

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.04.2018

Delivered on : 27.04.2018

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.31528 of 2016

and WMP.Nos.27364 and 27365 of 2016

and Cont.P.No.2507 of 2015

W.P.No.31528 of 2016

Dr.S.Djodilatchoumy
Head of the Department,
Computer Science & Applications,
Pachaiyappa's College,
Chennai-30.

.. Petitioner

Vs.

1.The Director of Collegiate Education,
College Road, Chennai.

2.The Member Secretary,
Pachaiyappa's Trust Board,
Pachaiyappa's College Campus,
Chennai-600 030.

3.The Principal,
Pachaiyappa's College for Men,
Chennai-600 030.

.. Respondents

Cont.P.No.2507 of 2015

Dr.S.Djodilatchoumy
Head of the Department,
Computer Science & Applications,
Pachaiyappa's College,
Chennai-30.

.. Petitioner

Vs.

1.Thiru.K.Hemanath,
The Secretary,
Pachaiyappa's Trust Board,
Pachaiyappa's College Campus,
Chennai-600 030.

2.Thiru.P.Gajivaradhan,
The Principal,
Pachaiyappa's College for Men,
Chennai-600 030.

.. Respondents

Prayer in W.P.No.31528 of 2016: 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 of the 2nd respondent - The Member Secretary of the Pachaiyappa's 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 the 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.

Prayer in Cont.P.No.2507 of 2015: Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, praying for punish the respondents for their willful and deliberate disobedience and defiance of the order of this Court dated 06.08.2015 passed in W.P.No.24016 of 2015.

PRYER IN WP.24016 OF 2015:

Writ Petition filed Under Article 226 of the Constitution of India seeking for a writ of Certiorarified mandamus calling for the records of the 3rd Respondent-The Secretary of the Pachaiyappa Trust Board, Chennai in RC.No. A1/2553/2013, dated 29.06.2015 and the consequential order of the 4th Respondent, The Principal, Pachaiyappa College for Men, Chennai, in D.No.182/2015, dated 09.07.2015, withdrawing the time scale of pay of the Petitioner and reverting back to consolidated remuneration, quash the same and further direct the 4th Respondent to release the salary of the Petitioners for the month of June 2015, in the time scale of pay.

In Both Petitions

For Petitioner : Mr.K.Elango

For Respondents : Mr.M.Devendran for R2 and R3 in
WP.31528/16 & R1 & R2 IN
CONT.P.No.2507

C O M M O N O R D E R

The petitioner, aggrieved by the order of the second respondent dated 06.07.2016 in withdrawing the time scale of pay and placing him as Full Time Lecturer, has come forward to file this writ petition.

2. It is averred by the writ petitioner that Pachaiyappa's Trust is administering 13 educational institutions at Chennai, Kanchipuram, Cuddalore and Chidambaram and the Pachaiyappa's College, Chennai run by the said trust is fully aided and recognized by the Government and the college is also governed by the Tamil Nadu Recognised Private Colleges (Regulation) Act. The petitioner would further aver that the second respondent has issued appointment order, vide Rc.No.A4/1943/94 dated 12.01.1995, appointing her as a Lecturer in the Department of Computer Science and the said course was approved by All India Council for Technical Education [AICTE] and also affiliated to the University of Madras. The said affiliation was done after verifying the infrastructure and other facilities available for running B.Sc., Computer Science and M.C.A. Courses for which provisional affiliation was granted for the academic year 1994-95. The second respondent, vide proceedings in Rc.No.A1/2466/97 dated 15.05.1997, has fixed the time scale of pay with 40% of Basic Pay and all other allowances with effect from the date of joining of the duty and on account of the said communication, appointment of the petitioner became permanent from the date of her joining duty i.e., from 23.01.1995.

3. The petitioner made a request to the second respondent to open Service Register and Contributory Provident Fund Account and in the interregnum, G.O.Ms.No.254, Higher Education (E.1) Department dated 10.06.1998 came to be passed issuing regulations for revising the tuition fees for Self-Financing Arts and Science Colleges and as per the said Government Order, teaching and non-teaching staff should be regular in nature and should be paid U.G.C. Scale of Pay and allowance and further, pension and provident fund contribution should be maintained in a separate account in the manner to be stipulated by the Government. It is further stated by the petitioner that the third respondent, vide proceedings in D.No.935/2001-2002 dated 30.10.2001, has appointed her as Head of the Department of Computer Science and Applications and thereafter, the second respondent, vide proceedings in Rc.No.A1/1096/2002 dated 21.04.2004 has regularized her service and placed her in the regular time scale of pay of Rs.8000-275-13500 and her pay has been fixed at Rs.8,000/- with effect from 01.07.2001 with monetary benefits from 01.04.2004 and further the second respondent has also directed the third respondent to regulate her pay and allowances and other benefits as applicable to the regular staff members and send the claim accordingly.

