

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-04-2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.1275 of 2019
and
W.M.P.No.1429 of 2019

K.Vinu

.. Petitioner

vs

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Department of Higher Education,
Fort St. George,
Chennai-600 006.

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

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writs of Certiorarified Mandamus, calling for the records relating to notice issued by the second respondent bearing Reference No.C1-10/21851/2018 dated 13.8.2018 and quash the same and direct the respondents to continuously pay the salary as being paid as on date with VII Pay Commission benefits from the due date.

For Petitioner : Mr.R.Murugabharathi
For Respondent-1 : Mr.V.Kathirvelu,
Special Government Pleader.

O R D E R

The show cause notice issued by the second respondent in proceedings dated 13.8.2018, is under challenge in the present writ petition.

2. The grievance of the writ petitioner is that she was working as Special Officer Grade-I under the second respondent-University. The writ petitioner was appointed on 22.4.2005 as Special Officer and her service was confirmed on 19.5.2007. After taking over the University by the Government, now the respondents issued show cause notice stating that the initial

appointment of the writ petitioner was made without the availability of any sanctioned post and without any assessment of workload and without any recommendations of the Finance Committee and the Resolutions of the University Syndicate.

3. In the process of regulating the administration, various steps are taken by the competent authorities of the University. Inspections are conducted, Audits and other verification of records were done and certain actions, which all are necessitated in order to regulate the administration were taken by the Government. The writ petitioner, who is a non teaching staff, working in the cadres of Special officer Grade-I has been issued with the impugned show cause notice, broadly stating that the said official namely Special Officer Grade-I on the rolls of the University remaining as surplus in terms of the workload available; and causing a huge financial loss to a tune about Rs.60 Crores per annum. The continuance of these 785 surplus officers in employment without no work but with full pay almost cripples the financial situation causing huge deficit every year and posing imminent threat to the very existence of the University. It is noticed that the initial appointment as well as the confirmation orders seems to have been issued pursuant to the orders of the Vice-Chancellor without the availability of any sanctioned post and without making any assessment of the prevailing workload and without any recommendation of the Finance Committee and without any resolution of the University Syndicate.

4. It is further stated in the impugned show cause notice that with the intent of striking a balance between the deteriorating financial position of the University and to avoid retrenchment of these surplus officers, who have no work in the University, has been exploring the possibility of accommodating these surplus officers against some other cadre for the time being namely, Assistant Section Officers in the pay scale of Rs.9300-34800+ GP 4600. The steps are taken in order to maintain the financial stability of the University.

5. In this regard, the second respondent has issued the impugned show cause notices in order to provide an opportunity to the writ petitioner and accordingly, the writ petitioner is directed to submit her explanations/objections within a period of fifteen days from the date of receipt of the impugned show cause notice.

6. The writ petitioner had already submitted her explanations/objections to the impugned show cause notice pursuant to the interim order passed by this Court in the present writ petition.

7. The learned counsel appearing on behalf of the writ petitioner made a submission, mainly contending that pay protection has already been extended in the Statute itself. This apart, the Government also issued orders in G.O.Ms.No.402, Higher Education Department dated 13.12.2006 and G.O.Ms.No.108, Higher Education Department dated 28.04.2017, stating that even in the case of deputation of the staff on account of the non-availability of the sanctioned post, the pay protection must be granted.

8. At the outset, the pay protection, which all are traced out from the Statute cannot be taken away by the Registrar. The Government orders in this regard are also not followed at the time of issuing the impugned show cause notices.

9. The learned counsel appearing on behalf of the writ petitioner further made a submission that the Registrar has no authority to issue the show cause notices. Thus, the impugned show cause notice is to be scrapped. The writ petitioner is of the opinion that even if there is no availability of sanctioned post in the University, she must be given pay protection, if at all she is deputed to some other Department in an equivalent cadre or in a lower cadre. Such a pay protection is extended based on the fact that the Syndicate itself approved her appointment and the Scale of Pay fixed.

10. This being the factum, the said position ensured in favour of the employees, cannot be taken away by the authorities competent.

11. In totality, the impugned show cause notice itself is under challenge in view of the fact that the notice is running contrary to the decisions already taken by the competent authorities.

