D E R

The short facts of the case are as follows:-

The petitioner further submits that the W.P.No.13863 of 2007 was filed for the issue of writ of mandamus or any other appropriate writ, Order or direction to direct the 1st respondent to promote the petitioner as Joint-Director under the 2nd respondent as per the recommendation of the Task Force of Distance Education Council dated 06.09.2000 and the representation of the petitioner dated 04.08.2006, with all monetary benefits. After notice to the respondents, this Court has passed the following orders:

"4. The relief sought for in the present writ petition is for a Mandamus to consider the petitioner's claim for promotion as Joint Director. In support of his claim for promotion, reliance has been placed on the recommendation of the Task Force of Distance Education dated 06.09.2000. There is also a representation dated 04.08.2006. The official memorandum clearly states that the case of the petitioner has been referred to the Expert Committee for evaluating the Self Assessment Report. It is for the authority to take a final decision one way or the other. In view of the statement of the counsel for the University that the final decision is now pending before the Syndicate, the relief sought for in the writ petition cannot be granted at this point of time. The authorities can however be directed to consider the claim at an early date and communicate the same to the petitioner. The respondents are directed to consider the petitioner's claim on merits. The Registrar shall communicate the outcome of such decision to the petitioner so as to work out his remedy in accordance with law. As prayed for by the counsel for the respondent, the above exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. No Costs. Consequently, connected miscellaneous petition is closed".

2. The petitioner further submits that he has joined as Systems Analyst on 21.10.1985, under the 1st respondent University of Madras. The 1st respondent on 24.03.1994, by his official

communication has informed the petitioner that the petitioner will hold addition charge of Co-ordinator, Data Cell until further order. By proceedings dated 09.04.1996, the 1st respondent has regularized the petitioner's services with effect from 21.10.1985, as System Analyst and Co-Ordinator (In-charge).

3. The petitioner further submits that the petitioner's service details are given below:

System Analyst	21-10-1985	1200-50-1300-60-1900	Date of Appointment
System Analyst	15-07-1994	3700-125-4700-150-5000	IV Pay fixation
System Analyst	01-01-1996	12000-375-16500	V Pay fixation
System Analyst	01-01-2007	Basic Pay Rs.16125/- in the scale of pay Rs.12000-375-16500	-----

The petitioner further submits that the petitioner's position and scale of pay was on par with that of a Reader's scale of pay Rs.1200-50-1300-60-1900 during 1985 and it was mentioned in the Financial Estimate of Madras University in the year 1985 and the petitioner is still in the equivalent to Reader Cadre. He submits that the petitioner has been denied promotion for two decades by the first respondent and thereby the petitioner has not been given an opportunity to advance in his career. He submits that the petitioner had taken an active role in computerizing the University Examination results with the help of a team of Technical Staff. The petitioner had developed the required software system for both UNIX and DOS environments and the results were published well on time without any error or discrepancy and that the petitioner is the Principal System Analyst and Co-ordinator for the processing and publications of results of both University and Institute of Distance Education UG, PG and professional degree courses. He submits that apart from Examination Results Processing and publications work, as per the first respondent's Communication No.A-III/1/94/307, dated 11.03.1994, both the first and second respondents have utilized the petitioner's services for handling classes for PG students, Research Scholars of University Departments as well as BCA, MCA students of Institute of Distance Education (IDE) respectively.

4. The petitioner further submits that with reference to the official communication No.F1/Estt/Tech/93/1974, dated 10.06.1993 and No.D1(A)/TE/91/2797, dated 23.10.1991 received from the 1st respondent and the Syndicate resolution dated 09.03.93 and as per the communications/letters (nearly 60 excluding BCA course) received from the prof. & Head, Department of Statistics, Head and

Director (RIAM) and the Co-ordinators of M.C.A Programme (ICE/IDE) the petitioner has handled computer classes to U.G., P.G and Research Scholars of Madras University (nearly 30 batches of MCA Students). He submits that with reference to the communication No.S3/MCA/(LW)/ICE/94, dated 10.01.94, No.ICE/LWS/MCA/1999/2235, dated 31.05.1999 and No.ICE/LWS/BCA/1999-2000/9061, dated 06.11.98, received from the 2nd respondent, the petitioner has written 4 Text Books for Madras University B.C.A and M.C.A Degrees in Distance Education. He submits that the petitioner is also rendering academic services (as an Examiner and Setting of Question Papers) to other Universities viz., Indira Gandhi National Open University and Sri Chadrashankar Sarabhai Saraswathi Viswa Mahavidyalaya (Deemed University) for conducting Viva Voce for projects, practicals and Central valuation for BCA, B.Sc (Computer Science and Information Technology), B.E., (Computer Science) and M.C.A., Degrees.

5. The petitioner further submits that each and every year the Madras University is introducing new courses, new affiliations and new regulations and thereby increasing the strength of students both in Regular and Institute of Distance Education (I.D.E). Every year around 4 lack students are appearing for University Examinations for different Degrees/Regulations both for Main and Supplementary examinations. Accordingly, the petitioner had to shoulder higher responsibility to complete the time schedule for both pre and post examinations of results processing. He submits that though the UGC has suggested one System Analyst per Shift (UGC letter D.O.No.F.Pl.1/87(T-II) dated 30.01.1990), the petitioner is the only Systems Analyst taking all the responsibilities at all times (more than 2 shifts) for both regular and IDE and constantly improving the efficiency of results publications and thereby the petitioner is rendering better services to the student community. He submits that the University results publications are being improved both qualitatively and quantitatively according to students strength.

