

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2018

CORAM

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

W.P.No.18267 of 2012

and MP.Nos.2 & 3 of 2012 & WMP. No.24166 of 2016

1.K.Prema
2.Mrs.R.Raja Rajeswari
3.K.Marimuthu
4.Mrs.S.Anuradha
5.Mrs.P.Tamizselvi
6.S.Irudaya Selvarai
7.Mrs.K.Vijaya
8.K.Girija
9.Mrs.S.P.Mahadevi

.. Petitioners

Vs

1.The Tamil Nadu Dr.M.G.R.University,
No.69, Mount Road, Guindy,
Chennai-600 032.
Rep. by its Vice-Chancellor

2.The Registrar,
The Tamil Nadu Dr.M.G.R.University,
No.69, Mount Road, Guindy,
Chennai-600 032.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of the first respondent herein daed 09.07.2012 in No.EII(2)/28749/2011 and quash the same and consequently direct the respondents herein to extend the Pay Band of PB 3 Rs.15600-39100 with GP. Rs.5400/- to the petitioners and to grant the petitioners the said pay for the entire services as Personal Secretary Gr.I.(Prayer amended as per order dated 03.11.2017 by SMSJ in WP.No.24165 of 2016 in 18267 of 2012).

For Petitioners : Mr.AR.L.Sundaresan, Sr. Counsel for
Ms.AL.Gandhimathi

For Respondents : Mr.P.R.Gopinathan

ORDER

This writ petition has been filed by the petitioners under Article 226 of Constitution of India, seeking for a Certiorarified Mandamus by quashing the order of the 1st respondent dated 09.07.2012 in proceeding No.EII(2)/28749/2011 after examining the records and consequently direct the respondents to extend the Pay Band 3 of Rs.15,600 - 39,100 with Grade Pay of Rs.5,400/- to the petitioners and grant the petitioners the said pay for the entire service as Personal Secretary Grade I.

2. It appears that the petitioners 1 to 8 were originally recruited as Steno Typist Grade III in the respondent university on different dates. So far

as the petitioner No.9 is concerned, he came on deputation to the University from the Cooperative Audit Department, Tuticorin on 03.03.1994 i.e. after the recruitment of the petitioners 1 to 8 and subsequently, he was permanently absorbed as per statute of the University. The aforesaid post of Steno Typist Grade III was having the promotional avenue to Steno Typist Grade II and therefrom to Steno Typist Grade I. For being considered promotion to the post of Steno Typist Grade II from the post of Steno Typist Grade III, the Steno Typist must have rendered not less than 5 years of service in the post of Steno Typist Grade III and for promotion from Steno Typist Grade II to Steno Typist Grade I, they must have rendered service not less than 7 years of service as Steno Typist Grade II. Though the petitioners had all the requisite experience and qualification for being promoted to the post of Steno Typist Grade II, due to the non-availability of promotional post they continued to wallow in the entry grade for a considerable period. Then when vacancy occurred, petitioner nos.1 to 6 were promoted to Steno Typist Grade-II on 05.02.2001 & 18.12.2001. Then on 01.09.2007 considering their total period of service, they were upgraded to Steno Typist Grade-I and petitioner nos.7 to 9 were also upgraded to Steno Typist Grade II from the post of Steno-Typist Grade III vide proceedings No.E-II(2)/00640/2007-2 dated 19.01.2007. The authority thereafter re-designated the aforesaid post of Steno Typist Grade I, Steno Typist Grade II and Steno Typist Grade III as Personal Secretary Grade I, Personal Secretary

Grade II and Personal Assistant respectively. Hence, the petitioners 1 to 6 were designated as Personal Secretary Grade I and Petitioners 7 to 9 were designated as Personal Secretary Grade II. Subsequent to the same, the petitioners 7, 8 and 9 were also upgraded from the post of Personal Secretary Grade -II to Personal Secretary Grade-I vide proceedings No.EII(1)/640/2007 University Order No.29/2008 dated 24.10.2008. However, the petitioners from the date of their upgradation were not given the equivalent salary of Personal Secretary Grade-I against which they had made grievance before the respondents. But, without redressing their grievance to grant the scale of personal secretary Grade I from the date they were upgraded, the respondent to the shock and surprise of the petitioners served them the proceedings No.EII(2)/28749/2011 dated 09.07.2012 of the 1st respondent stating that the Governing Council in its Resolution No.212(31) held on 27.06.2012 resolved to extend the Pay Band of Personal Secretary Grade I for two persons who were promoted against the sanctioned post and there being neither any provision of upgradation, the upgraded Personal Secretary Grade-I were downgraded to number of sanctioned post of Personal Secretary Grade-II and created two supernumerary posts of Personal Secretary Grade-II to accommodate petitioner nos.8 and 9 and not to entertain any further representation in this regard, so also extend the equivalent pay scale to Personal Secretary in any other Department to the persons holding the sanctioned post of

