

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.Nos.33973 to 33975 of 2013
and
M.P.Nos.2, 2 and 2 of 2013

P.Palanisamy .. Petitioner in
W.P.No.33973 of 2013

K.Nagarajan .. Petitioner in
W.P.No.33974 of 2013

M.Chandra Sekaran .. Petitioner in
W.P.No.33975 of 2013

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 - 600 035.

3.The Principal,
Nachimuthu Polytechnic College,
Pollachi - 624 003.

.. Respondents in the
above Writ Petitions

Writ Petitions filed under Article 226 of the Constitution of India to issue Writ of Certiorari calling for the records pertaining to the proceedings in B2/63/2012 dated 22.11.2013 issued by the 3rd respondent, quash the same.

For petitioner in all
the above WPs : Mr.R.Subramaniyan

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.D.Balaraman

COMMON ORDER

The case of the petitioners in these Writ Petitions is that the petitioners were initially appointed as Instructors, later promoted as Associate Lecturers and thereafter, they were upgraded as Senior Lecturers. The petitioners were placed in the revised Pay Scale. While so, the third respondent issued a Proceedings dated 22.11.2013 stating that as per Audit Report, the pay was re-fixed retrospectively, which is under challenge in the present Writ Petitions.

2. In the Writ Petitions, 2nd respondent filed Counter Affidavit for himself and on behalf of the 1st respondent. In the Counter Affidavit, it is stated that pursuant to G.O.Ms.No.111, Higher Education Department, dated 25.5.2010, the teachers who had put in above 5 years of service in the scale of pay of Rs.10,000 - 325 - 15,200 on 1.1.2006 alone are eligible to get AGP of Rs.8,000/-. It is further stated that as per Clause 1 (xvi), all advancement to Higher Grade Pay in various cadres will be effected subject to completion of two All India Counsel for Technical Education (AICTE)/State Government approved refresher programmes of not less than two weeks duration each and one week each Technical Education Quality Improvement Programme (TEQIP). Therefore, the petitioners would be entitled for revised AGP only on completion of 42 days refresher course programme prescribed in Clause 1 (xvi). According to these respondents, there is no infirmity or illegality in the impugned order passed by the third respondent.

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

4. 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 similar relief as sought for in the present Writ Petitions 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 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 sale 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.

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. It is further submitted by the learned counsel for the petitioners that the Clause xvi of Appendix I in G.O.Ms.No.111, Higher Education Department, dated 25.5.2010 is only applicable when the incumbent seeks advancement to higher grade. The intention is not to take away the advancement already given. In other words, it can only be prospective. Therefore, the Clause xvi of Appendix I of G.O.Ms.No.111, Higher Education Department, dated 25.5.2010 is not a bar for the petitioners to entitle revised AGP.

5. 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.

6. 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.

7. 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.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

asvm

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To

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

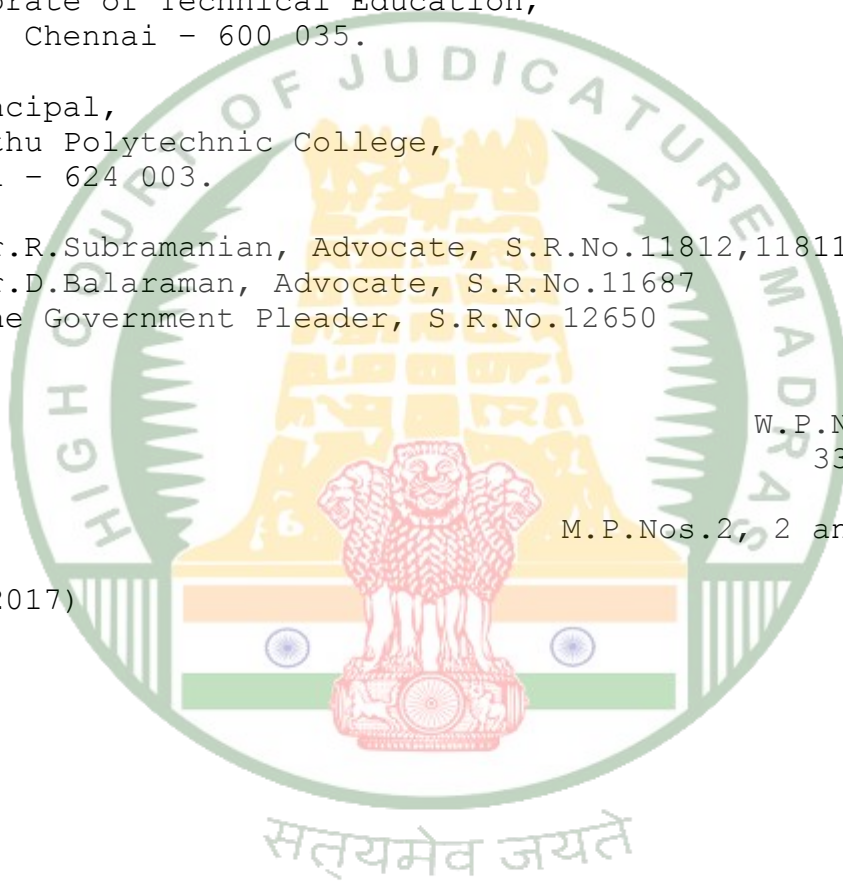
2.The Commissioner of Technical Education,
Directorate of Technical Education,
Guindy, Chennai - 600 035.

3.The Principal,
Nachimuthu Polytechnic College,
Pollachi - 624 003.

+3cc to Mr.R.Subramanian, Advocate, S.R.No.11812,11811,11810
+1cc to Mr.D.Balaraman, Advocate, S.R.No.11687
+1cc to the Government Pleader, S.R.No.12650

W.P.Nos.33973 to
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and
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BR(CO)
RS(11/05/2017)



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