

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.Nos.1889 to 1898 of 2014

and

M.P.Nos.1, 1, 1, 1, 1, 1, 1, 1, 1 and 1 of 2014

and

M.P.Nos.2, 2, 2, 2, 2, 2, 2, 2, 2, and 2 of 2014

A.Thamizharasan .. Petitioner in W.P.No.1889 of 2014
M.Parasuram .. Petitioner in W.P.No.1890 of 2014
J.Arul Daya Moni .. Petitioner in W.P.No.1891 of 2014
T.Vasantha .. Petitioner in W.P.No.1892 of 2014
A.Balakrishnan .. Petitioner in W.P.No.1893 of 2014
T.Chandrasekaran .. Petitioner in W.P.No.1894 of 2014
J.Celine Rani .. Petitioner in W.P.No.1895 of 2014
M.Mohana Das .. Petitioner in W.P.No.1896 of 2014
S.Ramdhas .. Petitioner in W.P.No.1897 of 2014
B.Barathan .. Petitioner in W.P.No.1898 of 2014

सत्यमेव जयते vs.

1. The Principal Secretary to
Government of Tamilnadu,
Higher Education Department,
Fort St.George,
Chennai - 600 009.

2. The Commissioner of Technical Education,
Directorate of Technical Education,
Guindy, Chennai - 600 025.

3. The Principal,
Kamaraj Polytechnic College,
Pazhavilai - 629 501,
Kanyakumari District.

.. Respondents

Writ Petition Nos.1889 to 1893 of 2014 and 1895 to 1898 of 2014 filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus calling for the records pertaining to the Letter No.21658/C2/2012 dated 03.07.2012 issued by the 2nd respondent, quash the same and direct the 3rd respondent to re-fix the scale of pay of the petitioner by fixing in Pay Band-3 in Rs.15600-39100 with AGP of Rs.8000/- designating the petitioners as Lecturers (Selection Grade) with effect from 01.01.2006 and by fixing in Pay Band 4 in Rs.37400 - 67000 with Academic Grade Pay (AGP) of Rs.9000 with effect from 01.01.2009 together with all the consequential monetary benefits.

Writ Petition No.1894 of 2014 filed under Article 226 of the Constitution of India to issue Writ of Mandamus directing the first respondent to issue clarification to G.O.Ms.No.111 dated 25.5.2010 as issued in Serial No.3 of the Lr.No.5928/H1/2010 dated 13.8.2010 w.r.to G.O.Ms.No.350 dated 9.9.2009 and re-fix the petitioner in a proper scale of pay in Pay Band 3 with AGP of Rs.8000 designating as Lecturer (Selection Grade) with effect from 06.06.2006 and fix in Pay Band 4 with APG of Rs.9000 with effect from 06.06.2009 with all consequential and monetary benefits.

For petitioner in all
the above WPs : Mr.D.Subramaniam

For respondents 1 & 2 : Mr.V.Ayyathurai
in all the above WPs Additional Advocate General
assisted by Mr.S.Navaneethan,
Additional Government Pleader

For 3rd respondent : Mr.N.Dilipkumar

COMMON ORDER

The case of the petitioners in these Writ Petitions is that they were appointed as Lecturers in the third respondent Polytechnic College and subsequently, they were upgraded as Senior Lecturers. Later, G.O.Ms.No.111, Higher Education (H1) Department, dated 25.5.2010 was issued by the Government of Tamil Nadu revising the Pay Scales to the Government and Government Aided Polytechnic College Teachers as per All India

Council of Technical Education (AICTE) Notification in the Gazette of India dated 5.3.2010. Following the said Government Order, the third respondent College revised the Pay Scale of the petitioner and sent for approval to the second respondent. The second respondent vide Proceedings No.21658/C2/2012 dated 3.7.2012 informed the third respondent that as per Clause 16 of Appendix in G.O.Ms.No.111 dated 25.5.2010, the Teachers have to undergo 6 weeks Refresher Course for eligibility to be placed in the Higher Grade of Pay. Further, the second respondent directed the third respondent to re-fix the scale of pay and recover the excess amount. The said contention was communicated to the petitioners by the third respondent on 31.7.2013. Aggrieved against the impugned order of the second respondent, the petitioners are challenging the Proceedings No.21658/C2/2012 dated 3.7.2012 issued by the 2nd respondent in the present Writ Petitions.

