



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.A. (MD) Nos. 564 and 579 of 2017
and
C.M.P. (MD) Nos. 4700, 4813 of 2017, 2866 and 2867 of 2018

Tamil University,
Rep. by its Registrar,
Thanjavur - 613 006.

: Appellant in both W.As.

Vs.

Dr.C.Lakshmanan
K.Devaraj

: Respondent in W.A. (MD) No. 564/2017
: Respondent in W.A. (MD) No. 579/2017

COMMON PRAYER: Writ Appeals are filed under Clause 15 of Letters Patent against the orders of Writ Court dated 14.11.2016, made in W.P. (MD) Nos. 15918 and 16520 of 2013 respectively.

Prayer in WP (MD) No. 15918/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order dated 7.8.2013 issued by the respondent in Na.Ka.No.A2/1728/2011 quash the same and consequently direct the respondent to settle the petitioner the remaining terminal benefits and to pay the petitioner monthly pension as per their orders dated 6.7.2012 and 25.7.2012 in Na.Ka.No.A2 1728/2011.

Prayer in WP (MD) No. 16520/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus after calling for the records pertaining to order dated 18.09.2013 issued by the respondent Na.Ka. Aa1/001/2013 and quash the same and consequently direct the respondent to settle the petitioners entire terminal benefits and to pay the petitioner s monthly pension at the rate of Rs. 15, 485/- without any recovery .

For Appellant
in both appeals
For Respondent
in both appeals

: Mr.B.Vijay Karthikeyan
: Mr.V.Ajoykhose,
For Mr.A.Rahul

**COMMON JUDGMENT**

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

These appeals are directed against the orders of the learned Single Judge, who was pleased to set aside the impugned orders of recovery dated 07.08.2013 and 18.09.2013 respectively passed subsequent to the date of retirement, seeking to recover the amount paid, while promoting the respondents.

2. The respondents among others were promoted in pursuant to the resolutions of the appellant. This promotion was not approved by the Government on the ground that what is required is 10 years of service. In the meanwhile, salary was paid for the promoted post. This was sought to be recovered by the impugned orders. The learned Single Judge, by placing reliance upon the order of the Apex Court, was pleased to allow the Writ Petitions and hence, the Writ Appeals.

3. The learned counsel for the appellant would submit that the respondents have given an undertaking and, therefore, the impugned orders will have to be sustained. Reliance has been made on the judgment of the Apex Court in High Court of Punjab and Haryana v. Jagdev Singh reported in AIR 2016 SC 3523.

4. As rightly submitted by the learned counsel for the respondents, we are concerned with the recovery sought to be made in pursuant to the promotions made by the appellant itself. Therefore, we are not dealing with a case of excess payment made towards the salary. In the same way, the undertaking given by the respondents also cannot be put against them, since it can only be applied for the pay fixation. We are not concerned with the pay fixation, but, with the payment made in the promoted posts, which were subsequently not approved. The fact that the respondents were made to work in the promoted posts till a decision was made by the Government was not in dispute. All these aspects have already been considered by this Court in an earlier occasion involving the appellant in W.A.(MD) No.145 of 2013, dated 14.03.2018, in which, the judgment of the Apex Court referred to supra was also taken note of. The following paragraphs would be relevant to extract hereunder:

"4.The learned counsel for the appellant placed reliance on the decision of the Hon'ble Supreme Court in the case of HIGH COURT OF PUNJAB AND HARYANA AND OTHERS VS. JAGDEV SINGH reported in AIR 2016 SUPREME COURT 3523. In the said decision the Supreme Court took note of the earlier decision in the case of STATE OF PUNJAB 7 ORS ETC. Vs. RAFIQ MASI(H(White Washer)etc. (AIR 2015 SC 696), on facts found that the payment made to the employee concerned was in excess. In the instant case, the promotion, which was given to the petitioner, was not based on the promotion, but on account of career progression after successful completion of 7 years of permanent service, which is the norms fixed by the appellant University.



Therefore, we find that the decision relied on by the learned counsel for the appellant is not applicable to the case on hand.

5. Thus, for the above reasons, the appellant has not made out any grounds to interfere with the order passed in the writ petition. Hence, the writ appeal fails and the same is dismissed. No costs.

6. The appellant University is directed to release the withheld amount along with statutory interest, if admissible, within a period of six weeks from the date of receipt of a copy of this judgment. Further, the learned counsel for the appellant submitted that the respondent has given a written undertaking to refund any excess payment made to him. This allegation is denied by the learned counsel for the respondent. Even assuming that there was an undertaking, the present action initiated by the appellant University is not at their behest as the Syndicate of the appellant University has taken a decision that the respondent is entitled for career progression on successful completion of 7 years of service. Thus, even if there was an undertaking, it cannot be put against the respondent."

5. In view of the above, the Writ Appeals stand dismissed. The appellant is directed to pay the retiral benefits to the respondents, within a period of twelve weeks from the date of receipt of a copy of this judgment. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-IV)

+2CC to Mr.A.Rahul, Advocate, SR.No.91644, 91646

+2CC to Mr.B.Vijay Karthikeyan, Advocate, SR.No.91094

W.A. (MD) Nos.564 and 579 of 2017
22.10.2018

SML

ES/RP/SAR 4/12.11.2018/3P/5C