

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2017

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.23377 of 2007

And

M.P.No.1 of 2007

- 1.Damodaran (Deceased)
- 2.Kalaivani
- 3.D.Durga Devi
- 4.D.Surender Amarnath

(Petitioners 2 to 4 substituted as LRs in the place of the deceased petitioner as per order dated 15.12.2011 by TSSJ in M.P.1/2010 in W.P.23377/2007)

... Petitioners

Vs.

1. The Government of Tamil Nadu by its Secretary, Higher Education Department, Fort St. George, Chennai - 9.
2. The Joint Director of Collegiate Education, Chennai - 6.
3. The Regional Joint Director of Collegiate Education, Vellore Region, Vellore.
4. Mazharul Uloom College, rep. by its Correspondent, Ambur, Vellore.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the orders of the third respondent in O.Mu.No.2117/A1/2001, dated 21.12.2001 and O.Mu.No.1273/A1/2002 dated 25.11.2002 and the order of the 2nd respondent and Mu.Mu.No.1047/G4/2004 dated 12.05.2006 and the order of the first respondent in Government letter No.13379/E2/2004-05, dated 13.04.2006, quash the same and consequently direct the respondents to pay the petitioner arrears of pay and all terminal benefits including pension by refixing the pay

w.e.f.1.7.96 in the revised scale by permitting to exercise revised option, with interest at 12%.

For Petitioner	: Mr.V.Ajoy Khose
For Respondents	: Mr.A.Zakir Hussain for R1 to R3 Government Advocate No Appearance for R4.

O R D E R

The prayer in the writ petition is for a writ of Certiorarified Mandamus calling for the records relating to the orders of the third respondent in O.Mu.No.2117/A1/2001, dated 21.12.2001 and O.Mu.No.1273/A1/2002 dated 25.11.2002 and the order of the 2nd respondent and Mu.Mu.No.1047/G4/2004 dated 12.05.2006 and the order of the first respondent in Government letter No.13379/E2/2004-05, dated 13.04.2006, quash the same and consequently direct the respondents to pay the petitioner arrears of pay and all terminal benefits including pension by refixing the pay w.e.f.1.7.96 in the revised scale by permitting to exercise revised option, with interest at 12%.

2.The case of the petitioner is that the petitioner is a retired Reader in Mathematics of Mazharul Uloom College, Ambur, the fourth respondent herein. The said College is an aided College receiving 100% aid from the State Government.

3.The petitioner joined at the said College on 24.09.1978 as Assistant Professor in Mathematics and retired on 15.10.2005. Prior to that the petitioner was working as Assistant Professor in Mathematics at Sacred Heart College, Thirupattur from 01.07.1977 to 15.06.1978. Therefore, altogether the petitioner had put in 28 years of unblemished service in the Collegiate Educational service.

4.The Government issued G.O.Ms.No.111, Higher Education Department, dated 24.03.1999 revising the pay scale of the College Teachers based on the recommendation of the UGC. As per the said G.O., revised pay scale was directed to be given with effect from 01.01.1996. On issuance of the said G.O.Ms.No.111, Teachers were required to submit their letters of option to switch over to the new pay scales. Accordingly, the petitioner also had given letter exercising his option to switch over to the new pay scale with effect from 01.01.1996. As per the option exercised by the petitioner his pay was fixed at Rs.12,420/- on the Rs.12,000-420-18,300 scale of pay, as per the proceedings of the respondent dated 22.03.2001. In accordance with this fixation his pay as on 01.07.2001 shall be as follows:

01.01.1996	Rs.12,420/-			
01.07.1996	Rs.12,420/- Rs.12,840/-	+	Rs.420/-	=
06.12.1990	Rs.12,840/- Rs.13,680/- (2 Incentive increments for Ph.D as per G.O.111)	+	Rs.840/-	=
01.07.1997	Rs.13,680/- Rs.14,100/-	+	Rs.420/-	=
22.10.1997 (Spl. Grade + 5 years)	Rs.14,940/-			
01.07.1998	Rs.14,940/- Rs.15,360/-	+	Rs.420/-	=
01.07.1999	Rs.15,360/- Rs.15,780/-	+	Rs.470/-	=
01.07.2000	Rs.15,780/- Rs.16,200/-	+	Rs.420/-	=
01.07.2001	Rs.16,200/- Rs.16,620/-	+	Rs.420/-	=

5. Thereafter, the Government issued a letter in Letter No.29909/H1/98-24 dated 05.01.2000 whereby the Government had permitted the Teachers to exercise the revised option within 30 days from the date of the clarification letter i.e., from 05.01.2000.