6. The petitioner further submits that apart from Computer centre administration work the petitioner's position is responsible for ensuring the University results publications Time Schedule both for Main and IDE (UG, PG, Professional and Certificate, Diploma courses) Examinations and related services (Statement of Marks, Provisional Certificates, Degree Certificates, Consolidated Statement of Marks, Duplicate certificates, Seating plan, Hall tickets, Nominal Roll, question paper statistics and supply of other office records) are provided in a Co-ordinated and systematic manner, developing, implementing and overseeing operational examinations processing systems, procedures and quality standards; prioritizing the processing work. He submits that the petitioner performs supervising tasks in relationship to subordinates and Co-ordinate activities between the Computer centre and other Examination sections both in regular and IDE. He submits that the

University Grants Commission (U.G.C) has sanctioned other higher posts like Systems Manager, Head of the Computer Centre, Director of Computer Centre, etc. This was approved by their syndicate in its meeting held on October 1986, Item No.184(U.G.C.Letter No.F.17-7/78/SR/II/T, dated 23.02.1986. The posts of Systems Manager/Head of the Computer Centre/Director Computer Centre which are equivalent to Professor Cadre of Madras University are also specified in the UGC Guidelines (Vide Reference No.D.O.No.F.P1.1/87 (T-II) dated 30.01.90). The Computer Centre is classified into three different levels (Level 'A', 'B' and 'C') and the UGC Guidelines were sent to Universities for information and adoption. He submits that the 1st respondent has given promotion to University Technical Staff on completion of 7 years of service from the date of entry into the cadre on or before 20.01.90. He submits that the petitioner has acquired special skills on INDONET, Design Reliability, Web-site (internet), EDUSAT network (Tele-education), Microprocessor and Multimedia Courseware for Distance Education.

7. The petitioner further submits that the petitioner is a Research Guide in the field of Computer Science in Manonmaniam Sundaranar University, Bharathidhasan University and Mother Theresa University and the details of the candidates are given below:

Degree	Currently working	Completed
M.Phil	2	4
Ph.D	1	--

The petitioner further submits that the Syndicate in its meeting dated 08.04.2005 has considered the request of the petitioner for promotion to the next higher cadre and the resolutions are given below:

"Considered the request dated 30.04.2004, received from Dr.U.T.Manisundar, Systems Analyst, CRPS-I, University of Madras for promotion to next higher cadre together with the opinion of Higher Department, Government of Tamil Nadu and the available U.G.C norms.

RESOLVED that clarification be obtained from the UGC with regard to latest guidelines under the X plan regarding consideration of computer personnel for higher post in the University system as in-service promotion.

RESOLVED FURTHER that the performance report of Dr.U.T.Manisundar System Analyst, University of Madras be evaluated by an IT expert for consideration of promotion in

the available administrative cadre, subject to the UGC clarifications, as above".

8. The petitioner further submits that while constituting the Expert Committee to consider the petitioner's request for promotion to next higher cadre, the appropriate/standard and available norms or norms approved by UGC/Distance Education Council have not been adopted which is being adapted to other staff of Madras University. He submits that there is no relevance between the resolutions passed by the Syndicate dated 08.04.2005 and 08.06.2007. The IT expert committee did not considered the agenda placed before the committee and the committee without applying their mind and simply ignoring the opinion of the Higher Education Department, Government of Tamil Nadu and the available UGC and Distance Education Council Norms/recommendations, they have taken an arbitrary decision to recommended to change the nomenclature of the post of "System Analyst" to 'Principal System Analyst' with the same scale of pay Rs.12000-375-16500. He submits that as per the official Communication No.F.1/Estt/Tech/94/293, dated 26.07.1994 issued by the first respondent, the petitioner was granted charge allowance which was paid to the petitioner, for the additional post held by him as Co-ordinator. The Co-ordinator post was vacant for long time. Therefore, in the senate meeting which was held in the month of December 1996, there was a question raised by the Senate member and the assurance given by the Chairman (Vice-Chancellor) to the Supreme body or to the Senate is given below:

"Dr.T.Balakrishnan: will the Syndicate assure the members of the Senate that the present Co-ordinator in-charge will be fully in-charge of the section that will be created in future?

The Chairman: As far as he is concerned, there is absolutely no difficulty about that. In fact, he is now stagnating there. They would like to upgrade his position in order that he is not penalised by being in the cell. They are very sympathetic and there is no question about it."

9. The petitioner further submits that according to the assurance given by the Vice-Chancellor (the Chairman of the Syndicate) to the Senate, the petitioner's position was not upgraded till now. He submits that all the petitioner's requests for promotion and pay increases for well over 22 years have fallen on deaf years and this has very adversely affected the petitioner's career goals, career achievements and personal satisfaction of work experiences of work experiences in the University, besides causing anxieties and mental agonies all the time. This also affects the petitioner's family indirectly, which creates a bad impression about the petitioner among his family members. He submits that the Assistant Director, Distance Education Council, by his letter dated

09.08.2000, had informed the 2nd respondent to send the list of categories of staff engaged in Teaching-learning process which ought to be included in academic staff category/Teaching Staff category within a fortnight to enable the Task Force on personnel policy to finalise the guideline. In reply to the above said letter the 2nd respondent on 24.08.2000, has requested the Assistant Director, Distance Education Council, to consider the post of Systems Analyst and Application Programmer as academic for the purpose of conducting practical in Computer Laboratory and Micro Processor Laboratory as in the case of Librarian and Physical Education Instructor in the absence of any guidelines from UGC-Distance Education Council to treat them as Academics. He submits that as per recommendation of the Task Force of Distance Education Council dated 06.09.2000, on broad personnel policy for academic staff in Distance Education to serve as a guiding principle for all open Universities in the Country, the System of Distance Education has its own peculiarities in terms of teaching learning process.

10. The petitioner further submits that the Committee perused the definition of the term "teachers" as defined in the different Acts of the Open Universities in the Country and noted that teachers mean Professors, Readers, Lecturers as in the traditional or conventional system and also includes groups of other persons who are engaged for giving guidance or rendering assistance to the students or engaged in imparting instruction in relation to any learning process. He submits that the Committee felt that the role of a teacher in the distance education system is multifaceted. In the distance education system, the role of an academic including teacher cannot be conceived only in the context of the methodology and the technique associated with classroom teaching. The multimedia based system of education will have different categories of academic staff unlike that of a classroom based education system.

11. Definition as per the recommendation of the Task Force of Distance Education Council "Teachers would continue to function in the respective schools of studies/programmes. Those who are appointed in various divisions to perform the academic functions should be designated as academic staff. In order to facilitate such classification, the probable functions are outlined by the committee". He submits that the committee did make an attempt to identify one of the functions is indicated below:

Evaluation of students performance - analysis of examination results.