12. The learned counsel appearing on behalf of the respondent-University disputed the contentions raised by the learned counsel for the writ petitioner in entirety. The learned counsel for the respondent states that the reasons stated in the impugned notice is well in accordance with the Statute and there is no violation. Surplus employees were appointed over and above the sanctioned strength and large number of employees are working in the University without any work to perform. Such a situation can never be continued and the financial stress undergone and the future financial implications are to be considered by the Administrators and under these circumstances, the impugned notice is issued to the writ petitioner.

13. In respect of the competency of the Registrar, it is contended by the learned counsel for the respondent that the

Registrar is a person, who communicates the decision taken by the Syndicate / Vice Chancellor of the University and he has not taken any decision of his own. The Registrar, being the authority under the Statute, is bound to communicate the decision taken by the competent Forum/ Authorities. Thus, there is no infirmity as such in respect of the show cause notice issued.

14. Considering the arguments as advanced by the learned counsel for the writ petitioner as well as the learned counsel for the respondent, this Court is of an opinion that pursuant to the interim orders of this Court, the writ petitioner has submitted her explanations/objections to the impugned show cause notice. The explanation received from the writ petitioner is now pending before the University for consideration. The writ petition is filed, challenging the show cause notice. The final decision is yet to be taken by the competent authorities. Under these circumstances, this Court has to consider, whether the merits raised in respect of the proposed decision can be adjudicated in a writ proceedings under Article 226 of the Constitution of India.

15. Judicial review against the show cause notice is certainly limited. The power of judicial review is not to question the decision. However, the process, through which, such a decision, if invalidates the decision itself, then the power of judicial review can be exercised. In all other circumstances, the authorities competent must be allowed to take an administrative decision and thereafter, the persons are aggrieved from and out of such decision or the process adopted for arriving such decision, then alone, the writ proceedings can be entertained. Even in the present case, the dispute is in relation to the fixation of scale of pay and pay protection. An administrative decision is to be taken by the competent authorities in respect of the pay protection already granted through various Government orders and the objections submitted by the respective employees and take a decision by assigning reasons and by way of a speaking order. Contrarily, the Hon'ble High Court cannot exercise such a power of scrutinizing the fixation of scale of pay and the judicial power cannot be extended to such an extent to arrive an administrative decision, which is not within the domain or within the purview of the writ proceedings. Undoubtedly, certain legal grounds are raised, stating that the pay protection given to the employee cannot be taken away by the respondent on account of her deputation or on account of the fact that she is treated as a surplus employee.

16. It is further contended that the pay protection and other assurances already extended by the Government to these employees is non negotiable and the authorities competent has no jurisdiction to re-adjudicate or re-open such

assurances/conditions provided to these employees both under the Statute as well as under various Government orders.

17. Even in all such cases, of course, the financial interest of a public institution must be taken care of by the Government. Financial protection and safeguarding the interest of the tax-payers money are also of paramount importance. It is not as if, the Government cannot take a policy decision. Government is empowered to take a policy decision in the interest of public and to protect the public money. However, certain service conditions, which all are assured cannot be altered to the disadvantage of the employees, who all are already in service.

18. This being the basic principles, a striking balance in-between is to be adopted by the competent authorities, while taking such policy decisions. Undoubtedly, the University was taken over by the Government on certain unavoidable circumstances. The employees of the University were also taken over along with the University and certain protections are extended. Thus, the Government has to consider all these aspects and take a decision in the interest of the tax-payers money as well as in the interest of the employees of the Universities. However, such an exercise cannot be done by the Hon'ble High Court under Article 226 of the Constitution of India in view of the fact that these all are the complex facts and circumstances deserves complete adjudication of issues and facts. The Hon'ble High Court cannot adjudicate the factual aspects and arrive a conclusion that a particular scale of pay must be fixed to the employees of the University. Undoubtedly, the facts now prevailing in the University are certainly complex. Thus, the University has to take a decision administratively by considering all these aspects, which all are raised by the employee as well as the reasons stated by the University in the impugned show cause notice.

19. Fairness in arriving a conclusion is one of the administrative character. Decisions administratively taken, must be fair and in consonance with the established principles. Undoubtedly, the employee is already appointed by the erstwhile administration of Annamalai University is now affected. Further, the said employee at large is taken over by the Government, while transferring the University from the hands of the private Management. Under these circumstances, a thorough analysis of the situation, including administrative difficulties, financial crisis, public interest, protection of tax payers money, which all are to be considered by the authorities competent and expert decision is also required in this regard. It is not as if, the administration can sack the employees or reduce their benefits. Equally, it is not as if, the competent authorities can shut their eyes in respect of certain unnecessary financial

expenditures and crisis, both has to be considered. It is not only the protection of employees, equally, protection of finance of the State Protection of public money is also of paramount importance. Thus, a pragmatic approach and logical reasons are certainly imminent, while taking such administrative decisions.

