

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 01.07.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

Writ Petition No.5018 of 2018

1.M.Dhanasekarapandian

2.V.Nedumaran

3.P.Sivasankar

4.D.Sivakumar

5.R.Balamurugan

6.D.Saravanan

7.R.Saravanan

8.C.Senthilkumar

9.K.Selvam

10.R.Vijin

...Petitioners

Vs.

1.The State of Tamil Nadu,
rep by its Secretary to Government,
Department of Higher Education,
Fort St.George, Chennai - 600 009.

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

3.Annamalai University,
Rep by its Registrar,
Annamalai Nagar,
Cuddalore District - 608 002.

...Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of mandamus directing the respondents to pay the annual increment for the year 2018 to the petitioners with effect from January 2018 within a time frame that may be fixed by this Court with interest from the due date.

For Petitioners: Mr.V.Vijay Shanker,
for Mr.J.Saravana Vel

For Respondents: Mr.V.Kathirvelu, Spl.G.P. (for R.1)
Mr.K.Sathish Kumar (for R.2 & R.3)

ORDER

All the petitioners herein are working as Special Officers Grade I under the third respondent/University. They were appointed on various dates from 2005 onwards and they have put in 8 to 14 years of service continuously. The post of Special Officer is an approved post, as per the Standing Orders applicable to the respondent University. The qualification prescribed for appointment to the said post is Post Graduate Degree with II Class. All the petitioners herein had acquired the prescribed qualification when they were appointed.

2.According to the petitioners, about 85 persons, who were appointed and working as Special Officers, were re-designated as Special Officer Grade II due to lower educational qualification and the same was subject matter of challenge before this Court. This Court by order dated 06.06.2016 in W.P.No.38537 of 2016 etc batch, upheld the re-designation of those 85 persons as Special Officers Grade II. The petitioners herein have been re-designated as Special Officers Grade I with effect from 01.11.2015, as they fulfilled the prescribed qualification to be re-designated as such. According to the petitioners herein, there was no avenue of promotion to the post of Special Officer and their only incentive was annual increment, which is given to them every year. The pay band of the Special Officer Grade I is 15,600-5,400-37,100.

3.The Special Officers were appointed and posted to work in Directorate of Distance Education to look after various work pertaining to different Sections and Offices in the Directorate of Distance Education. Some of them were posted to work in Study Centers and Information Centers established by the University not only in Tamil Nadu but in other States as well. The post of Special Officer is classified as a non teaching staff category. According to the petitioner, some of the Special Officers were also appointed as Hostel Wardens. Their duties and

responsibilities include all administrative work in the Directorate of Distance Education and the hostel as well. They are also involved in enrollment of students in Distance Education and as they were entrusted with the task of looking after the study centers, they are involved in generating revenue for the University. Thus, the role of Special Officer is very crucial for effective management of the University in its diverse academic activities.

4.The Special Officers being the non-teaching staff of the University have been given annual increments as given to all others and they have been in receipt of the same in the past. While so, to their dismay, they found that they were denied annual increments for the year 2018, while the rest of the teaching and non-teaching staff were granted annual increments. According to the University, a Circular has been issued excluding few categories from the grant of annual increments, in the year 2018, which included the post of Special Officer. Since the denial of annual increments is contrary to the provisions of Standing Orders of the University and also the same is violative of Articles 14 and 21 of the Constitution of India, the petitioners are before this Court.

5.Shri.V.Vijay Shankar, the learned counsel appearing for petitioners would submit that the Standing Order as found in Chapter XXVII(d)(2) of the respondent University clearly provides for payment of annual increment as a matter of course. The provision which clearly mandates the payment of annual increment reads as under:

"An increment shall ordinarily be drawn as a matter of course unless it is withheld from a servant of the University by the Syndicate on the recommendation of the Vice-Chancellor if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld and whether the postponement shall have the effect of postponing future increments."

6.The learned counsel would submit that the grant of annual increment can be withheld if only the conduct of the staff had not been found good or his work has not been satisfactory. Therefore, denial of increment for the year 2018 by the University is in contravention of its own Standing Order and therefore, on this ground alone the action of the respondent University denying the annual increment to the petitioners is liable to be interfered with.