12. The petitioner further submits that the Committee said that basing of the broad function, the personnel involved in performing the function come under the category of academic staff. The committee felt that they are teachers by virtue of the

definition of the term "teachers" though they are not called teachers in the conventional meaning. Keeping in mind the broad academic function, the Committee recommended and suggests a list of personnel engaged in these areas with designations (Asst. Director, Dy. Director, Jt. Director and Director) and equivalent grade in terms of Lecturer, Reader and Professor. He submits that "Student Support Services" is one of the areas identified by the committee. He submits that the Committee has also recommended the Service conditions and Career Advancement of Academic Staff in Open Universities. The Committee felt that there should be no difference in the service conditions for teachers and academic staff. All the service conditions which are applicable to teachers are totally applicable for academic positions also. The only difference will be that there are certain privileges attached to the positions by virtue of the position of teachers such as vacation and sabbatical leave. These privileges are not admissible to the academic positions other than those designated as professors, Readers and Lecturers. The Committee recommended that the pay scales, the increments attached with qualifications, retirement age, facility of travel grants, membership of University authority etc, should be made applicable to all academic positions as they stand extended to teachers.

13. The petitioner further submits that the Committee recommended that the superannuation and re-employment of distance education teachers and academic staff may be followed as per the UGC guidelines. He submits that the committee has recommended the following with respect to Career Advancement Scheme:

"The Committee noted that the functions/tasks of academics are part of the broad functions of teaching. In open Universities, the teachers are mainly managers, Co-ordinators or collaborators. The functions of teaching in open Universities are carried out together by teachers and academics as well. It is the combined effort of all these functionaries to achieve the goal of distance education. Therefore, the committee recommended that the career advancement scheme as applicable to teachers should be extended in toto to academics also in view of the definition of teachers in the context of distance education. While, the conditions for promotion to and placement in higher position will remain the same in principle if necessary, a separate ordinance may be framed to make appropriate provisions for this purpose in the light of the nature of their functions. In implementing the scheme of career advancement as extended to all academics, on par with teachers, a practical problem may arise as to how to go about the designations on promotion. While, a Lecturer is designated as a Reader or a Professor on promotion, an Assistant Director may be designated as Deputy Director i.e., the equivalent grade of a Reader. However, a Deputy Director on promotion cannot be designated as Director, in view of the statutory provisions applicable to the post of a

Director. As a way out, a Deputy Director on promotion may be designated as Additional Director. In case of academic positions, one more cadre of Joint Director is existing in some open Universities. This may be reviewed and the incumbents of this position may be designated as Additional Director. In case of academic positions, one more cadre of Joint Director is existing in some Open Universities. This may be reviewed and the incumbents of this position may be designated as Additional Director to make a three-tire system on par with teachers. To be clearer, the equivalent designation of academic may be as under."

SL. No.	Teacher	Academics
1.	i) Lecturer ii) Lecturer (Sr.Scale)	Assistant Director, Assistant Regional Director, Research Officer, Analyst and such other position in the grade of Lecturer. All the positions other than Assist. Director and ARD may be redesignated an Asst. Director (Research), Asst. Director (Analysis), Asst. Director (P/a), Assist. Director (DEC) and so on to have a common nomenclature and so it gives scope to have the entire strength as a combined cadre of Asst. Director. The Assistant Directors/Asst. Regional Directors may be placed in senior scale/selection grade on fulfilling the conditions prescribed for CAS and may be designated as Asst. Director/ARD (Sr.Scale/Selection Grade) as the case may be.
2.	Reader	Dy. Director, Regional Director, Dy. Director (Planning), Dy. Director (DEC) and so on.
3.	Professor	Director (if it is on direct recruitment or appointment to the post), Additional Director/Jt. Director (in case of promotion under career advancement scheme)

14. The petitioner further submits that the Committee has further made the following recommendations MOBILITY OF ACADEMIC PERSONNEL:

"The Committee noted that the mobility of academic personnel across Divisions, schools/Directorate important issue in the context of Open Universities. In Open Universities, the academic personnel are associated with the delivery of programmes in the field. There should be a flexible policy that provides mobility of personnel in the divisions and

schools. The experience and competence acquired by the academics in the field should be used as a useful input in preparation of programmes. In the same way, the teachers engaged in development of learning packages should have an opportunity to have the first hand knowledge of the problems of the students. This is possible only when there is a provision of mobility between academic and teachers. One need not take this as a technical mobility and need not have an apprehension as to how an academic can occupy the position of a teacher. Here, it is emphasised that teachers are allowed to occupy academic positions but vice-versa is not in practice. It is all the more necessary to have such a provision in distance education system because of the needs. This is only a provision to enhance the working skills of both the categories with first hand knowledge. This will lead to the ultimate goal of having a multi skilled distance educator who will be working for the distance education system more effectively".

15. The petitioner submits that according to the orders of the Vice-Chancellor, the Controller of Examinations-i/c under whom the petitioner is working was referred to by the first respondent to offer his critical remarks on the self assessment report of the petitioner submitted on 13.08.2004 and the Controller of Examinations-i/c has offered the following remarks:

"According to the self-assessment report, he has worked as Co-ordinator, Data Cell, IDE Microprocessor lab in-charge, IDE Web-site incharge etc. He has stated that he had designed and developed new programs in the examination processing. He had taken classes in IDE, writer lessons and programmes and presented papers in conferences.

As System Analyst, he is in-charge of CRPS-I. The work of CRPS-I is satisfactory. He is regular and his work and conduct are satisfactory during my tenure as COE-i/c.

He should take active part in updating the processing unit so as to reduce the manpower and make it cost effective."

The critical remarks offered by the Controller of Examinations regarding the performance of the petitioner were placed before the Syndicate in its meeting held on 08.04.2005.