6. The case of the petitioner is that in view of the revised pay scale from 01.01.1996, the petitioner lost heavily, as, if the new pay scale has been given effect to from 01.07.1996 as has been calculated and given to the petitioner, without taking into account the actual increment, which was due to him on 01.01.1996, then financially the petitioner will lose. However, if the actual increment due dated 01.01.1996 based on the earlier pay i.e., on 31.12.1995 is calculated and given to the petitioner and thereafter if the new pay scale is given to the petitioner from 01.07.1996 such a financial loss caused to the petitioner can be avoided.

7. Only for this purposes the revised option provision was given to the Teachers like the petitioner through the said Government letter dated 05.01.2000.

8. The further case of the petitioner is that even though such a letter was issued by the Government, the same had not been communicated to the petitioner or any other similarly

placed persons working in the fourth respondent College. Therefore the petitioner could not file his revised option as has been permitted/ directed through the said Government Letter dated 05.01.2000, within a period of thirty days, as stipulated therein.

9.However, the petitioner after coming to know about such facility to make a revised option, had given his revised option on 13.07.2001 whereby, the petitioner had expressed his willingness to go for a revision only from 01.07.1996 instead of 01.01.1996 after getting actual increment which was due on 01.01.1996. In the said revised option itself, the petitioner had specifically stated that he had withdrawn the earlier option given by him to give the increase in the revised pay scale from 01.01.1996 and infact he had also stated that whatever the amount received between 01.01.1996 and 30.06.1996 in excess would be refunded by the petitioner.

10.Even though such a revised option was given by the petitioner on 13.07.2001, the same was rejected by the respondents through the impugned orders and ultimate rejection of the Government is dated 13.04.2006 whereby, the Government has rejected the revised option submitted by the petitioner on the only ground that the petitioner had given the revised option after one year. Therefore, since it was not submitted within the time, as stipulated by the Government, the same cannot be accepted and accordingly, the said revised option submitted by the petitioner was rejected. Challenging the rejection order passed by the respondents, especially, the order of the Government through G.O.Letter No.13379/E2/2004-05 dated 13.04.2006, the petitioner has come out with this writ petition with the aforesaid prayer.

11.Mr.Ajoy Khose, the learned counsel appearing for the petitioner would submit that, even though a clarification was issued by the Government through their letter dated 05.01.2000 permitting the Teachers like the petitioner to exercise a revised option within a period of 30 days from the date of the said clarification i.e., from 05.01.2000, the said communication has never been put on notice to any of the Teachers like the petitioner.

12.In this regard, the learned counsel for the petitioner would draw the attention of this Court to a proceedings issued by the Joint Director of Collegiate Education, Vellore region, the third respondent herein vide his letter dated 25.10.2005. The said letter has stated as follows:

"பார்வை இரண்டில் கண்ட இயக்குநர் (பொ)
கடிதத்துடன், அரசு உயர் கல்வித் துறை கடித எண் 29909/
எச் 1/98-24 நாள் 05.01.2000 கடிதம் இவ்வலுவகத்தில் 31.01.2000

அன்று பெறப்பட்டது. ஆனால் இக்கடிதம் அப்போது இம்மண்டல கட்டுபாட்டின் கீழுள்ள உதவி பெறும் கல்லூரிகளுக்கு அனுப்பப்படவில்லை என்பதை பணிவடன் தெரிவித்துக் கொள்கிறேன். இது போன்ற தவறு, இனி வருங்காலங்களில் ஏற்படாவண்ணம் கவனத்துடன் செயல்படுத்தப்படும் என பணிவடன் தெரிவித்துக் கொள்கிறேன்".

13.In view of the categorical assertion made by the third respondent, which would state that, the said clarificatory communication issued by the Government dated 05.01.2000, giving the option to the Teachers to give a revised option within a period of thirty days, has not at all been communicated to any of the aided institutions in that region including the fourth respondent College, where the petitioner had worked, the question of making the revised option, within the said period of thirty days would not arise at all, as the petitioner or any other similarly placed person, working in aided institution in that region, had not at all been put on notice about the Government's decision to make a revised option, within thirty days from the date of the said communication.

14.Therefore, the learned counsel appearing for the petitioner would submit that the impugned order rejecting the revised option given by the petitioner on the sole ground of belated or delayed one beyond the thirty days period, is totally unsustainable. Therefore, in that view of the matter, the learned counsel appearing for the petitioner submits that the impugned order is liable to be interfered with.