4. The second respondent, vide proceedings in Rc.No.A1/1096/2002 dated 22.04.2004, made a request to the third respondent to send the proposal for claim of periodical increment with effect from 01.07.2001, the date from which the increment was due to be sanctioned and regulate the future increments with monetary benefits from 01.04.2004 and the second respondent, vide proceedings in Rc.No.A2/1834/04 dated 25.04.2004, has declared the petitioner as approved probationer. The second respondent, vide proceedings in Rc.No.A2/3979/2010 dated 25.11.2010 has extended the benefit of U.G.C. norms scale of pay to the petitioner and fixed her pay from 01.01.2006 and also directed the third respondent to forward necessary proposal for fixation of incentive increment for the Ph.D. Degree possessed by the petitioner. However, to the shock and surprise of the petitioner, the second respondent, vide communication dated 09.07.2015, has withdrawn the time of scale of pay and re-fixed the consolidated scale of pay without giving any opportunity.

5. The petitioner, challenging the legality of the same, has filed W.P.No.24016 of 2015 and this Court, vide order dated 06.08.2015, has quashed the order of the third respondent with a further direction directing the said official to consider afresh after affording opportunity of personal hearing to the petitioner within a period of four weeks and communicate the decision taken, to the petitioner. Accordingly, the third respondent has issued a proceedings dated 04.11.2015 for which the petitioner has submitted a detailed reply dated 09.11.2015 and also appeared in person before the third respondent on 26.11.2015 and submitted her oral representation.

6. The grievance expressed by the petitioner is that without considering the detailed reply and oral representation, the second respondent has passed the impugned proceedings 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. The petitioner also expressed grievance that since the date of reopening of the college for the academic year 2016-17, the petitioner has been experiencing unpleasant treatments by the respondents 2 and 3 by not allowing him to do her duty and also deleted her name in the college rolls and was orally informed not to attend the college. When the petitioner is ready for enquiry, she came to know that her time scale of pay was withdrawn from the academic year 2014-15. The petitioner, challenging the legality of the impugned proceedings of the second respondent, has filed the present writ petition and it was entertained on 09.09.2016 and notices were ordered.

7. The petitioner, alleging non-compliance of the order dated 06.08.2015 in W.P.No.24016 of 2015, filed Cont.P.No.2507 of 2015 and the respondent/contemnor has entered appearance in the contempt petition and vide interim order dated 29.08.2016, this Court has directed the respondents to pay the arrears to the petitioner as per time scale of pay between 01.07.2011 and 01.06.2015 on or before 27.09.2016 and the contempt petition was again listed on 10.04.2017 and on that day, the learned counsel for the contemnors has produced the supplementary bill claiming arrears of salary for the period from 01.07.2013 to 31.05.2015 and time is sought for filing the details of calculation as to the compliance of the said order with supporting affidavit. Pendency of the contempt petition, it is brought to the knowledge of this Court about the impugned order dated 06.07.2016 passed by the second respondent, which is the subject matter of the present writ petition and therefore, this Court directed the Registry to list Cont.P.No.2507 of 2015 along with the present writ petition, after getting appropriate orders and accordingly, after obtaining necessary orders, Cont.P.No.2507 of 2015 is listed along with this writ petition.

8. The learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents and would submit that even at the time of appointing the petitioner on consolidated pay on 12.01.1995, selection process was done on merits and the second respondent, vide proceedings in R.C.No.A1/1096/2002 dated 21.04.2004 has regularized her service in the Department of Computer Science and Applications as insisted by AICTE and she was put in regular time scale of pay of Rs.8000-275-13500 and her pay has been fixed at Rs.8000/- with effect from 01.07.2001 with monetary benefits from 01.04.2004 and the Principal in-charge of the college was informed to send proposal for claim of periodical increments in respect of the petitioner with effect from 01.07.2001, the date from which increment was due to be sanctioned and regulate the future increments with monetary benefits from 01.04.2004. It is the further submission of the learned counsel appearing for the petitioner that the second respondent, vide proceedings dated, 21.04.2004 has placed her as approved probationer and also declared that she has successfully completed the probationary period on and from 01.07.2001 with a further direction to make necessary entries in the service register and the Principal In-charge of the College had also ordered payment of allowances such as Dearness Allowance, House Rent Allowances, City Compensatory Allowance and Medical Allowance as applicable to Time Scale of Pay and as such, she has been made permanent and became a regular staff and the second respondent, vide proceedings dated 25.11.2010 in Rc.No.A2/3979/2010, has also recorded it's Resolution No.137 dated 16.11.2010, to extend the

benefit of revised UGC norms scale of pay to the petitioner and to fix her pay with effect from 01.01.2006 and as such, the impugned order withdrawing the time scale of pay and placing her as Full Time Lecturer is per se unsustainable.