16. The petitioner further submits that earlier to 1986 the result publication work of Institute of Distance Education in Madras University was done manually and the computerization on results processing work of Distance Education was taken up in the year 1986 and the results were published successfully. As per the directions of the Vice-Chancellor the petitioner was the team

leader in the above Project and the 2nd respondent was assigned to oversee the performance of the Project and therefore, the second respondent has appreciated the performance of the petitioner by issuing a certificate on 10.07.1987 and it is given below:

"Certified that Thiru.T.Mani, System Analyst, Computer Centre, University of Madras, is now working from 20.10.1985. He is very industrious and intelligent. He works night and day without thinking in terms of monetary consideration, but thinking in terms of meeting the requirement for time bound programmes. He is sincere in his work. He can be trusted for processing the confidential work.

His conduct and character is very good.

17. The petitioner further submits that one Data Processing Manager, Mr.R.Sadagopan, one Supervisor, Mr.S.Munusamy and one Technical Officer, Mr.Rajkumar have been retired from the Computer Centre; the petitioner is managing with less manpower/other staff in results processing and thereby the petitioner has taken active part in updating the processing unit made it cost effective. He submits that as per the financial estimate issued by the 1st respondent for the year 2007-08, one post of Joint-Director, I.D.E, under the 2nd respondent is vacant and therefore, if the Task Force Committee's recommendation is taken into consideration, he is eligible to be promoted as Director, the vacant post may be filled by promoting the petitioner as Joint Director, under the 2nd respondent. He submits that for the past 22 years on different occasions the petitioner has delivered quality and diversity of work in Madras University in Administration, Technical and Academic lines.

18. The petitioner further submits that by the impugned order dated 10.10.2007, the first respondent has communicated the resolution of the Syndicate and informed the petitioner that the nomenclature of the post of System Analyst is changed as Principal System Analyst in the same scale of pay. Therefore, he made a representation to the first respondent on 23.10.2007 with a request to clarify the position as to whether the resolution is an order of promotion or not. The impugned order passed by the first respondent reveals nothing about the grounds urged in the writ petition filed before this Court earlier. Therefore, the impugned order passed by the first respondent is a non-speaking order besides the same is highly arbitrary and illegal. He submits that he is working as Systems Analyst/Principal System Analyst for the post 22 years without any promotion; his promotion has been denied whenever the representations have been made to the 1st respondent stating some flimsy reasons. The petitioner is already working which is equivalent to Reader Cadre in Madras University since 1985. Now, as per the recommendation of the Task Force Distance

Education Council, the petitioner is eligible to be promoted as Director and in view of the financial estimate submitted by the 1st respondent for the year 2007-08, a Joint Director's post under the 2nd respondent is vacant. Hence, the petitioner after having exhausted all the remedy available to him by making representations to the 1st respondent and having no other equally efficacious alternative remedy, the petitioner approaches this Court. Hence, this writ petition is filed.

19. The 1st respondent has filed a counter statement on behalf of the 2nd respondent herein and himself.

The respondent further submits that the writ petitioner was appointed as temporary system analyst w.e.f 21.10.1985 in the scale of pay Rs.1200-50-1300-60-1900 and the scale of pay has been revised as Rs.1200-375-16500 w.e.f 01.01.1996 based on the VI Pay Commission, Government of Tamil Nadu and at present he is drawing a basic pay of Rs.16,500/- w.e.f 01.01.2007 in the scale of pay of Rs.12000-375-16500. The Syndicate has considered the report of the IT Expert Committee and resolved that the nomenclature of the post of "System Analyst" may be changed as 'Principal System Analyst' in the same scale of pay of Rs.12000-375-16500. It is respectfully submitted that the Writ Petitioner joined as System Analysts on 21.10.1985 at the Data Cell of the Computer Centre in the University of Madras. His services have been confirmed in the post w.e.f 21.10.1987. He was placed as Co-ordinator-in-charge on 24.03.1994. The service particulars of the Writ Petitioner are as follows:

a. Appointed as System Analyst on 21.10.1985 in the scale of pay Rs.1200-50-1300-60-1900.

b. His pay has been revised and refixed w.e.f 01.06.1988 in the scale of pay Rs.3000-100-3500-125-4500.

c. As per the Syndicate resolution dated 10.06.1998 scale of pay has been revised as Rs.10,000-325-15,200 for the post of System Analyst.

d. As per the Syndicate Resolution dated 22.12.1999 and 10.07.2000 his pay has been revised and refixed in the scale of pay of Rs.3700-125-4700-150-5000 w.e.f., 15.07.1994 correspondingly revised as Rs.12,000-375-16500 w.e.f 01.01.1996.

20. The respondent further submitted that as per the G.O.Ms.No.162, dated 13.04.1998 which was adopted by the Syndicate on 10.06.1998 it has been mentioned that no selection grade scale was prescribed for ordinary grade scale of Rs.10,000-325-15,200 and above. Hence, the question of denying promotion to the Writ Petitioner for two decades by the University does not arise. As

per letter dated 27.01.2004 received from the Deputy Secretary to Government, Higher Education (H1) Department has stated that the Government have examined the matter and found that only when the service rules governing the respective post provide promotion to another post, promotion can be given when vacancy exists, promotion cannot be given for the reasons that the individual is in the same post for certain period. It is respectfully submitted that under the supervision of the Writ Petitioner as Principal System Analyst, Application Programmers, Supervisor, Assistant Technical Officers are working. The Writ Petitioner is doing over all supervision. The Processing of Data Creation works are entrusted to outsourcing agency. It is respectfully submitted that as per the communication dated 25.11.1998 issued to all the Heads of Departments, it has been clearly mentioned that Technical Officers i.e., non-teaching staffs working in various Departments has not been permitted by the University for teaching classes. It is respectfully submitted that the Writ Petitioner was appointed as Technical Staff under Chapter XXIV of the University Calendar Volume-I, 2001. He has not obtained any permission from the University to do academic activities such as question paper setter and as examiner in various instructions.

