

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:24.07.2018

Coram

THE HONOURABLE Mr.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

W.A.No.1506 of 2018
and
C.M.P.No.12006 of 2018

1. The Annamalai University,
Rep. By its Registrar,
Annamalai Nagar,
Chidambaram - 608 002.
Cuddalore District.
2. The Dean
Rajamuthiah Medical College & Hospital,
Annamalai University,
Annamalai Nagar - 608 002. ... Appellants/Petitioners

Vs.

M.Somasundaram ..Respondent

Prayer: Appeal filed under Clause 15 of Letter Patent against the order dated 15.12.2017 in W.P.No.1238 of 2013 passed by this Court.Writ Petition filed Under Article 226 of the Constitution of India issue a Writ of Mandamus directing the 1st respondent university to pay the difference in gratuity Pension, Arrears of Pension, Commenced value of pension provident Fund and all other herefire on the basis of the revised scale of pay as applicable to the Petitioner after the implementation of the recommendation of to VI pay commission as per gratuity cum Pension cum Provident fund cum insurance cum family Pension Scheme for Teachers framed by the 1st respondent university along with interest at the rate of 18% per annum.

For Appellants : Mr.V.R.Kamalanathan

For Respondent : Mr.Balan Haridas (Caveator)

JUDGMENT

[Judgment of the Court was delivered by M.VENUGOPAL, J.]

The Appellants/Respondents have preferred the instant Writ Appeal [as aggrieved persons] as against the Order dated 15.12.2017 in W.P.No.1238 of 2013 passed by the Learned Single Judge in allowing the Writ Petition.

2.Earlier, the Learned Single Judge, while passing the impugned order on 15.12.2017 in W.P.No.1238 of 2013 filed by the Respondent (as Writ Petitioner) at paragraphs 4 and 5, had observed the following:

"4.The learned counsel appearing for the petitioner has also brought to the notice of this Court, that the very same resolution passed by the first respondent was declared as invalid by this Court in W.P.No.19587 of 2011, dated 24.09.2012. The learned counsel for the petitioner further states as against the said order, writ appeal was filed and the order of this Court was confirmed by the Division Bench of this Court. However, the Hon'ble Division Bench held that the resolution passed is no relevance in respect of the settlement of pensionary and terminal benefits payable to the professor.

5.Further, it is brought to the notice of this Court that the writ petitioner was not in service at the time of passing of the resolution and this view of the matter, the writ petitioner is entitled for all the terminal benefits from the date of his retirement."

and finally directed the Appellants/Respondents to settle the pensionary benefits due to the Respondent (Writ Petitioner), taking into account his date of retirement as 30.06.2006 and consequently, to pay the revised pay and pension in accordance with the rules, within a period of twelve weeks from the date of receipt of a copy of this order.

3.The Learned Counsel for the Appellants submits that the Learned Single Judge should have dismissed the Writ Petition (filed by the Respondent/Writ Petitioner) on the ground that the Syndicate of the Annamalai University had passed a Resolution bearing No.63 dated 28.07.2010, which runs as under:

"Resolved that the staff members who retired between the academic year 2006-2007 and 2008-2009 and who have declined the offer of appointment be not allowed the

benefit of refixation of pension in the revised scale of pay and their pension be fixed as per the pre-revised scale of pay.”

4. Advancing his arguments, the Learned Counsel for the Appellants contends that the Respondent/Writ Petitioner has not challenged the Resolution No.63 dated 28.07.2010 of the syndicate of the Annamalai University. Further, it is represented on behalf of the Appellants that the Learned Single Judge had failed to take into consideration that the Respondent/Writ Petitioner was paid pension from the date of re-employment i.e. on 01.07.2006 till September 2007 and from 01.09.2009 onwards.

5. Expatiating his submission, the Learned Counsel for the Appellants brings it to the notice of this Court that the Respondent/ Writ Petitioner made a request for re-employment and he was willing to work in the University upto the age of 65 years and based on such assurance, the University extended and renewed the contract of the Respondent/Writ Petitioner year after year and this made the University to take a decision not to recruit a Professor in the respective subject.

6. The Learned Counsel for the Appellants proceeds to point out that the Respondent/Writ Petitioner resigned from his post on 11.12.2007, which resulted in great hardship for the administration to search for a substitute to teach respective students particularly during the middle of the academic year.

7. Yet another contention advanced on behalf of the Appellants is that the Learned Single Judge had failed to appreciate that the Appellants had considered the earlier service of the Respondent/ Writ Petitioner for a period of seven years and nine months in Medical College, Ludhiana was considered for pensionary benefits and counted his 'Qualifying Services' for obtaining pension benefits, though it will cause additional financial burden to the University.