9. Per contra, Mr.M.Devendran, learned standing counsel appearing for the respondents 1 and 2 has invited the attention of this Court to the counter affidavit of the second respondent and would submit that the petitioner was initially appointed as Lecturer in Computer Science on 23.01.1985 temporarily on consolidated pay and subsequently, MCA course was started with the approval of the University of Madras and therefore, her salary was put on time scale of pay with effect from 06.09.1999, subject to review on Budget Estimate for self-financing courses and review by the administration of the Trust and that the petitioner has been working as Lecturer in MCA (Self Finance Course) and was receiving time scale of pay and for the past four years, the admission of students to MCA course was coming down from the sanctioned strength of 30 students to 13 students and the management was not able to run MCA course due to continuous financial constraints and therefore, the Management has suspended the MCA course from the Academic Year 2014-15 after approval from the University of Madras and also given tabular column, which shows that the fees collected per year was Rs.3,43,395/- and whereas the annual salary payable to the petitioner comes to Rs.13,51,392/-. It is the further submission of the learned standing counsel appearing for the respondents that however, considering the service rendered by the petitioner, the Management, on sympathetic consideration, reverted back to her original pattern of consolidated pay in the same capacity as Head of the Department on par with other members employed in self-finance courses on consolidated remuneration subject to provision of work load in self-financing courses, namely B.Sc., Computer Science and B.C.A. and as such, the impugned order cannot be faulted with and prayed for dismissal of this writ petition.

10. The writ petitioner has filed a reply affidavit dated 27.09.2016 and took a stand that staff members similarly placed working in Microbiology Department and who were receiving time scale of pay, were not terminated and shifted to other departments in the College and whereas the petitioner, who was the Head of the Department of Computer Science and Applications was not allowed to continue in service and she has been purposively reverted and as a consequence, there is likelihood of pay reduction also and therefore, prayed for quashing of the impugned proceedings.

11. This Court paid it's best attention to the rival submissions and also perused the entire materials placed before it.

12. It is not in dispute that the petitioner was initially appointed as a Lecturer in the Department of Computer Science in Pachaiyappa's College on consolidated remuneration of Rs.2,200/- per month, vide proceedings of the second respondent in 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. It is also not in dispute that the second respondent has appointed the petitioner 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 AICTE and placed her in 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.

13. The second respondent, vide proceedings in Rc.No.A/1096/2002 dated 22.04.2004, had informed the third respondent to send proposal for claim of periodical increments in respect of the petitioner 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 second respondent, vide proceedings dated 25.11.2010, has taken note of it's resolution in No.137 dated 16.11.2010 to extend the benefit of revised UGC norms scale of pay to the petitioner 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.

14. The second respondent, 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 third respondent dated 09.07.2015. The petitioner, 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 petitioner before passing the said proceedings, has partly allowed the writ petition by quashing the impugned orders and remanded the matter once again to the third respondent for fresh consideration after affording opportunity of personal hearing to the petitioner. According to the

petitioner, she has submitted a reply/representation dated 04.11.2015 and also participated in the oral enquiry. Thus, all along, the petitioner is treated as a regular employee with time scale of pay with periodical increments as per UGC norms. The second respondent, vide impugned proceedings, has taken note of the fact that the petitioner did not appear for personal enquiry and evaded it and 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 petitioner also made a challenge to the said order, by filing an appeal and later on withdrawn it.

15. It is not in dispute that the petitioner'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. According to the second respondent, due to lack of pattern of MCA course, there is not enough generation of funds and the salary of the teaching staff for self-financing courses to be paid only out of income generated by way of fees by running the said course and since the said income has fallen drastically, a fair decision has been taken to revert the petitioner to consolidated scale of pay and to place her as Full Time Lecturer.

16. In the considered opinion of the Court, the said course adopted by the second respondent is per se unsustainable for the reason that the impugned order visits her with grave consequences for the reason that once the petitioner has been made permanent and put on time scale of pay as Head of the Department, she cannot be reverted to consolidated scale of pay and placed as Full Time Lecturer in respect of self financing courses. The learned counsel appearing for the second respondent would submit that on account of abolition of the said course, it would be highly impossible to accommodate her in any other department. However, in the considered opinion of the Court, the difficulty pleaded by the second respondent is 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 petitioner to consider any fair offer to be offered by the management of the college. The impugned order, in the considered opinion of the Court, has lowered her status as full time teaching staff and also affected her pay and allowances and the second respondent, cannot do so.

17. In the result, this Writ Petition is partly allowed and the impugned order passed by the second respondent in Rc.No.A1/2553/2013 dated 06.07.2016 is set aside and the second respondent is directed to release the eligible salary and allowances payable to the petitioner 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 is to be carried out within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petitions are closed.

18. In the light of orders passed by this Court in W.P.No.31528 of 2016, Cont.P.No.2507 of 2015 is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

jvm

To

1.The Director of Collegiate Education,
College Road, Chennai.

+1cc to Mr.K.ELANGO, Advocate, S.R.No.32229

+2cc to Mr.M.DEVENDRAN, Advocate, S.R.No.31840

Common Order
in W.P.No.31528 of 2016
and Cont.P.No.2507 of 2015

NRL (CO)
TR(15/05/2018)

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