Personal Secretary. The petitioners thereafter came to challenge the same in this writ petition, inter-alia, on the grounds that since they have been upgraded taking into consideration the total length of their service from the date of their entry as a Personal Assistant by the respondent and they have also rendered service in the said upgraded post for a quite substantial period and qualified for the same, they could not have been downgraded arbitrarily by the University that too without notice to them on the ground that there was no availability of the sanctioned post even though there is a case of upgradation.

3. In the counter affidavit the Respondent-University does not dispute the fact that the petitioners having all the requisite qualification for promotion to the next grade of Personal Secretary Grade-II, from Personal Assistant then Steno Typist Grade-II and could not be promoted for a considerable period and only when the vacancy occurs, the petitioner nos.1 and 6 were promoted against sanctioned post and thereafter petitioner nos.7 to 9 were upgraded to the said post as there was no sanctioned post to promote them and thereafter their upgradation was made to the next Grade, i.e., Personal Secretary Grade-I by Respondent-University. However, their such upgradation being not permissible as there was no sanctioned posts on that grade and they were also not qualified to be promoted to that grade and as such upgradation was illegal. Hence, such decision of the

University being not in consonance with the law, the Finance Committee made the objection to such illegal and arbitrary upgradation. Taking note of the same, the University also being competent to review such wrong decision, took impugned decision. The said decision of the University being not suffering from any wrong, this writ petition is devoid of merit. But, considering the hardship of the petitioner nos.8 and 9, two supernumerary posts were created and they were absorbed in the post of Personal Secretary Grade-II. Furthermore, it is also the case of the University that even if their posts were re-designated but the said post not carrying the same as duty and responsibility of the Personal Secretary Grade-I in any other Department, they were denied with the same scale or pay. But, the Authority subsequently considering the grievance of Personal Secretary Grade-I has granted the scale to two posts of Personal Secretary as demanded. Hence, the writ petitioners who were not qualified to be appointed against the post of Personal Secretary Grade-I on the date of upgradation, are neither entitled to the post nor the scale of pay for the same. Therefore, the writ petition is devoid of merit and liable to be dismissed.

4. It is submitted by the learned counsel for the petitioners that the petitioners were recruited as Steno Grade-III with a legitimate expectation to get promotion to Grade-II after rendering five years of service, but they

continued to wallow in the entry grade for considerable period of time without promotion as there was no vacancy for the same. It is only after availability of vacancy for six persons were promoted to Grade-II, later on designated as Personal Secretary Grade-II and also their colleagues/ petitioners Nos. 7, 8 and 9 also being continued in the entry grade, they were subsequent upgrade Personal Secretary Grade-II as there was no vacancy in the promotional cadre. Subsequently, there being no vacancy available for Personal secretary Grade-I which is a Personal Assistant after rendering 12 years of service can reach inasmuch as Personal Assistants are eligible for promotion to Personal Secretary Grade-II after rendering 5 years of service and after rendering seven years of service therein, he can be promoted to Personal secretary Grade-I, the authority decided to upgrade their post to Secretary Grade-I on different dates and accordingly upgraded. Such power being always available with the employer as the same is not creating any additional post, but extending the benefit to the employee who have stagnated to a lower grade, the benefit of higher scale of pay to boost up their moral, they were upgraded. The same being a well considered decision of the Departmental Promotion Committee duly constituted by the University which was also accepted, the same could not have been reviewed on the ground that they were upgraded to a post having no sanction strength vide the impugned order, that too at a belated stage.