2. Heard the learned counsel for the petitioners, the learned Additional Advocate General for respondents 1 and 2 and the learned counsel for the third respondent.

3. Among other things, it is specifically submitted by the learned counsel for the petitioners that in an identical case, where a similarly placed Lecturer, namely, D.Subramanian, preferred a Writ Petition, viz., W.P.No.19592 of 2010 before this Court seeking a similar relief and this Court disposed of the said Writ Petition while setting aside the impugned order passed by the third respondent therein with a direction to the third respondent to get clarification from the second respondent therein as to the scope and applicability of the Clarification issued by the Government vide Letter No.5928/H1/2010-3 dated 13.8.2010, wherein it was clarified by the Government that "movement from AGP of Rs.7,000 to AGP of Rs.8,000/- may be allowed after completion of 5 years of service from the date of award of senior scale and not after 5 years period in the AGP of Rs.7,000/- shall be accepted subject to the other requirements laid down by the UGC or conditions laid down by the State Government/Universities". Subsequently, the All India Council for Technical Education vide Notification dated 4.1.2016 vide the Gazette of India dated 6.1.2016, at Page 28, clarified the same thing, which is as follows.

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45	Clarification invited regarding counting of service period rendered in pre-revised Pay Scale (Rs.10000-15200) as a Lecturer (Senior Scale) prior to 1.1.2006 for the upward movement of Lecturer from AGP of Rs.7000 to AGP of Rs.8000 in Para a (ix) of Lecturer in Polytechnic in the AICTE Regulations, 2010.	The period specified in the AICTE Regulations, 2010 for upward movement of Lecturer from AGP of Rs.7000 to AGP of Rs.8000 shall be counted from the date of placement of Lecturer in the corresponding pre-revised Pay Scale.
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According to the learned counsel for the petitioners, in view of the clarification issued by the AICTE, the third respondent shall refix the AGP as stated in the clarification and the Refresher Course stated in Clause xvi of Appendix I in G.O.Ms.No.111, Higher Education (C2) Department, dated 25.5.2010 is only applicable when the incumbent seeks advancement to higher grade. Therefore, Clause xvi of Appendix I of the aforesaid G.O. is not applicable to the petitioners.

4. Additional Counter Affidavit dated 21.02.2017 has been filed by the second respondent wherein it is stated that, based on the aforesaid clarification, by Letter No.1495/A3/2013, dated 9.3.2016, the second respondent has recommended for taking into account of the earlier services rendered by the teaching staff for Grade Pay movement from Rs.7,000/- to Rs.8,000/- and the same is under consideration before the first respondent.

5. The learned Additional Advocate General reiterating the said averments made in the Additional Counter Affidavit submitted that the second respondent is awaiting orders from the Government to implement the aforesaid clarification issued by the AICTE.

6. Taking into consideration of the above facts and recording the above said submission made by the learned Additional Advocate General, this Court directs the first respondent to pass appropriate orders in the light of the clarification Notification dated 6.1.2016 issued by the All India Council for Technical Education and Letter No.1495/A3/2013 dated 9.3.2016 addressed by the 2nd respondent, as expeditiously as possible, preferably, within a period of four months from the date of receipt of a copy of this order. By consent of the parties, the impugned order passed by the third respondent is kept in abeyance insofar as the petitioners are concerned till an order is passed by the first respondent as directed. Thereafter, it is open to the petitioners to approach the third respondent for necessary claim.

7. In result, the Writ Petitions are disposed of, with the above direction. Connected Miscellaneous Petitions are closed. No costs.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Principal Secretary to Government
of Tamilnadu,
Higher Education Department,
Fort St.George,
Chennai - 600 009.
2. The Commissioner of Technical Education,
Directorate of Technical Education,
Guindy, Chennai - 600 025.
3. The Principal,
Kamaraj Polytechnic College,
Pazhavilai - 629 501,
Kanyakumari District.

+3 Ccs to M/s. D. Subramaniyan, Advocate sr 12019
+1 Cc to The Govt. Pleader sr 12589 to 12596, 12642 & 12643

W.P.Nos.1889 to
1898 of 2014
and

M.P.Nos.1, 1, 1, 1, 1, 1,
1, 1, 1 and 1 of 2014
and

M.P.Nos.2, 2, 2, 2, 2, 2,
2, 2, 2, and 2 of 2014

MP (CO)
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