21. The respondent further respectfully submitted that the Computer Results Processing Section (CRPS) is attached to Examination Wing for registration of candidates, seating arrangements, publication of results and printing of mark sheets. The whole wing is doing the above work under the supervision of the System Analyst. He submits that the Syndicate on 18.10.1986 has resolved that the posts sanctioned by the University Grant Commission for the Computer Centre of this University, for which the State Government has also given its concurrence, be approved for institution and the same may be advertised as per the revised scales of pay and after prescribing the required qualification. The Writ Petitioner has to submit the application in the prescribed format through proper channel and he has to compete for the post along with others as per the eligibility norms when it is advertised. It is respectfully submitted that as per the Resolution of the Syndicate dated 20.01.1990, promotions were awarded to eligible technical staff members after completion of seven years. The writ petitioner does not come under this category. It is respectfully submitted that the said courses underwent by the Writ Petitioner does not help to modernize or update the processing of results in the University. He respectfully submits that in accordance with the decision of the Syndicate dated 08.04.2005, clarification were obtained from the University Grant Commission with regard to the latest guidelines under the X-Plan and the performance report of the petitioner was evaluated by the IT experts for consideration of the promotion in the available administrative cadre subject to the UGC clarification. It is respectfully submits that as per the decision

of Syndicate at its meeting held on 08.04.2005 the self assessment report submitted by the Writ Petitioner was placed before the IT Expert Committee. The IT Expert Committee comprising of three members i.e., (i) the Technical Director, National Information Centre (NIC), (ii) the Professor, Department of Computer Science and Engineering, Anna University and (iii) the Professor, Department of Computer Science and Engineering, Indian Institute of Technology (IIT), Madras was constituted and has considered the self assessment report in detail of the petitioner and submitted the following recommendations:

"Any appointment is done in accordance to the service rules laid down by University. The applicant should be fully aware of this fact while accepting the current post that there is no further promotion possible.

The applicant has already enjoyed a jump and scale slide upwards during IV pay fixation and this has a further cascading effect in the subsequent revision. The current scenario where he is stagnant is largely due to earlier advancement benefits he got rather than anything else. Had he gone through the routine regular progress, he would not have experienced long stagnation even under the current rules/frame work.

The Committee also noted that the benefits/pay packages offered to him has always been on the higher side compared to the packages offered to Systems Analysts in other Government Organizations. (For Example, in Organization like NIC, for Systems Analyst the scale is 8000-275-13500 for senior Systems Analyst the scale is 10000-325-15200 and for Principal Systems Analyst the scale is 12000-375-16500. This applicant has already enjoyed the benefits of cadre elevation and drawing now equivalent of senior most analyst of any Government Organization. Hence, there is no justification for any kind of grievance in this case. As mentioned earlier, the stagnation is largely due to his getting the senior most cadre early in his career).

The candidate has obtained his doctorate degree only in 2003 and the Committee feels he requires much more academic credentials, teaching and research experience to consider him for the post of Professor.

Besides automatic transferring from non-teaching line to teaching cadre at the highest level may adversely affect the morale of teaching staffs at Readers/Lecturer levels with more research/teaching experience. Specifically, the Committee did not find him to be of exceptional research/academic experience to recommend for professors post. Mere reaching stagnation

point in one cadre cannot be considered as sufficient reasons to automatically transfer to a professor's post. He being a doctorate may face the open competition against an advertisement and the selection Committee for faculty position may offer appropriate faculty rank for him at a suitable later date.

It is also suggested that University may create 3 cadres for Systems Analysts to enable them see the progress, in line with other Government Agencies namely Analyst, Senior System Analyst, Principal System Analyst/EDP Manager with appropriate scales. In the event of creation of such cadres the current applicant may be redesignated in the senior most cadre".

22. The respondent respectfully submitted that the Finance Committee at its meeting held on 05.06.2007 considered the minutes of the meeting of the IT Expert Committee to assess the Self-Assessment Report of Dr.U.T.Manisundar, System Analyst, CRPS-1 submitted to the University as per the direction in order to consider his request for promotion to next higher cadre as he has completed 20 years of service in the same cadre since his appointment to the post in 1985.

"Resolved to recommended that the nomenclature of the post of "Systems Analyst" may be changed as 'Principal Systems Analyst' with the same scale of pay of Rs.12000-375-16500."

The same was approved by the Syndicate on 08.06.2007.

23. The respondent further submits that the writ petitioner was paid charge allowance after he was given an additional charge in the Data Cell in 1994. Subsequently, a full-time Co-ordinator was posted in the Data Cell. After his retirement the post of Co-ordinator is still vacant. The Petitioner's contention that the charge allowance was not given to him is false since he was not given to hold the post of Co-ordinator in Data Cell. It is respectfully submitted that the contention of the Writ Petitioner that he was sincerely and efficiently discharging his duties assigned to him is not correct. The petitioner was placed under suspension for negligence and dereliction of duty, which resulted in the non-publication of examination results in time during 1987. It is respectfully submitted that the processing and publication of results are entrusted to outsourcing agency. It is respectfully submitted that the Finance Committee held on 05.06.2007 considered the minutes of the IT Expert Committee to assess the self-assessment report of the Writ Petitioner and recommended that the nomenclature of the post of System Analyst may be changed as Principal System Analyst in the same scale of pay of Rs.12000-375-16500 and the same was approved by the Syndicate on

08.06.2007. It is respectfully submitted that as stated earlier, the writ petitioner has obtained his Doctorate Degree only in the year of 2003 and if the writ petitioner is transferred from non-teaching cadre to teaching cadre at the highest level it may adversely affect the morale of teaching staffs at Readers/Lecturers level, which requires more research and teaching experience. Moreover, the Syndicate did not find the Writ Petitioner to be of exceptional research/academic experience to recommend for any teaching post. Mere reaching stagnation point in one cadre cannot be considered as sufficient reasons to automatically promote the petitioner to the post of Professor/Joint Director. Moreover, it is always open to the Writ Petitioner to compete in the open recruitment if he so desires. For the reasons stated in the foregoing paragraphs, it is humbly prayed that this Court may be pleased to dismiss the above writ petition.

24. The petitioner has filed an additional statement stating that he has been stagnated without a promotion for decades together. Not only himself and other persons who are working in the same post in various Universities brought to the notice of the University grant Commission, New Delhi, about their denial of promotion in chances and the University grant commission recommended a shifting pattern in three different levels (A,B+C) for the technical/computer staff working in the computer centres of the Universities vide their reference dated 30.01.1990. The cadre of System Analyst denoted to the post of Professor in the Universities where the Computer centre is classified as "C" level category. The computer centre of the University of Madras comes under "C" level.

