



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 14.03.2018

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD).No.145 of 2013
and
M.P. (MD).No.2 of 2013

1.The Tamil University,
Rep by its Registrar,
Tamil University,
Tanjore-5.

2.The Syndicate of Tamil University,
Rep by its Secretary,
Tamil University,
Tanjore-5.

.. Appellants / Respondents 2&3

Vs.

1.M.Balakrishnan

... Respondent /Petitioner

2.The State of Tamil Nadu,
Rep by its Secretary,
Tamil Development Department,
Fort St. George,
Chennai-9.

3.The Assistant Director,
Local Fund Auditor,
Tamil University,
Tanjore-5.

... Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, against the order passed by this Court in W.P.(MD).No.3230 of 2007 dated 02.03.2012.

Prayer in WP(MD). 3230/ 2007 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration, declare that the letter in Na.Ka.no. 58/Tha 1/2007 dated 14/03/07 of the 4th respondent, the resolution of the 3rd respondent in subject no. 2007 : 49 as contained in their proceedings in Aa.Ku.Kuu.No. 158/2007/Tha Pa Ka date 29/03/07 and the order dated Na.Ka.No. Aa3/6990/07 dated 03-07 of the 2nd respondent are illegal and to direct the respondents 2 and 3 to grant the



petitioner scale of Editor from 01/10/2003 with arrears, award costs.

For Appellant : Mr.M.Mariappan
For R1 : Mr.S.Arunachalam

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JUDGMENT

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

Heard Mr.M.Mariappan, learned counsel appearing for the appellant and Mr.S.Arunachalam, learned counsel appearing for the first respondent.

2.This appeal by the Tamil University is directed against the order in W.P.(MD).No.3230 of 2007, dated 02.03.2012. In the said writ petition, the respondent has challenged the order of recovery passed against him on the verge of his retirement during the year 2007, based on an audit objection stating that he was erroneously given promotion.

3.The writ Court took into consideration that the appellant University in its Syndicate Meeting resolved that the respondent is entitled for promotion as a part of career advancement and was promoted to the post of Assistant Editor and fixed in a proper scale of pay, which has occurred in the year 1996 and the respondent continued to function in the promoted post. On the verge of his retirement, a notice dated 06.03.2007 was issued not on the basis of the opinion of the appellant University, but based on the audit objection. The appellant University having taken a decision in its Syndicate Committee Meeting that the said decision would bind the University and the fact that the Audit Department has raised objection cannot be a sole reason for the University to alter its stand that too upto a period of 11 years.

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 MASIH(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.

Consequently, connected Miscellaneous Petition is also dismissed.

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.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary,
The State of Tamil Nadu,
Tamil Development Department,
Fort St. George,
Chennai-9.

2.The Assistant Director,
Local Fund Auditor,
Tamil University,
Tanjore-5.

+1CC to Mr.A.Arunachalam, Advocate, SR.No. 55294
+1CC to the Special Government Pleader SR.No.55548

W.A. (MD) .No.145 of 2013
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