The power of upgradation and creation of post being always available to

the University which can be visualized from the impugned order where the University has created two supernumerary posts to protect the employees who were wallowing in the post of Personal Assistants though their colleagues were promoted, the impugned order is unsustainable. Therefore, the impugned order being without rational, the same is liable to be quashed and is without any substance. It is also submitted that equity is also in their favour inasmuch as they have already rendered more than five years of service. Hence, the decision to rescale their upgradation by the impugned order and downgrade to the post was unjust and improper and liable to be quashed.

5. Per contra, learned counsel appearing for the respondents has submitted that the decision taken to upgradation being without any principle and without the appropriate sanction of the Government and also creation of equivalent number of posts, their such upgradation is contrary to law. In such premises, even if they were working in the upgraded post for a quite substantial period they are not entitled to hold the said post as no vested right has accrued in their favour. The authority when came to know about the aforesaid mistake having rectified the same by the impugned order, challenge to the same in this writ petition is without any substance and liable to be dismissed. Furthermore, so far payment of scale is concerned, since the scale claimed for is not applicable to upgraded and re-

designated post, they are also not entitled to the scale of pay at par with the personal secretary grade-I of the other department prescribing such scale of pay. Hence, their claim in this writ petition is devoid of merit, more so when from the very inception their such upgradation is illegal and arbitrary and by this process they were not discharging the function of any higher responsibility. Reliance has been placed in the decision of the Apex Court in the case of ***Notified Area Council through Executive Officer vrs. Bishnu C. Bhoi and others***, reported in (2001) 10 SCC 636 wherein it has been held that if the post is not sanctioned by the State Government and the respondents employees were illegally recruited on the said post without following the process of selection, the Court in exercise of writ jurisdiction could not have directed the State Government to sanction the post and thereafter consider the question of their regularization. Placing reliance on the same, it is submitted that the petitioners are not entitled to the regularization against any up-graded post and also the scale prayed for by them as the authority in the meanwhile realizing the mistake to have been committed and decision being against the statute of the University downgraded them to the respective posts to which they are not entitled. For the said reasons also, it is submitted that they are not entitled to the scale of pay as prayed for.

6. I have considered the submission of the parties and have gone

through the materials on record.

7. As it appears from the materials on record, that the petitioners upgradation to the post of Personal Secretary, Grade I has been objected by the Finance Committee of the University on the ground they were upgraded beyond the sanctioned strength of two post, so also without approval from the Government. Besides the same, the same has also been objected on the ground that though they were not qualified for promotion to the higher grade of Personal Secretary Grad I, they were upgraded to that post by the University in utter dis-regard to the regulations. The aforesaid being an illegal/erroneous decision the same was reviewed and the petitioners were down graded to the post of Personal Secretary Grade II, for which they were qualified to be promoted and accordingly promoted but for some of them there being no posts i.e., for petitioner No. 8 and 9 and two others, who have not come forward to challenge such decision of reversion, absorbed by creating equal numbers of supernumerary post. However, it is not disputed that a Committee duly constituted by the University had recommended their upgradation which was accepted and accordingly, the petitioner Nos.1 to 6 who were first promoted as Personal Secretary Grade II, were upgraded as Personal Secretary Grade I on the first batch i.e., 19.01.2007 and the rest of the petitioners, personal assistant were upgraded as Personal Secretary Grade II on that day vide the said recommendation.

Again petitioner No.7 to 9 were later on upgraded to Personal Secretary Grade I on a subsequent date i.e., vide recommendation dated 24.10.2008.

It is not in dispute that these three petitioners on the date of their upgradation had all the qualifications to be promoted to Personal Secretary Grade II 19.01.2007, hence while reviewing the decision of the University regarding upgradation, their such upgradation was protected. But it cannot be last sight that upgradation and promotion are two different concepts in service jurisprudence. For promotion a person moves from a post of lower grade to post of higher grade carrying higher responsibility. To accord promotion there must be a post available in the promotional grade /cadre to promote a persons from the feeder grade/ cadre. Where as in upgradation, there is no requirement of sanctioned posts. On promotion a vacancy is created in the feeder cadre but on upgradation no such vacancy is created as lower post is upgraded by exhaustion of the said post. Soon after the upgraded person vacate the post by superannuation or promotion, the post is reverted back to the lower cadre from which he was upgraded. Therefore, the objection of the University on the ground that the upgradation made beyond the sanctioned strength as such upgradation was contrary to law appears to this Court to be without any rational and also not in consonance to the principle of upgradation of a post. Hence, the upgradation of the petitioners question on that ground was misconceived.