8. Conversely, it is the submission of the Learned Counsel for the Respondent/Writ Petitioner that the Learned Single Judge had rightly directed the Appellants/Respondents to settle the pensionary benefits due to the Respondent/Writ Petitioner, after taking into account of his date of retirement as 30.06.2006 and resultantly had directed to pay the revised pay and pension in accordance with the rules, within a period of twelve weeks from the date of receipt of a copy of this order passed in the Writ Petition and the said order is free from any flaw.

9.It comes to be known that the Respondent/Writ Petitioner had joined the 1st Appellant/University as a Lecturer in Physiology on 30.12.1981. He was promoted as Reader on 01.10.1992 and later promoted as Professor. He attained the age of superannuation on 30.06.2006. He was engaged as Contract Professor from 01.07.2006 and from the contract service, he was relieved with effect from 11.12.2007.

10.As a matter of fact, the Respondent/Writ Petitioner in the Writ Petition had taken a plea that he had put in 24 ½ years of regular service in the 1st Appellant/1st Respondent/University and 1 ½ years of service on contract basis. Earlier, prior to his joining in the 1st Appellant/1st Respondent University, he had rendered seven years and ten months of service [put together in Christian Medical College and Brown Memorial Hospital, Ludhiana and Dayanand Medical College and Hospital, Ludhiana]. Apart from that, the 1st Appellant/1st Respondent/University, through its Memorandum dated 10.06.1996, had informed the Respondent/Petitioner that the services rendered by him and other institutions before joining it, would be taken into account for the purpose of pensionary benefits and directed him to remit Rs.45,391/- and the said sum was recovered by the Appellants/Respondents in 36 instalments from his salary beginning from August 1996.

11.Thus, the stand of the Respondent/Petitioner is that he had rendered total service of 32 years and four months for the purpose of calculating his pension. Therefore, according to him, he is eligible to claim full pension and that he was not paid any pension for the period from 01.07.2006 to 31.12.2008. The Respondent/Writ Petitioner in his W.P.No.1238 of 2013 had also averred that the Appellants/Respondents in respect of others, who had retired from the regular service, who were taken back on contract service, were given full revised consolidated pay and pension and only in his case, different yard stick was sought to be applied without semblance of any legal basis.

12.It transpires from the Affidavit of the Respondent/Writ Petitioner in W.P.No.1238 of 2013 that he had furnished the list of following persons, who after the retirement were retained the faculty on contract basis and they were paid with the pension.

"(i) Dr.C.Ramachandran, who retired from the Dental Faculty on 30.06.2006, has been retained on contract basis and he is being given full pay and full pension

(ii) Dr.A.R.Annamalai, who retired on 30.6.2007 as Professor of Pharmacology, has been retained on contract basis and he is being given revised full pay and full pension

(iii)Dr.C.Subramaniam, who retired on 30.06.2009 as Professor of Surgery, has been

retained on contract basis and he is being given revised full pay and full pension.

(iv) Dr. S.C. Sahoo, who retired as Professor and HOD, ENT, has taken up employment elsewhere and he is being given full revised pension

(v) Dr. Joseph P. Innocent, who retired as Professor of Microbiology, has taken up employment elsewhere and he is being given full revised pension."

13. In pith and substance, the contention advanced on behalf of the Respondent/Petitioner is that when all retired individuals, who were also re-engaged on contract basis, were given pension and revised pension, the Respondent/Writ Petitioner cannot be denied of the same. Viewed in that perspective, the Respondent/ Writ Petitioner has filed the Writ Petition praying for passing of an order by this Court in directing the 1st Appellant/1st Respondent/ University to pay the difference in Gratuity, Pension, Arrears of Pension, Commuted Value of Pension, Provident Fund and all other benefits on the basis of the revised pay scale applicable to the Respondent/Petitioner after the implementation of the recommendations of the VI Pay Commission as per Gratuity cum Pension cum Provident Fund cum Insurance cum Family Pension Scheme for Teachers, framed by the 1st Appellant/1st Respondent/ University together with interest at 18% per annum.

14. This Court has heard the Learned Counsel for the Appellants and the Learned Counsel for the Respondent/Petitioner and noticed their contentions.

15. It is to be borne in mind that if any Resolution is brought into force by any Competent Authority ordinarily the same will be prospective in nature. It may not apply in a retroactive or retrospective manner, especially when the said Resolution affects the right of concerned persons resulting in civil consequences. Also that, the accrued rights or crystallised rights to and in favour of the individual cannot be displaced in a lighter fashion.

