

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.No.1450 of 2018
and C.M.P.No.11530 of 2018

- 1.The Member Secretary,
Pachaiyappa's Trust Board,
Pachaiyappa's College Campus,
Chennai-600 030.
- 2.The Principal,
Pachaiyappa's College for Men,
Chennai-600 030. Appellants

-vs-

- 1.Dr.S.Djodilatchoumy
- 2.The Director of Collegiate Education,
College Road, Chennai. Respondents

Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.31528 of 2016 dated 27.04.2018.

Writ Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari mandamus to Call for the records of the 2nd respondent The Member Secretary of the Pachaiyappa Trust Board Chennai in RC.No.A1/2553/2013 dated 06.07.2016 withdrawing the time scale of pay of the petitioner and reverting back to consolidated remuneration, quash the same and further direct the 2nd respondent allow petitioner to continue as Head of the Department of Computer Science and Application and also to release the salary of the petitioner from the month of June 2015 in the time scale of pay

For Appellants :: Mr.K.V.Sundararajan

For Respondents :: Mr.K.Elangoo for R1

Mr.C.Munusamy,

Special Government Pleader
for R2

JUDGMENT

(Delivered by HULUVADI G.RAMESH, J.)

The facts of the case in brief, are as follows:

(i) The first respondent was initially appointed as a Lecturer in the Department of Computer Science in Pachaiyappa's College for Men, Chennai, on consolidated remuneration of Rs.2,200/- per month, vide proceedings of the first appellant Rc.No.A4/1943/94 dated 12.01.1995 and it has been indicated in the appointment order that it was for a period of four months from January, 1995 and her services would be terminated at any time, if found unsatisfactory. Thereafter, by proceedings of the first appellant dated 15.05.1997, the appointment of the first respondent was made permanent from the date of her joining duty, i.e., from 23.01.1995. Subsequently, the first appellant has appointed the first respondent as Head of the Department of Computer Science and Applications, vide proceedings in Rc.No.A1/1096/2002 dated 21.04.2004 and regularized her service as insisted by All India Council for Technical Education and placed her in the regular time scale of pay of Rs.8000-275-13500 and her pay has been fixed @ Rs.8000/- with retrospective effect from 01.07.2001 with monetary benefits from 1.4.2004 and also informed the Principal In-charge, Pachaiyappa's College to regulate her pay and allowances and other benefits as applicable to the regular staff members and send the claim accordingly. The first appellant, vide proceedings in Rc.No.A/1096/2002 dated 22.04.2004, had informed the second appellant to send proposal for claim of periodical increments in respect of the first respondent with effect from 01.07.2001, the date from which increment was due to be sanctioned and regulate the future increments with monetary benefit from 01.04.2004 along with the service register after making necessary entries. The first appellant, vide proceedings dated 25.11.2010, has taken note of its resolution in No.137 dated 16.11.2010 to extend the benefit of revised UGC norms scale of pay to the first respondent and to fix her pay from 01.01.2006 and the Principal In-Charge Pachaiyappa's College, was also directed to send proposals immediately as per UGC norms.

(ii) In these circumstances, to the shock and surprise of the first respondent, the first appellant, vide proceedings in Rc.No.A1/2553/ 2013 dated 29.06.2015, has withdrawn the time scale of pay and placed her as Full Time Lecturer, which was followed by a consequential order of the second appellant dated 09.07.2015. The first respondent made a challenge to the said

orders, by filing W.P.No.24016 of 2015 and this Court, taking note of the fact that no opportunity whatsoever has been afforded to the first respondent before passing the said proceedings, has partly allowed the writ petition by quashing the said orders and remanded the matter once again to the second appellant for fresh consideration after affording opportunity of personal hearing to the first respondent. Accordingly, the second appellant has issued a proceedings dated 04.11.2015 for which the first respondent has submitted a detailed reply dated 09.11.2015 and also appeared in person before the second appellant on 26.11.2015 and submitted her oral representation. But without considering the same, the first appellant has passed an order dated 06.07.2016 withdrawing the time scale of pay with effect from 01.06.2015 and also reverted to consolidated pay on par with other faculty members employed in self-finance courses on consolidated remuneration.