Now coming to the question their upgradation without approval of the

Government, this Court is of the view no Rule or regulation was placed before this Court that respondent University cannot taken such decision in the absence of such approval of the Government or the Finance Committee. The next question i.e., come up for consideration is that such upgradation was such arbitrary decision of the Committee constituted in as much as the same is contrary to the principles of upgradation as there was no stagnation of the petitioners in the down graded post as they were not wallowing in the post of Personal secretary Grade II though had all the requisite qualification for promotion to the higher post for want of sanction post. Therefore, they could not have been upgraded. Such contention appears to have a force in as much to move to the post of Personal Secretary Grade I, a person must have experience of 7 years in the grade of Personal Secretary Grade II. Admittedly, none these petitioners had such qualification. Therefore, there was no apparent reason to upgrade them to the higher post eventhough in ordinary course in 12 years one could have moved from the entry grade to the Personal Secretary Grade I and all these petitioners had such years of experience from the date of entry into service on the date they were upgraded. The sole purpose of upgradation is to give relief to the employee who used to wallow in a post even if he fulfills all the criteria's for promotion to the next higher post but due to non availability of the post in the promotional cadre he continue to remain in the lower post. The same is solely to boost up the moral of a employee and

to bail out him from the frustration of continuing in the same scale for a considerable period. Since in this case, none of the petitioners has stagnated in the cadre of Personal Secretary Grade II and had also not the requisite experience for promotion to the Personal Secretary Grade I, the authority therefore, could not have upgraded them. Hence the objection made by the Finance Committee that they were illegally upgraded and as such the respondent University cannot be found fault with to set right as such a wrong decision such a power is always available to the authority in view of the law laid down in this regard in the decision cited by the counsel for the petitioner. But simultaneously, it cannot be last sight that the petitioners have no contribution in such decision of the University in upgrading their posts. It is the University taking into consideration their length of service from the date they entered as Personal Assistant and the period normally required for promotion to the Personal Secretary Grade II in ordinary course, upgraded them to the Personal Secretary Grade I.

However, the petitioners had no qualification to be promoted to Personal Secretary Grade I on the date of their upgradation. But in the meanwhile atmost all of them have acquired seven of experience as Personal Secretary Grade II required for promotion to Personal Secretary Grade I. It is also not in dispute that they have unblemishedly served to the respondent. In such premises, this Court is of the view that the petitioners are made out a case to continue with the upgraded post Personal Secretary Grade I from the

next date of completion as seven years in the post of Personal Secretary Grade II or upgradation to the said post.

7. Therefore, impugned order is quashed and the respondent is directed to issue a fresh order directing the upgradation of the petitioner nos.1 to 6 to the post of Personal Secretary Grade I on the next day of their completion of experience of seven years in the post of Personal Secretary Grade II. So also sofar petitioner no.7 to 9 are concerned while protecting their upgradation to the post of Personal Secretary Grade II made on 19.01.2007, the respondent University is also directed to upgrade their post to Personal Secretary Grade I from the next date they completed seven years in the upgraded post of Personal Secretary Grade II. Since the University has taken a decision to extend the pay band as prayed for by the petitioners of Personal Secretary Grade I, to two number of posts, all the petitioners are also entitled to the said scale from the modified date of their upgradation to be issued by the respondent in terms of this order. So also the petitioner nos.7 to 9 are also entitled to the scale of Personal Secretary Grade II from the date of their upgradation. Accordingly, necessary order in this regard be passed by the University within a period of three months from the date of receipt of the copy of this order extending the financial and other consequential benefits in terms of the aforesaid order. With the aforesaid order and direction, this writ petition stands

disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

21.02.2018

rka/Dn

To

1.The Tamil Nadu Dr.M.G.R.University,
No.69, Mount Road, Guindy,
Chennai-600 032.
Rep. by its Vice-Chancellor

2.The Registrar,
The Tamil Nadu Dr.M.G.R.University,
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