IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.06.2019

Delivered on : 28.06.2019

CORAM

THE HON'BLE MR. JUSTICE V.PARTHIBAN

Writ Petition No.18300 of 2018

Dr.R.N.Jayakumari ...Petitioner

Vs.

1. Annamalai University,
   rep by its Registrar,
   Annamalai Nagar - 608 002.

2. The Dean,
   Rajamuthiah Medical College and Hospital,
   Annamalai University,
   Annamalai Nagar - 608 002.

...Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of writ of declaration, declaring the Resolution No.63 dated 28.07.2010 of the first respondent University, the Pension Payment Order dated 08.04.2014 in so far as fixing the pension on the basis of the unrevised scale and the order dated 25.08.2016 bearing File No.S1/086431/2016 of the first respondent as illegal, arbitrary, contrary to law and consequently direct the first respondent University to refix the pension of the petitioner in the revised scale of pay viz., VI Pay Commissioner and VII Pay Commission, pay the revised pension, pay the difference in commuted value of pension, difference in Gratuity etc., along with interest at the rate of 10% per annum.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.K.Sathishkumar

ORDER

The petitioner joined the first respondent University as Lecturer in Anatomy on 15.10.1980. According to the petitioner, she was the first person to be appointed in the Department of

Anatomy. She was promoted to the post of Reader in the year 2004 and on attaining the age of superannuation, she retired from service on 30.06.2008. Before retirement, the petitioner had put in 28 years of regular service and was entitled to payment of pension and other retirement benefits.

2. After her retirement, the petitioner was paid pension on consolidated basis and the same was calculated and paid on the basis of pre-revised scale of pay i.e., prior to 01.01.2006. When the pay scale came to be revised on the basis of the sixth pay commission recommendation, the pension had to be calculated and paid on revised pay scale, but for strange reasons, the pension of the petitioner was paid only on the basis of unrevised pay scale and the petitioner continued to receive lower rate of pension, despite her protest.

3.According to the petitioner, several persons, who retired during the period when she retired, and those persons, who were taken on service on contractual basis, subsequent to their regular date of superannuation, had been paid pensionary benefits on the basis of revised pay scale.

4.According to the petitioner, the pensionary benefits as given to her is far lower than the pension that is being paid to the persons whose pension has been calculated on the basis of the revised pay scale. In this regard, the petitioner has submitted a representation that many persons who retired during the period when she retired and some of them, who have not taken up contractual appointment, had also been paid pension on the basis of the revised pay scales.

5.After making several representations in person, the petitioner appears to have submitted a written representation on 10.06.2015. The first respondent, in response to the said representation, had sent a communication dated 25.08.2016 stating that the Syndicate of the University had passed a Resolution No.63, dated 28.07.2010 and by such Resolution, it was resolved that the staff members who retired between the academic year 2006-07, 2008-09 and who were declined the offer of re-employment, were not allowed the benefit of fixation of pay in the revised scale of pay and their pension would be fixed only on the basis of pre-revised pay scale. At this, the petitioner had approached the authority concerned under the Right to Information Act and obtained an information. In fact, the petitioner was not offered any re-employment at all and therefore, the question of applying Resolution to her claim is unjust and arbitrary. According to the petitioner, at no point of time she was informed by any authority about the Resolution of the Syndicate dated 28.07.2010. Moreover, the Resolution was passed only on 28.07.2010, whereas the petitioner had retired much earlier to the said date i.e. on 30.06.2008. Therefore, the Resolution cannot be applied retrospectively.

6.In the above circumstances, the petitioner has come up with this writ petition seeking to declare the Resolution No.63, dated 28.07.2010, of the first respondent University in regard to the fixation of pension on the basis of pre-revised scale along with communication dated 25.08.2016 as illegal, arbitrary and contrary to law and praying for other consequential direction for payment of pension and other benefits on the basis of the revised scales of pay.

7.Mr.G.Balan Haridas, learned counsel appearing for the petitioner would submit that the denial of pension, on the basis of the revised pay scale to the petitioner alone, is per se discriminatory, arbitrary, unreasonable and violative of Article 14 of the Constitution of India. When similarly placed retired staff have been extended the benefit on the revised scale of pay, the denial of the same to the petitioner amounts to hostile discrimination, which cannot be constitutionally countenanced.