15.Per contra Mr.A.Zakir Hussain, learned Government Advocate appearing for the respondents 1 to 3 has relied upon para 3 of the counter affidavit which reads thus:

"3.It is submitted that regarding the averments made in para 7 to 11 the petitioner did not send the revised option in time. If he had furnished his revised Option in time, his pay would have been refixed automatically according to his revised option. But the petitioner sent his willingness letter for revised option after lapse of one year and five months i.e. on 13.07.2001 (which was received in this office on 31.07.2001). Hence his appeal was rejected by the 3rd respondent the Regional Joint Director of Collegiate Education, Vellore Region, Vellore and even by the Government i.e. 1st respondent in its letter No.13379/E2/2004-5, dated 13.04.2006, citing belated submission. Ignorance of this provision of rules on the

part of the petitioner cannot be taken as an excuse".

16.By quoting the said averments made in the counter affidavit filed by the third respondent, the learned Government Advocate would argue that the petitioner had already exercised his option to get the revised scale of pay from 01.01.1996 which he has already admitted. Even though the Government has come forward to give a chance to those who have already exercised their option to get their revised pay scale from 01.01.1996 to give a fresh option to get revised pay scale from 01.07.1996 of-course after getting the annual increment which would be due on 01.01.1996 based on the erstwhile, pay on 31.12.1995, a specific time frame was given by the Government through the said clarificatory letter dated 05.01.2000.

17.According to the learned Government Advocate, the thirty days time has been clearly mentioned in the said letter dated 05.01.2000 and it is not an individual communication to every Teachers. It is only a communication of the Government addressed to the Vice-Chancellors of all Universities, Registrars of all Universities, Principals of all Collages through the Director of Collegiate Education and other Officials in the Pay and Accounts Department etc. If the said communication dated 05.01.2000 has been sent to every one including the Principals of all Colleges through the Directorate of Collegiate Education, the Petitioner cannot take a stand that the said communication has not been made either to the fourth respondent College or to the Teachers working therein.

18.The learned Government Advocate would further submit that if at all the communication had been sent to the Principal of the College concerned, the same would have been also sent to the Principal of the fourth respondent College and in turn it is up to the fourth respondent College Principal to display it or communicate it to the Teachers concerned, including the petitioner. Therefore, on the part of the Government the said letter dated 05.01.2000 has been duly communicated to every College and therefore, the petitioner cannot take any shelter that the same has not been communicated to him and therefore, he could not make his option, within the period of thirty days.

19.Therefore, the learned Government Advocate would submit that the rejection now has been made by the Government, rejecting the option made by the petitioner, i.e., after one year five months, is fully justifiable one and therefore, he submits that there is no requirement of any interference by this Court on the impugned order.

20.This Court has considered the rival submissions made by both sides.

21.The issue involved in this writ petition is in very narrow compass. The revised option exercisable by persons like the petitioner has to be exercised within the time of thirty days as stipulated under the clarification letter dated 05.01.2000 which has clarified that, Teachers are permitted to exercise the revised option consequent upon the issue of the further clarification, within thirty days from the date of the clarification issued. Therefore, the thirty days time starts from 05.01.2000 and it ends on 04.02.2000, whereas, the revised option has been made by the petitioner only on 13.07.2001. If this date is taken, it can be presumed that the revised option given by the petitioner is certainly beyond the thirty days period, as stipulated in the Government letter dated 05.01.2000.

22.However, it is pertinent to note here that the said clarificatory letter dated 05.01.2000, though has been directed to be communicated to each of the Principal of the Colleges through the Directorate of Collegiate Education, the said clarification has not been communicated to a number of aided Colleges under the jurisdiction of the third respondent i.e., Regional Joint Director of Collegiate Education, Vellore Region. This fact is very much available in the proceedings dated 25.10.2005 issued by the third respondent and the contents of the said proceedings has already been extracted herein above.

23.In the said letter, the third respondent has asserted that in the said Vellore region, the 05.01.2000 communication has not been sent or communicated and he has further stated that in future this kind of mistakes would not occur. Therefore, from the reading of the said communication of the third respondent it had become abundantly clear that the very clarification dated 05.01.2000 of the Government has not at all been communicated to any of the aided institution under the jurisdiction of the third respondent (Vellore region) where the fourth respondent College is also located.