20. The learned counsel appearing on behalf of the writ petitioner made a submission that earlier, the show cause notice issued to the employee had been withdrawn. Therefore, the revised show cause notice is unsustainable. Such arguments deserve no consideration at this juncture in view of the fact that once again, the present writ petition is filed, challenging the very show cause notice. No final decision has been taken by the competent authorities by considering all these aspects and by considering the explanations/objections submitted by the writ petitioner.

21. No writ proceedings can be entertained against the show cause notice in a routine manner. Judicial review against the show cause notice is certainly limited. A show cause notice can be challenged, if the same has been issued by an incompetent authority, having no jurisdiction or if an allegation of mala fides are raised or if the same is in violation of the statutory rules in force. Even, in case of raising an allegation of mala fides, the authorities against whom such an allegation is raised, to be impleaded as party respondent in the writ proceedings in his personal capacity. In the absence of any one of these legal grounds, no writ proceedings can be entertained against the show cause notice. Intermittent Intervention in statutory proceedings are not preferable and the authorities competent, on initiation of proceedings under the statute, must be allowed to complete the same by following the procedures as contemplated under law. Institutional respects are also to be maintained by the Constitutional Courts. Frequent interventions in the statutory proceedings will certainly cause prejudice to the parties both the petitioner as well as to the Department.

22. The learned counsel for the writ petitioner state that the contentions stated in the impugned show cause notice is predetermined and therefore, the authorities have taken a decision and on that ground also, the present writ petition is to be entertained.

23. For instance, number of writ petitions, challenging the show cause notices are filed on the ground that no details are provided in the show cause notice and therefore, the persons against whom, such a show cause notices are issued, are not in a position to submit their explanations. In the event of absence of details in the show cause notices, the persons against whom such notices are issued would not be in a position to submit their explanations/objections. Thus, the show cause notices must

contain details and the mind of the authorities competent and in that event only, the persons aggrieved may be in a position to submit their explanations/objections. This is one such argument raised, whenever a show cause notice is under challenge.

24. The other grounds raised against the show cause notice is that the authorities have given the details. Therefore, they have predetermined the issue. They have furnished the details and the proposed decision and in the event of communicating the proposed decision, it is to be construed that the authorities have arrived a decision and on that ground also, the show cause notice is to be quashed. This Court is unable to understand, what should be the contentions to be stated in the show cause notices. Of course, may be an advocacy or for the cause of the litigant and however, the Court has to adopt a pragmatic approach and the practical aspects of the matter.

25. Undoubtedly, a show cause notice can never be a blanket one. If a show cause notice is a blanket one, the person, who received the show cause notice may not be in a position to understand what is the action to be taken against him. In the absence of such minimum details required, no person would be in a position to submit or offer his explanations.

26. Under these circumstances, nothing wrong for the Administrator to furnish the details or the proposed action, enabling the person aggrieved to submit his explanation/objections on the details given in the show cause notice or the proposed action to be taken on a particular subject. In the common parlance, every order must be a speaking, so also, the show cause notice. A Speaking show cause notice alone will provide an opportunity to the person aggrieved to submit his explanation/objections. Contrarily, if the show cause notice is non-speaking without any details may not be proper and the aggrieved person would not be in a position to offer his explanations/objections. Therefore, the arguments advanced that the details given or proposed decisions or issues predetermined or the arguments outdated and in the current day transparent world, the proposed decisions and reasons must be communicated and the transparency to the extent possible is certainly required, while taking actions by the competent authorities. Transparency does not mean that all such reasons and other details must be provided in the final order alone. Nothing wrong for the competent authority in expressing his mind and the only requirement is, while considering the explanations, the competent authority must be fair and open minded. It is no wrong in expressing opinion by the Administrator. However, if an explanation is received, then he must keep his mind open for the purpose of considering all the grounds and before taking a final decision, he must provide reasons for his decision either

accepting the explanations or rejecting the explanations. That is the mandatory requirement. Contrarily, if the point of predetermination is raised, it may not be possible for the aggrieved person to submit his explanation and that may not be considered as a transparent procedure, which is to be adopted in the current day of administration.