7.The learned counsel would submit that even otherwise, the teaching as well as non-teaching staff, who were appointed along with the petitioners herein against regular posts, have been paid annual increments, and hence, the same cannot be denied to these petitioners, as such denial amounts to violative of the principles enshrined under Article 14 of the Constitution of India. In fact, the University has not spelt out any reasons for such discriminatory treatment in the matter of payment of annual increment and in any event, such denial, in the facts and circumstances of the case, is per se unreasonable, arbitrary and cannot stand the Constitutional scrutiny, particularly, with reference to Articles 14 and 21 of the Constitution of India. Therefore, the learned counsel would submit that the direction as sought in the writ petition may be issued directing the University to pay annual increment to the petitioners for the year 2018, which was payable in January 2018.

8.Per contra, the learned counsel appearing for the respondent University would vehemently contest the claim of the petitioners stating that these Special Officers belong to surplus category and therefore, they were not entitled to annual increment, since their continued employment with the University itself is questionable.

9.A detailed counter affidavit has been filed on behalf of the University and particularly in paragraph No. 4, the issue of surplusage of the staff had been mentioned, which paragraph is extracted hereunder;

"4. It is submitted that the Government after taking over the University, administrative officer was appointed and he gave a report that there were more surplus staff both teaching and non-teaching working in the University and decided to deploy all the surplus teaching staff. Based on the recommendations the teaching staff totally 1401 found surplus and most of them deputed to the various Government colleges through several Government Orders like G.O.Ms.No.14, Higher Education (F2) Department, dated 23.01.2016, G.O.Ms.No.105, 106, 107 Higher Education Department, dated 28.04.2017 and G.O.Ms.Nos. 270, 364 Higher Education Department, dated 19.09.2017, 27.12.2017 respectively. Insofar as the non-teaching staff are concerned, the sanctioned strength is only 1110. As against the sanctioned strength there are 8,433 are presently working, out of which 4,722 are found surplus. It is pertinent to mention that all these excess appointments were made by the

erstwhile management without following any procedure of recruitment.

10. Moreover, the learned counsel for the respondent University would also submit that the pay scale as made applicable to these petitioners, viz., the post of Special Officer, was on the higher side which did not match the pay scales in the Government service and therefore, they had to be retained in University service, as they could not be deputed to Government service. According to the learned counsel, their very employment with the University is not valid in view of surplus manpower in various categories of non-teaching staff recruited by the erstwhile management indiscriminately.

11. In fact, the learned counsel for the respondent University would submit that the larger issue of continuance of employment of various Personnel working in several categories belong to non-teaching staff has been the subject matter of litigation before this Court in W.P.No.21769 of 2018 etc batch and this Court passed a detailed order on 05.03.2019. The directions, as passed by this Court has been incorporated in the counter affidavit, which read as under;

"In this view of the matter, this Court is inclined to pass the following orders:

1. The relief as such sought for in all the writ petitions stand rejected.

2. The third respondent/the Registrar is directed to receive the additional grounds/explanations/objections from all the persons, against whom the show cause notices are issued.

3. The writ petitioners are directed to submit their additional grounds/explanations/objections to the third respondent/the Registrar, within a period of four weeks from the date of receipt of copy of this order, for placing the entire records before the competent authorities for adjudication and for providing personal hearing to these entire writ petitioners.

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 petitioners and take a decision on merits and in accordance with law and pass final orders on or before 30th July, 2019."

12. According to the learned counsel, representations have been received and personal hearing is likely to be provided at any time in July 2019. In the said circumstances, he would submit that the employment of the petitioners as Special

Officers itself is now being assessed and examined in view of surplusage and therefore, they cannot be heard to complain about the non-grant of annual increments to them. According to the counsel, since the University is in the process of revisiting the entire staff pattern and the process is still having not been completed, the question of grant of annual increment to the category of Special Officers does not arise at the moment.

13. At this, the learned counsel for the petitioners would submit that the directions issued by this Court in the above said writ petition have no bearing on the entitlement of these petitioners getting annual increment, which fell due and payable in January 2018. According to the learned counsel, as on date, these petitioners have been employed as Special Officer Grade-I and as such, their entitlement does not depend on the exercise undertaken by the University, in pursuance of the directions passed by this Court. The learned counsel for the petitioners would rely on a decision of this Court in W.P.(MD).No.11068 & 11069 of 2018 dated 21.01.2019 (M.Dhanasekara Pandian & R.V.Nagendran Vs. The Registrar, Annamalai University), wherein this Court allowed the claim of the employees of the respondent University, when those employees were denied the benefits of 7th Pay Commission. The University has issued a Circular excluding certain categories from the benefit of 7th Pay Commission recommendations and that was put to challenge in the writ petition and finally the learned Judge has held that they were entitled to recommendations of the 7th Pay Commission on the ground that such exclusion was unsustainable in law. The learned counsel would draw the attention of this Court to paragraph Nos.1 to 4 and 15 to 17, which are extracted hereunder:

The petitioners, who are working as Special Officer Grade-I and Liaison Officer in the respondent University have challenged the circular, dated 24.04.2018, issued by the Registrar of the University, denying the benefits of the recommendations of the Seventh Pay Commission to certain employees of the University namely Section Officer Grade -I and Grade - II, Zonal Officer, Liaison Officers, Deputy Farm Superintendent/Deputy Garden Superintendent/Orchard Manager/Farm Supervisor/Horticulturist. The University, which was a private University was taken over by the Government by passing of the Annamalai University Act, 2013.

2. The Finance Committee of the University passed a resolution on 27.03.2018 recommending implementation of the recommendations of the

Seventh Pay Commission, as per the G.O.Ms.No.303, Finance Department, dated 11.10.2017, to the non-teaching staff of the University with effect from 01.04.2018. On the same day, the Syndicate of the University accepted the recommendations of the finance committee by its resolution No.30, which reads as follows:-

"To consider the minutes of the meeting of the Finance Committee held on 27.03.2018 at 4.00 p.m. in the Additional Chief Secretary Chamber, Finance Department, Secretariate, Chennai.

The Syndicate resolved to approve the minutes of the meeting of the Finance Committee held on 27.03.2018 at 04.00 p.m. in the Additional Chief Secretary Chamber, Finance Department, Secretariate, Chennai."

3.However, the Registrar (In-charge) of the University issued a Circular on 24.04.2018 directing the employees to exercise their option in the form prescribed in the said Government Order in G.O.Ms.No.303, dated 11.10.2017. While doing so, the Registrar excluded the employees, who are working in the cadre of Zonal Officer, Liaison Officer, Special Officer Grade-I and Grade-II and Deputy Farm Superintendent/Deputy Garden Superintendent/Orchard Manager/Farm Supervisor/Horticulturist.

4.The petitioners, who were working as Special Officer Grade-I and Liaison Officer, had filed the above writ petitions challenging the said Circular, primarily contending that the Registrar has no power to modify or meddle with the resolution passed by the Syndicate.

15.I am unable to accept the said contention. Even if the petitioners are re- designated at lower time scale of pay, the excess amount paid can be recovered from their salary. It is not the claim of the University that these petitioners are illegally employed. In fact, the University cannot take such a stand in view of Section 58(3)(e) which provides that all employees who were appointed before the date of announcement of the Act, shall be deemed to have been properly appointed under the the Act. I am, therefore, of the considered opinion that the action of the Registrar in excluding certain categories of employees suffers want of statutory powers. If an

action suffers for want of statutory powers, the same cannot be ratified. Such ratification cannot cure the defect of want of authority. That is precisely the reason why the resolution dated 12.11.2018 is cleverly worded as if the decision dated 24.04.2018 was taken by the University. The contention of the University that these officers are surplus staffs and the possibility of re-deploying them cannot also hold water, as the replies given to the petitioners' queries under the Right To Information Act, make it clear that there has been no fixation of staff strength for the University. The information provided to the petitioners under the Right To Information Act, on 12.09.2017, shows that there has been no staff fixation for the respondent University either under the Annamalai University Act, 1928 or under the Annamalai University Act, 2013. In the absence of any staff fixation and sanctioned strength, the petitioners cannot be called as surplus employees. The basis, on which the petitioners are classified as surplus employees is not disclosed. Mr.M.Ajmal Khan, learned Senior Counsel appearing for the respondent University would however contend that the Government is granting aid only for four Special Officers, where as there are more than 700 Special Officers working in the University. In the absence of any staff fixation, the grant of aid by the Government alone cannot render these persons, who are deemed to have been properly appointed as surplus

16. In view of the above, I am of the considered opinion, that the unilateral action of the Registrar in excluding the petitioners from the purview of the benefits of the resolution of the Syndicate dated 27.03.2018 suffers for want of statutory powers and its subsequent ratification cannot also be held to be valid.

17. For the foregoing reasons, these writ petitions are allowed. The proceedings of the Registrar dated 24.04.2018 and the subsequent ratification dated 12.11.2018 are set aside. It is made clear that the petitioners would be entitled to the benefits of the resolution dated 27.03.2018 on par with the other employees of the University. However, this order will not preclude the respondent University for having fresh look in to the matter. No costs. Consequently, connected Miscellaneous Petitions are closed."