24.Therefore, there is every force in the contention of the learned counsel appearing for the petitioner that the said clarification letter dated 05.01.2000 has not at all been communicated to the College where he worked. In fact since the clarification itself was not communicated to the College Principal, the petitioner might not have been in a position to know as to what has been clarified by the Government on 05.01.2000. Therefore, absolutely the petitioner cannot be found fault with for not having made his revised option, within the thirty days period stipulated in the said letter dated 05.01.2000.

25.Therefore, only on coming to know about such a clarification issued by the Government from others concerned,

the petitioner has rightly exercised his option by enclosing a detailed communication dated 13.07.2001. The said revised communication now has been rejected through the impugned order on the sole ground that it has not been made within the stipulated time of thirty days. When the very prescription of thirty days time itself has not been communicated to any of the Colleges in the Vellore region where the fourth respondent College is located, making the blame on the petitioner for not having applied for revised option, is absolutely ridiculous and un-justifiable on the part of the respondents. Therefore, this Court has no hesitation to hold that the impugned order is liable to be quashed and accordingly, it is quashed.

26. In the result, the impugned order is quashed and the writ petition is allowed. The respondents are directed to take into consideration of the revised option made by the petitioner dated 13.07.2001 and pass orders by calculating the revised pay scale from 01.07.1996 as per the revised option and calculate the difference of pay, if any and accordingly, pay the same and also continue to pay the revised pension to the petitioner's family, within a period of eight weeks from the date of receipt of a copy of this order.

27. With these directions, the writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1. The Higher Education,
The Secretary to Government of Tamil Nadu
Department, Fort St. George, Chennai - 9.
2. The Joint Director of Collegiate Education,
Chennai - 6.

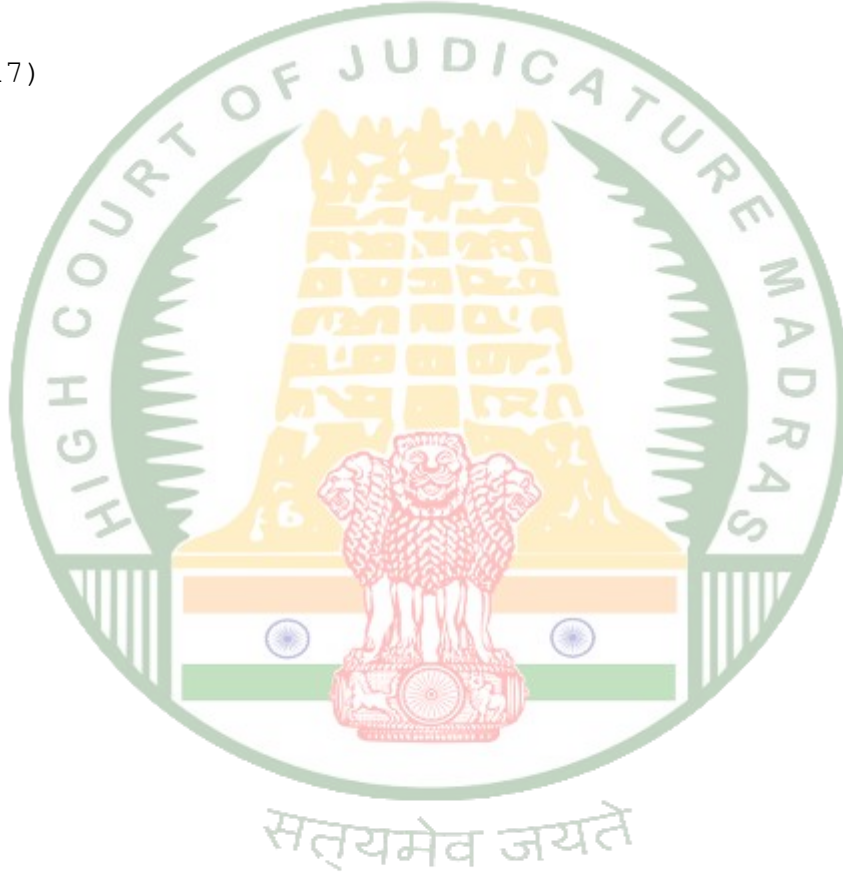
3. The Regional Joint Director of
Collegiate Education,
Vellore Region, Vellore.

+1cc to the Government Pleader Sr. 18703

+1cc to M/S. V. Ajoy Khose, Advocate Sr. 17837

W.P.No.23377 of 2007
And
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