25. The highly competent Senior Counsel appearing for the petitioner submits that the petitioner has been appointed on 21.10.1985 as System Analyst under the 1st respondent namely, University of Madras. The Madras University informed the petitioner on 24.03.1994 by official communication stating that the petitioner will hold additional charge of Co-Ordinator Data Cell until further orders. The petitioner obtained permanent status as System Analyst and Co-ordinator with affect from 21.10.1985. The petitioner is working as System Analyst for the past 22 years without promotion since he is possessing highest qualification i.e., Doctorate in Philosophy. The respondents after a few decades had not given promotion to the petitioner. The very competent Senior counsel further submits that in Madras University Registrar had issued a communication dated 11.03.1994 and as per the communication the petitioner handled the classes for post-graduate students, research scholars of the University Department as well as Bachelor of Computer Application and Master of Computer Application. Further, the petitioner has handled Computer Classes for under graduate as well as post graduates besides the research scholars of Madras University, nearby 30 batches of P.G Students.

The petitioner has written 4 text books for Madras University, Bachelor of Computer Application and Master of Computer Application degree courses. Additionally, he is also rendering academic services as an examiner and setting of question papers to other universities namely Indira Gandhi National Open University and Sri Chadraseskharendra Saraswathi Viswa Mahavidyalaya for conducting viva voice for projects, practicals and central valuation for BCA, B.Sc, B.E and M.C.A degree courses.

26. Every around four lakh students are appearing for University examinations when the petitioner had taken higher responsibility to complete the time schedule for examination of result and processing the same, besides the petitioner is taking all the responsibilities for more than two shifts. As such, he is rendering the best services to the students. The highly competent Senior Counsel further submits that the University grant Commission has sanctioned posts like Systems Manager, head of the Computer centre, Director of Computer centre. This was approved by the syndicate. These posts are equivalent to professor cadre of Madras University. The 1st respondent has given promotion to university technical staff on completion of 7 years service from the date of appointment but the petitioner had not been considered for promotion even after completing a service of 22 years without any adverse remarks. The petitioner is a research guide in the field of Computer Science in Manonmaniam Sundaranar University, Bharadhidasan University and Mother Theresa University. The Syndicate body has recommended the petitioner for promotion on dated 08.04.2005. Accordingly, the Syndicate meeting was again conducted on 08.06.2007 and a resolution has been passed and resolved to recommend that the nomenclature of the post of "System Analyst" may be changed as "Principal System Analyst" with the same scale of pay of Rs.12000-375-16500. Despite the promotion the scale of salary has been stagnant without any revision which is inappropriate and humiliating and does not set a justifiable promotion in a high institution of learning.

27. The highly competent Senior Counsel submits that the Chairman of the Syndicate body had given assurance to the senate committee that the petitioner will be upgraded but it was not given affect. The Distance Educational counsel has informed to the 2nd respondent herein to send a list of categories of staff engaged in teaching-learning process which ought to be included in economic staff category/Teaching staff category within a fortnight to enable the Task Force of personal quality in order to finalize the guidelines. In reply the 2nd respondent has requested the Distance Educational Counsel to consider the post of Systems Analyst and Application programmer as Economic for the purpose of conducting practicals in Computer Laboratory. This also has not been implemented. The learned Senior Counsel has also submitted written arguments which are as follows:

" The above writ petition is filed for the relief of issue of Writ of Certiorari or Mandamus or any other appropriate relief calling for the records of the notification in F1(B)/Estt/CETG/07/1446, dated 10.10.2007 passed by the respondent and quash the same and direct the 1st respondent to promote the petitioner as Joint Director under the 2nd respondent as per the recommendations of the Task Force of the distance education council dated 06.09.2000 and the representation of the petitioner dated 23.10.2007 with back wages and all monetary benefits and thus render justice.

(ii) The petitioner was appointed temporarily as a System Analyst on 21.10.1985 in the scale of pay of Rs.1200-50-1300-60-1900. After IV Pay Commission recommendations, the scale of the petitioner was revised as Rs.3600-125-4700-150-5000. Subsequently, as per the V Pay Commission Recommendations, as on 01.01.1996, the salary of the petitioner was revised as Rs.12000-375-16500.

(iii) The Syndicate of the University considered the report of the IT Expert committee and resolved the nomenclature of the post of System Analyst (may be changed to Principal System Analyst) in the same scale of pay Rs.12000-375-16500. The petitioner is stagnating in the same post right from the date of his appointment with no promotional opportunities. The petitioner has taken an active role in computerizing the University examination results with the help of a team of technical staff. Earlier, the examination results were processed manually and subsequently after the petitioner's active role in computerization, it was totally computerized. The petitioner is also a Co-ordinator for processing and publication of the results of both Madras University and the Institute of Distance Education (UG, BT and Professional Degree Courses). Based on the 1st respondent communication dated 11.03.1994, the petitioner's services have been utilized for both classes of PG students and Research Scholars of the University of Madras as well as BCA, MCA and students of distance education respectively. The petitioner has written 4 text books for Madras University, BCA, MCA and Distance Education. The petitioner has also rendered academic service (as examiner) to other universities namely IGNOU, Chandrasekara Saraswathi, Vishwamahila University (deemed University) for viva voce for project practicals and central evaluation for BCA, B.Sc (Computer Science), I.T., BE(Computer Science) and MCA Degrees. The petitioner is shouldering higher responsibility in order to complete the time schedule for both pre and post examination result processing. The petitioner is only a System Analyst taking all the responsibilities all the time (more than 2 shifts) for both regular and institute of distance education students improving the efficiency of the result publication and thereby the petitioner has rendered better service to the student community. The petitioner is also performing supervisory task in relation to subordinates and

Co-ordinator activities relating to the computer centres and other examination centres in regular and institute of distance education. It is submitted that in the University, promotions have been given to the University technical staff on completion of seven years of service from the date of their entry in the cadre on or before 20.01.1990. The petitioner has acquired special skill in computer which has been used for the distance education.