27. The confidentiality in administrative decisions are now minimized on account of the Enactment of Right to Information Act, and people are able to get all administrative informations from the Government and the Union. Therefore, every proposed decision and the policy decisions are now made available to the public for their comments and their opinions. This being the procedures adopted, the ground raised in the writ petitions that the details furnished in the impugned order is predetermined, deserves no merit consideration.

28. This Court is of an opinion that the issue in relation to the fixation of Scale of Pay, must be adjudicated in entirety by the competent authorities. Since the proposed decision in the impugned notices, will affect the interest of the employees, who all are already in service. Thus, an effective adjudication by providing opportunity to all the persons, who are likely to be affected, must be heard and their explanations must be considered.

29. In this view of the matter, this Court is inclined to pass the following orders:-

(1) The relief as such sought for in the present writ petition stands rejected.

(2) The second respondent-Registrar, Annamalai University is directed to receive the additional grounds / explanations / objections from the person, against whom, the show cause notice is issued.

(3) The writ petitioner is directed to submit her additional grounds / explanations / objections to the second respondent/The Registrar, Annamalai University within a period of four weeks from the date of receipt of a copy of this order, for placing the entire records before the competent authorities for adjudication and for providing personal hearing to the writ petitioner.

(4) The authorities competent are directed to consider all the materials available on record including the submissions made during the personal hearing by the writ petitioner and take a decision on merits and in accordance with law and pass final orders on or before 30th July 2019.

30. With the above directions, the writ petition stands

disposed of. However, there shall be no order as to costs.
Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

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To

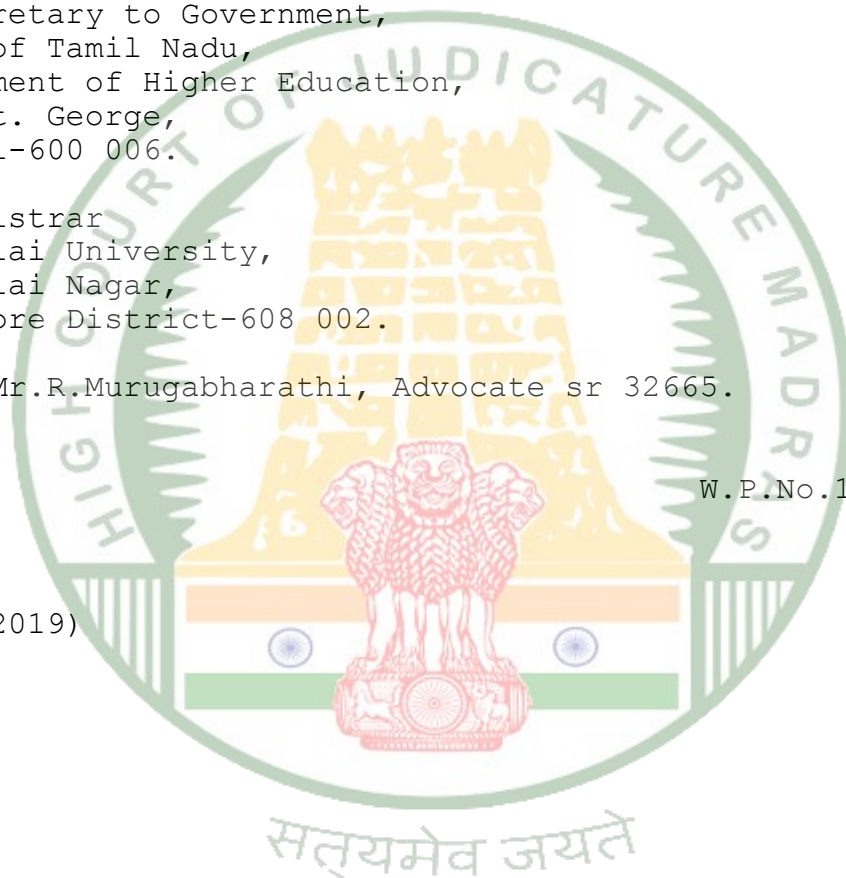
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+1 CC to Mr.R.Murugabharathi, Advocate sr 32665.

W.P.No.1275 of 2019

SP(25/04/2019)



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