16. As far as the present case is concerned, although a heavy reliance is placed on the Syndicate Resolution of the 1st Appellant/ 1st Respondent/University to the effect that 'the staff members who retired between the academic year 2006-2007 and 2008-2009 and who have declined the offer of appointment be not allowed the benefit of re-fixation of pension in the revised scale of pay and their pension be fixed as per the pre-revised scale of pay', this court pertinently points out that in the present case, the Respondent/ Writ Petitioner retired on 30.06.2006 and he served on reemployment from 01.07.2006 till

September 2007. In this connection, it is not out of place for this Court to make a relevant mention that the Syndicate Resolution No.63 dated 28.07.2010 of the 1st Appellant/1st Respondent/University is not helpful and the same will not come to the aid/rescue of the Appellants because of the reason that the said Resolution is not applicable to the Respondent/Writ Petitioner. Besides that, the Syndicate Resolution No.63 dated 28.07.2010 of the 1st Appellant/1st Respondent/ University is not assailed by the Respondent/Writ Petitioner, yet, this Court is of the earnest opinion that it cannot be put against the Respondent/Writ Petitioner. When the Respondent/Petitioner, in para 4 of the Affidavit in W.P.No.1238 of 2013, had referred to five names of individuals [all retired persons], who were also reengaged on contract basis, were given pension and revised pension, then, the Respondent/Writ Petitioner cannot be differently treated and in short, he cannot be denied of the retirement benefits which he is entitled to receive legally.

17.In view of the foregoing discussions and also, this Court, taking note of the primordial fact that the Respondent/Writ Petitioner was not in service at the time when the Syndicate of the 1st Appellant/1st Respondent/University passed a Resolution No.63 dated 28.07.2010, then, this Court holds that the Respondent/ Petitioner, in Law, is entitled to claim all the terminal benefits due to him from the date of his retirement.

18.Looking at from any angle, the view taken by the Learned Single Judge in directing the Appellants/Respondents to settle the pensionary benefits due to the Respondent/Writ Petitioner after taking into account his date of retirement as 30.06.2006 and resultantly, to pay the revised pay and pension in accordance with the rules etc., they do not suffer from any material irregularities and patent legal infirmities. Resultantly, the Writ Appeal fails.

19.Accordingly, the Writ Appeal is dismissed, leaving the parties to bear their own costs. Consequently, the Order dated 15.12.2017 passed by the Learned Single Judge in W.P.No.1238 of 2013 is affirmed by this Court, for the reasons assigned in this Appeal. Connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The Registrar,
The Annamalai University,
Annamalai Nagar,
Chidambaram - 608 002.
Cuddalore District.

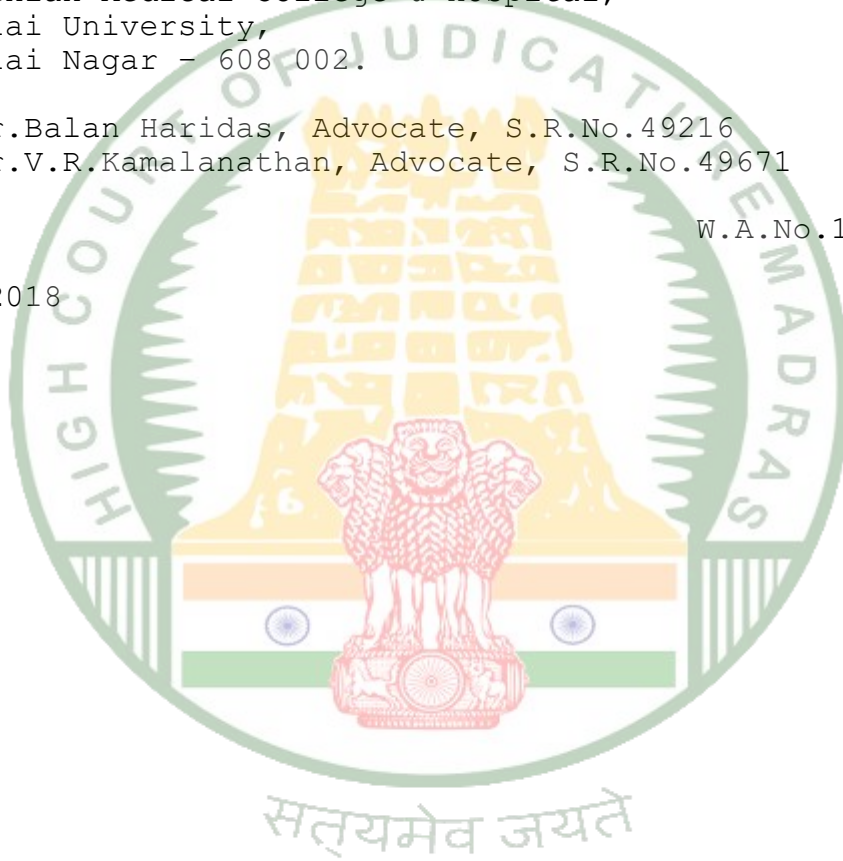
2.The Dean
Rajamuthiah Medical College & Hospital,
Annamalai University,
Annamalai Nagar - 608 002.

+1cc to Mr.Balan Haridas, Advocate, S.R.No.49216

+1cc to Mr.V.R.Kamalanathan, Advocate, S.R.No.49671

W.A.No.1506 of 2018

MG (CO)
BM 26/07/2018



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