(iv) The petitioner is a research guide in the field of computer science in Mononmaniam Sundaranar University, Bharathidasan University and Mother Theresa University. It is submitted that 4 students of the petitioner have completed M.Phil and some of them have pursued M.Phil besides number of persons have completed Ph.D. Based on the representation made by the petitioner, the Syndicate of the University in its meeting dated 08.04.2005 considered the request of the petitioner for promotion to the next higher cadre and the Resolutions are as follows:

-Resolved that clarifications may be obtained from UGC with regard to the latest guidelines under the X-Plan regarding the consideration of computer Personnel for higher post in the University system as in service promotions.

-Resolved further that the performance report of the petitioner to be evaluated by the IT experts for consideration of promotion in the available administrative cadre subject to the UGC clarifications as above.

(v) The Syndicate in its meeting dated 08.06.2007 has considered the minutes of the IT expert committee to assess the self-assessment report of the petitioner to consider his request for promotion to the next cadre as resolved by the recommendations that the nomenclature of the post of System Analysis may be changed as per the self-assessment with the same scale of pay. It is submitted that while constituting the committee to consider the petitioner's request for promotion to the next cadre, appropriate standards are available and norms are provided by UGC/Distance Educational Council.

(vi) It is submitted that the petitioner's request for promotion and pay increase after serving for 22 years have fallen on deaf ears and it is affecting his career achievement and personal satisfaction of the work experience in the University, besides causing anxiety and mental agony to the petitioner and his family;

(vii) It is submitted that the Assistant Director, Distance Education Council in his letter dated 09.08.2000 has informed the 2nd respondent to send a list of activities of the staff to enable the committee to finalise the guidelines. The Assistant Director

has included the post of System Analyst and Programmer as academic for the purpose of conducting macro process. the Task Force committee felt that the rule of teachers in distance education system is multifaceted. In the educational system, the role of academic teaching should be conceived only in the test of methodology. The multimedia based system of education will have a different cadre of academic staff unlike that of class room based education system. The Committee felt that there should be no different service conditions in teaching and academic staff. The only difference will be that there are certain members attached to the position by virtue of the post of teachers such as vocation, sabastical leave. Following the recommendations of the task force committee, the claim of the petitioner based on the system analysis report of the petitioner was sent for critical remarks on 13.08.2004 and the Controller of Examinations in-charge, Vice-Chancellor post has subsequently stated that the petitioner's performance is on the higher side, both on the teaching and as well as academic side, but when the matter was placed before the Syndicate, the Syndicate has not passed any resolution granting promotion to the petitioner inspite of being essential service rendered by the petitioner.

(viii) It is submitted that as per the finance estimate of the 1st respondent for the year of 2007-08, one post of Joint Director in the Institute of Distance Education under the 2nd respondent is vacant and if the Task Force Committee recommendation is taken into consideration, the petitioner is entitled to be promoted as Joint Director by promoting the petitioner under the 2nd respondent. The petitioner has put in 30 years of service on different occasions. The petitioner made a representation on 04.08.2006 and approached this Court in W.P.No.13863 of 2007 for consideration of his claim based on the recommendations of the Task Force of the distance education institute on 06.09.2000. This Court issued a direction to consider the same on merit. Following the order of this Court, the respondent has issued the impugned order dated 10.10.2007, rejecting the claim of the petitioner on invalid grounds. It is not a speaking order without taking into consideration the Task Force Committee report and it is not meeting any of the points raised by the petitioner with reference to his promotion to the next cadre. Hence, this writ petition.

28. The highly competent counsel Mr.Mani Sundar Gopal, appearing for the 1st and 2nd respondents submits that the writ petitioner was appointed as a temporary System Analyst with affect from 21.10.1985, in the scale of basic pay of Rs.1200 with admissible allowances, subsequently on the basis of the 6th pay commission, the petitioner salary has been revised, now the petitioner is drawing a basic pay of Rs.16,500/- with allowances. As per the report of the I.T expert committee, the petitioner has been promoted from the post of System Analyst to the post of

Principal Analyst. The very competent counsel further submits that as per the G.O.Ms.No.162, dated 13.04.1998, it was mentioned that no selection grade scale was prescribed for ordinary grade scale of Rs.10,000-325-15,000 and above. Therefore, the question of denying promotion to the petitioner for two decades by the university does not arise in the instant case. Now, the petitioner is doing over all supervision as Principal System Analyst under him, the application programmes, supervisors, Assistant Technical Officers are working. The non teaching staff working in various departments have not been permitted by the University for teaching classes. The writ petitioner was appointed as a technical staff. Further he has not obtained any official permission from the University to perform academic activities such as question paper setter and as an examiner in various Institutions. The very competent counsel further submits that the computer results processing section is attached to the examination Wing for registering of candidates, seating arrangements, publication of results and printing of mark sheets are under the supervision of the petitioner herein. As per the decision of the Syndicate meeting promotions were granted to eligible technical staff members after completion of seven years, but the petitioner does not come under this category. The petitioner's academic qualification does not help to modernize or update the process of results in the Universities. Further more as per the Syndicate body's decision, clarification had been obtained from the University Grants Commission with regard to the latest guideline under the X plan and the performance report of the petitioner was evaluated by the Income Tax experts for consideration of the promotion in the available administrative cadre subject to the University Grant Commission clarification.