8.Moreover, the counsel for the petitioner would submit that the issue of payment of pensionary benefits on the revised pay scale is no more res integra in view of the decisions of this Court both by the Division Bench as well as Single Judges. The learned counsel would rely on the following decisions in support of the above contention:

(i)Dr.B.Siva Reddy vs. 1.Annamalai University, rep.by its Registrar, Annamalai Nagar and another (W.P.No.19587 of 2011 dated 24.09.2012), wherein, the learned single Judge of this Court, in respect of similar claim, has held in favour of the University staff. The operative portion of the observations and the Ruling of the learned Judge as found in paragraph Nos. 8 to 11 are extracted hereunder:

> "8. The respondents have filed a counter affidavit. In the counter affidavit, it is admitted that the petitioner retired peacefully, after serving till the end of the academic year, on 30.6.2010. But the respondents have contended in the counter affidavit that as per the Resolution of the Syndicate, dated 28.07.2010, every employee was bound to serve the institution till the age of 65 years and that those who are not willing should pay a compensation of Rs.5 lakhs. I have already extracted the Resolution in a previous paragraph.
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> 9. But the above Resolution of the Syndicate,

is wholly illegal for several reasons, some of the reasons are as follows:-

(i) The Resolution was passed post facto on 28.07.2010, after the relationship between the petitioner and the perversity got served, except for the limited purpose of being a pensioner. Therefore, the petitioner cannot be made bound by the said Resolution.

(ii) The Resolution of the Syndicate actually amounts to altering the terms and conditions of service. The relationship between an employee and the University, is regulated by the statuses of the University and the Syndicate Resolutions. No provision in the statutes of the University is entitled to make it compulsory for retired employees to continue in service upto 65 years. It is interesting to note that the Resolution of the Syndicate did not increase the age of retirement of persons to 65 years. It would have been a different matter if the normal age of retirement had been enhanced. Even in such cases, employees have a right to seek voluntary retirement, except in respect of posts for which the request for voluntary retirement is prohibited. Instead of increasing the age of retirement of the employees, the Resolution of the Syndicate makes it compulsory for retired employees to serve upto the age 65 years. Such an imposition cannot be made by the University upon the retired employees.

(iii) The arbitrary nature of the Resolution of the Syndicate is confounded by an additional factor viz., that a threat to recover compensation in a sum of Rs.5 Lakhs is made in the Resolution, in respect of those who are not willing to take up post retirement employees. No employee can be threatened with such consequences, for not accepting the post retirement employment. Therefore, the refusal of the respondents to pay the portion of the arrears of VI Pay Commission recommendations and to pay the retirement benefits on the basis of the revised scale of pay, the retirement benefits on the basis of the revised scale of pay, is wholly illegal. Apart from the Resolution of the Syndicate, the respondents do not rely upon anything else to make the petitioner ineligible for the grant of the relief.

10. A faint attempt is made in the counter affidavit to state that the petitioner took up employment in Mahatma Gandhi Medical College and

Research Institute and that this action of the petitioner exposed his unwillingness to work in the respondent University. But I do not know as to how the respondents could curtail the right of the petitioner to take up employment elsewhere after retirement. After retirement, what the petitioner does, is entirely a matter of his choice. Merely because an employee took up post retirement employment with another employer, the respondents cannot have any claim for extracting the services of the petitioner so long as they wish.

11. In view of the above, the petitioner is entitled to succeed. Therefore, the writ petition is allowed and there will be a direction to the respondents (i) to settle the arrears of pay and allowances, arising out of the fixation of pay on the basis of the recommendations of the VI Pay Commission, within a period of 8 weeks and (ii) to settle the terminal benefits such as gratuity, pension, computation of pension etc., on the basis of the revised scale of pay, as applicable to the petitioner after the implementation of the recommendations of the VI Pay Commission, within a period of 8 weeks from the date of receipt of a copy of this order. The petitioner is also entitled to interest on the said amounts, since there is a wrongful withholding of the above amounts. Even as per the Government Rules, belated payments of gratuity attracts interest at 10%. Therefore, the petitioner is entitled to the above payments along with the interest at 10% per annum. No costs.”

(ii)Against the order of the learned Single Judge, an appeal was filed in W.A.No.2117 of 2013 and the Division Bench, vide its order dated 16.10.2014 dismissed the appeal and confirmed the order passed by the learned Single Judge. While dismissing the appeal, the Division Bench has observed as under in paragraph Nos. 3 to 7.