2. With the above background, the first respondent filed a writ petition before this Court in W.P.No.31528 of 2016 challenging the order passed by the first appellant dated 06.07.2016. The first respondent also filed a contempt petition in Cont.P.No.2507 of 2015 praying for punishing the appellants herein for the willful disobedience of the order dated 06.08.2015 passed by this Court in W.P.No.24016 of 2015. This Court, partly allowed the writ petition by quashing the order passed by the second respondent in Rc.No.A1/2553/2013 dated 06.07.2016 and by directing the first appellant to release the eligible salary and allowances payable to the first respondent with effect from 29.06.2015, subject to any payment already made during the pendency of Contempt Petition No.2507 of 2015 and the said exercise was directed to be carried out within a period of twelve weeks.

3. Challenging the order passed in the writ petition, the present appeal has been filed.

4. It is the main submission of the learned counsel for the appellants that the learned single Judge has not taken into consideration the fact that due to the strength of students in M.C.A. Course which has come down from 30 to 13, the Management was facing financial constraints and hence the said course was ultimately closed after getting the approval from the University. Hence, the first respondent is not entitled to question the withdrawal of the time scale of pay, which has been made only due to financial constraints, as per law.

5. Per contra, the learned counsel for the first respondent has submitted that the learned single Judge has considered the matter in proper perspective and has passed the impugned order which does not require any interference in the hands of this

Court.

6. We have also heard the learned Special Government Pleader appearing for the second respondent on the submissions made by the learned counsel for the appellants and perused the materials available on record carefully.

7. According to the first respondent, she has submitted a reply/representation dated 04.11.2015 and also participated in the oral enquiry. But without considering the same, the first appellant has passed an order dated 06.07.2016 withdrawing the time scale of pay with effect from 01.06.2015 and also reverted her to consolidated pay on par with other faculty members employed in self-finance courses on consolidated remuneration. The learned single Judge, considering the facts and circumstances, had given a finding that all along, the appellant has been treated as a regular employee with time scale of pay with periodical increments as per UGC norms. It is the contention of the first appellant that the first respondent did not appear for personal enquiry and evaded it and hence the first appellant took a decision to withdraw the time scale of pay due to closure of MCA course in Pachaiyappa's College on self-finance pattern on account of financial crisis and she is entitled to original pattern of consolidated pay on par with other faculty members employed in self-finance courses on consolidated remuneration from the beginning of academic year 2015-16 till the end of the academic year 2015-16. The first respondent also made a challenge to the said order, by filing an appeal and later on withdrew it.

8. Since the first respondent's services have been regularized and she was posted as Head of the Department of Computer Science and Applications and her pay scale was revised on par with UGC norms and her probation has also been declared successful and thus, for all purposes, she became full time teaching staff of Pachaiyappa's College, the learned single Judge came to the conclusion that the action of the first appellant in reverting the first respondent to consolidated scale of pay and placing her as Full Time Lecturer, is not tenable. It has also been observed that the said reversion has lowered her status as full time teaching staff and also affected her pay and allowances, which the first appellant cannot do so. We concur with the view taken by the learned single Judge, as we have no second opinion over the findings rendered by the learned single Judge. As rightly held by the learned single Judge, the difficulty pleaded by the first appellant has to be resolved by themselves and this Court cannot grant any protection to the Management of the institution, but at the same time, it is also open to the first respondent to consider any fair offer to be offered by the Management of the college.

9. In the result, the writ appeal stands dismissed.

Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

KM

To

The Director of Collegiate Education,
College Road, Chennai.

+1cc to Mr.K. Elango, Advocate SR.No.53730

W.A.No.1450 of 2018
and C.M.P.No.11530 of 2018

GMV (14/09/2018)



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