29. The very competent counsel Mr.Mani Sundar Gopal, submits that the I.T.Expert Committee comprising of three members namely the Technical Director, National Information centre, Professor, Department of Computer Science and Engineering Anna University and the Professor, Department of Computer Science and Engineering, Indian Institute of Technology, Madras, has constituted and was considered the self assessment report of the petitioner and submitted the recommendations, accordingly any employment is done in accordance to the service rules layed down by the University, the applicant should be fully aware of this fact while accepting the current post that there is not further promotion possible. As such the above writ petition is not maintainable. The pay packages offered to the petitioner has always been on the higher side compared to the packages offered to the petitioner has always been on the higher side compared to the packages offered to System Analyst in other Government Departments. Therefore, there is no justification for any kind of grievance in his case. The petitioner had obtained doctorate degree in the year of 2003, further automatic transferring from non-teaching cadre to

the teaching cadre at the highest level may adversely affect the moral of teaching staff as Readers/Lecturer levels with more research and teaching experience. The petitioner does not possess academic experience for recommendation to Professors post. If the petitioner being a doctorate may face the open competition against an advertisement and the selection committee for faculty position may offer appropriate faculty rank to him at a suitable later date. Now the petitioner holding senior most cadre i.e., Principal Systems Analyst as approved by the Syndicate Committee, hence the highly competent counsel entreats the Court to dismiss the above writ petition.

30. The very competent counsel Mr.P.R.Gopinathan, appearing for the 3rd respondent herein submits that there is two Systems Analyst Posts. In this Category of post there is no further promotion, however the petitioner has been given a revised time scale of pay. For appointment of System Analyst, the minimum qualification is Master of Technology in Computer Science or M.Sc Computer Science or Master Degree in Computer Science or Computer Software. This Category of employee is classified as non teaching staff. Therefore, the petitioner cannot seek promotion as a Professor in teaching staff. However, the petitioner is getting a basic pay i.e., a sum of Rs.15,600/- which is equal to the pay of Senior Deputy Registrar. Therefore, there is no discrimination for paying the salary to the petitioner. Further, the petitioner is well aware at the time of joining his post that there is no further promotion in the category of his post. Hence, the very competent counsel entreats the Court to dismiss the above writ petition.

31. From the above discussion this Court is of the view that:

(i) This Court had directed the respondents to consider the claim of the petitioner on merits. On the basis of the Court's observation the 1st respondent herein had issued a communication dated 10.10.2007 to the petitioner and informed him that the nomenclature of the post of "Systems Analyst" is changed as "Principal System Analyst" with the same scale of pay i.e., Rs.12,000-375-16500/-. This nomenclature promotion has been considered by the syndicate body on the basis of the report of the I.T.Expert committee. This kind of promotion is nothing than an advancement not only in the time scale of pay but also leading to a higher level of authority with commensurate levels of performance. The same was denied to the petitioner in the promotion order.

(ii) The petitioner has obtained a Doctorate Degree and he rendered academic service as an examine, setting up examination papers for his parent University besides other Universities. As per the 1st respondents communication dated 23.10.1991, the petitioner had handled Computer classes for Under Graduates and Post Graduate, research scholars of Madras University, besides the petitioner has written four text books for Madras University i.e.,

B.C.A., and M.C.A Degree which aptly proves that a capable candidate could take on University/Faculty Assignments against a suitable promotion. The petitioner has authored four text books for a prominent University besides his application with Computer Management that all became acceptable, as such is there anything more to search for in terms of capability?;

(iii) The petitioner has been appointed as Systems Analyst on 21.10.1985 and he was continuing in the same post till 10.10.2007 i.e., around 22 years. For such a prolonged and accepted level of service without enhancement of position whatsoever is indeed a discrimination. The 1st respondent had issued a communication to the petitioner and informed him that he has been promoted from Systems Analyst to Principal Systems Analyst with the same scale of pay i.e., Rs.12,000/- basic pay, which is tantamount to the same position, the same authority and on the same salary, this Court is unable to find agreement to a promotion based on merit without any enhancement whatsoever, in fact this Court opines whether it is a kind of embarrassment to the writ petitioner. Can this easily be subverted by vested interests for whatever prejudiced gains?. The petitioner acquired exceptional skills in Computer Application, consequently he was able to set up examination papers for his parent University besides other Universities and apparently they were accepted by the learned authorities;

(iv) The petitioner is possessing a Doctorate Degree and he had participated and still rendering academic services over the years which came to be acceptable by the University. Therefore, the petitioner shall be given an appropriate promotion for services rendered and the opportunity to still enhance his potential, which is the most appropriate form of social justice, since he has evinced keen participation in all his assignments at the University with tenacity could there be a better achiever? Why compare his position and salary scale with other institutions when he is doing his utmost to his parent institution and keeping its position comfortable;

(v) A fully qualified person being retained in the same position from his initial appointment right to the end of his service does not render any logical explanation or transfer deficit. As such the respondent's communication dated 10.10.2007 informing him to continue in the same position and on the same scale of pay by renaming the nomenclature as Principal Systems Analyst which is very obviously an unusual order by appointing the petitioner in such a manner besides invoking the opinions of the other staff at the University which is certainly not conducive for a healthy faculty perception. Universities who set the standards should also walk the standards by example. From a logical and most conscientious stand it should be the respondents to take up the case of the ever obedient and gracious senior staff member and not

go against a tenacious underling. An Act of reconciliation should be the best mode of treatment;

32. Considering the facts and circumstances of the case and arguments advanced by the learned counsel on all sides and on perusing the typed set of papers including the impugned order of the 1st respondent herein and this Court's views as in (i) to (v), the above writ petition is allowed. Consequently, the impugned official communication F.1(B)/Estt/Tech/2007/1446, dated 10.10.2007, passed by the 1st respondent is quashed. Further, this Court directs the 1st respondent to promote the petitioner as Joint-Director under the 2nd respondent as per the recommendation of the Task Force of Distance Education counsel, dated 06.09.2000 in response to the representation of the petitioner dated 23.10.2007, with backwages and all other monetary benefits to be allowed.

33. In the result, the writ petition is allowed. There is no order as to costs. Accordingly ordered.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.University of Madras,
Rep. by its Registrar,
University of Madras,
Chepauk, Chennai - 600 005.

2.The Director,
Institute of Distance Education (IDE),
University of Madras,
Chepauk,
Chennai - 600 005.

3.The University Grants Commission,
represented by its senetary,
New Delhi.

1 cc to Mr.Mani Sundar Gopal,Advocate, SR.No.10650

1 cc to Mr.A.G.Rajan ,Advocate, SR.No.10699

1 cc to Mr.P.R.Gopinathan ,Advocate, SR.No.11095

W.P.No.35145 of 2007

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