14. According to the learned counsel for the petitioners when this Court has intervened in a matter where certain categories of University staff were sought to be excluded in regard to implementation of 7th Pay Commission recommendations, as far as the present claim of the petitioners is concerned, it is on a much stronger footing, as the increment does not depend on any grace or largesse from the University, as same has been earned by the petitioners, since they discharged their duties as Special Officer Grade-I. When this Court has intervened in the matter of 7th Pay Commission and held that exclusion of certain categories of staff was unsustainable in law, the denial of increment to the petitioners has also to be held as unsustainable in law.

15. Considered the submissions made on behalf of the petitioners as well as on behalf of the respondent/University.

16. The point in issue before this Court is rather simple and straight forward as to whether these petitioners can be denied annual increment for the year 2018 on the stated grounds by the University in their counter affidavit and also submissions made on behalf of the University.

17. Although, several reasons have been cited in the counter affidavit and submissions made on behalf of the University regarding indiscriminate appointment of staff in the University by the erstwhile management and the pay band being on the higher side to the staff than what was being paid to the Government Servants in similar positions, yet, such objections cannot be successfully pressed into service for the reason that these petitioners having worked as Special Officers Grade-I and having been employed on a regular basis, cannot be denied annual increment, which fell due in January, 2018. When the petitioners have discharged their duties and functions as Special Officer Grade-I, the annual increment has to be automatically paid to them and under no circumstances, the same can be withheld or denied except when a staff comes under cloud for unsatisfactory performance or poor conduct. In fact the provision of the Standing Order applicable to the University, as extracted supra, would clearly mandate payment of annual increment to the University staff. Therefore, as rightly contended by the learned counsel for the petitioners, the denial of annual increment to the petitioners is directly in contravention of the Standing Order and therefore, on this ground alone the writ petition is liable to be allowed.

18. Even otherwise, the payment of annual increment does not depend on administrative initiatives by the University, as the same became payable at once the staff complete one year in

regular service. As a matter of fact, as rightly contended by the learned counsel for the petitioners, it is not a matter of grace or charity for the University to select and pick the categories of staff entitled to be paid annual increment. When the staff of the University are governed by the Standing Orders, which has a statutory force, the conditions of service like payment of increment is inviolable except the circumstances indicated in the Standing Order.

19. Further, this Court, in the decision extracted above, has held that the action of the University in excluding certain categories of staff from the conferment of 7th Pay Commission recommendation is unjustified and unsustainable in law. In such circumstances it has to be held the denial of annual increment to the petitioners as wholly illegal, arbitrary and unreasonable, which cannot stand the test of Constitutional scrutiny under Article 14 of the Constitution of India.

20. The other reasons cited in the counter affidavit regarding directions issued by this Court in regard to the initiative taken by the University for restructuring the staff pattern is concerned, that exercise, which is underway, cannot have any bearing on the claim made by the petitioners herein. Such exercise, of course may determine the future employment of the staff of the University, but it cannot have any adverse effect on the entitlement of the petitioners. The increment which fell due in January 2018 was what already earned by the petitioners and under no circumstances such benefit can be denied. In fact, in the counter affidavit nothing has been stated as to on what basis the increment was denied to the petitioners except emphasizing the issue of surplus staff being employed by the University on the basis of indiscriminate recruitment done by the erstwhile management of the University. No doubt, such indiscriminate appointment in both teaching as well as non-teaching staff would be a point to be considered by the Government, which took over the University. But that would only govern the future career of the staff employed and their prospects. Certainly, that would not result in negation of right of the petitioners to receive their annual increments when the fact of the matter is that the petitioners have worked on a regular basis as Special Officer Grade-I and thus have earned the increment.

21. For the above said reasons, this Court finds that the petitioners have made out a clear case for grant of relief. Therefore, the writ petition is allowed and mandamus is issued as follows:

The University is directed to release the annual increment for the year 2018 as admissible to all the petitioners herein, within a period of

four weeks from the date of receipt of copy of this order. It is made clear that in case, annual increment is not paid for the present year i.e., January 2019, the same shall also be paid as directed above.

No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

mrm/msk

To

1.The Secretary to Government,
Department of Higher Education,
Fort St.George, Chennai - 600 009.

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

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

+2 CCS to Mr.J.Saravanavel, Advocate sr 54377.

+1 CC to Mr.K. Sathish Kumar, Advocate sr 54411.

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NRL (CO)
SP(30/07/2019)