“3.It is the case of the respondent before the learned single Judge was that he was appointed as Lecturer in Forensic Medicine in the 2nd respondent-College, which was affiliated to the 1st respondent-University on 21.3.1991. The respondent was promoted as a Reader in the Department of Forensic Medicine from 01.7.2001 and was further promoted as Professor from 23.10.2002. He reached the age of superannuation on 2.5.2010. The age of retirement was 60 years and he was also allowed to retire, as there was no proceedings pending against him. Since the respondent was a teaching staff, his services were extended till the end of the academic year viz., 30.6.2010 on re-employment terms. The respondent served on re-employment till 30.6.2010 and he was relieved thereafter with a certificate of No Arrears from the Department. The respondent also handed over charge to his successor, as directed. The respondent vacated the quarters and car shed and handed over possession of the same to the appellants. On 9.8.2010, the 1st appellant issued an order re-employing the respondent on the basis that a Professor retiring at 60 years, should serve upto the age of 65 years and the respondent was also asked to report for duty on or before 13.8.2010. The said letter was issued based on the Syndicate Resolution bearing No.63, dated 28.7.2010, which states that a person should serve upto 65 years and if a person leaving before serving at the age of 65 years, he should remit a sum of Rs.5.00 lakhs as compensation and an undertaking to this effect be obtained as and when they offered the appointment on renewable contract basis after superannuation/retirement.

4. Since the respondent retired virtually on 2.5.2010 and he served on re-employment till 30.6.2010 and he vacated his office on retirement from 01.7.2010, the Syndicate Resolution said to have been passed on 28.7.2010, cannot be applied to the respondent.

5. The learned single Judge appreciated the said fact and allowed the writ petition with a direction to the appellants to settle the arrears of pay and allowances arising out of the fixation of pay on the basis of the recommendations of VI Pay Commission, within a period of eight weeks and to settle the terminal benefits such as gratuity, pension, computation of pension etc., on the basis of the revised scale of pay, as applicable to the respondent after the implementation of the recommendations of the VI Pay Commission, within the period of eight weeks from the date of receipt of a copy of the order and also ordered to pay interest for the said amounts at the rate of 10% per annum from the date of due till the date of payment.

6. The learned counsel appearing for the University contended that the Syndicate Resolution dated 28.7.2010 has not been challenged and in the light of the said resolution, the mandamus issued by the Writ Court, is not proper. We are unable to appreciate the said contention, as the resolution itself was passed on 28.7.2010, long after the actual date of retirement of the respondent that was on 2.5.2010.

7. Accordingly, the writ appeal is dismissed. No costs. It is made clear that this judgment will be applicable to the persons, who retired prior to the Syndicate Resolution dated 28.7.2010 and not to the persons retired after the said Resolution, unless they challenge the resolution and set aside the same."

(iii)In M.Somasundaram vs. 1.Annamalai University, rep.by its Registrar, Annamalai Nagar (W.P.No.1238 of 2013, dated 15.12.2017), yet another learned Judge of this Court has allowed a similar claim. Paragraph Nos. 3 to 7 are extracted hereunder.

"3. The non settlement of the pensionary benefits with effect from 01.07.2006 was on the ground that the apex body of the Annamalai University had resolved vide Syndicate Resolution No.63 dated 28.07.2010 as follows:

" Resolved that the staff members who retired between the academic year 2006-2007 and 2008-2009 and who have declined the offer of appointment be not allowed the benefit of refixation of pension in the revised scale of pay and their pension be fixed as per the pre-revised scale of pay".

4. The learned counsel appearing for the petitioner has also brought to the notice of this Court, that the very same resolution passed by the first respondent was declared as invalid by this Court in W.P.No.19587 of 2011, dated 24.09.2012. The learned counsel for the petitioner further states as against the said order, writ appeal was filed and the order of this Court was confirmed by the Division Bench of this Court. However, the Hon'ble Division Bench held that the resolution passed is no relevance in respect of the settlement of pensionary and

terminal benefits payable to the professor.

5. Further, it is brought to the notice of this Court that the writ petitioner was not in service at the time of passing of the resolution and this view of the matter, the writ petitioner is entitled for all the terminal benefits from the date of his retirement.

6. Accordingly, the respondents are directed to settle the pensionary benefits due of the writ petitioner, taking into account his date of retirement as 30.06.2006 and consequently pay the revised pay and pension in accordance with the rules, within a period of twelve weeks from the date of receipt of a copy of this order.

7. In fine, the writ petition stands allowed. However, there shall be no order as to costs."

(iv)As against the order of the learned Single Judge, an appeal was filed in W.A.No.1506 of 2018 and a Division Bench of this Court, by order dated 24.07.2018 has confirmed the order of the learned Single Judge and dismissed the appeal. While upholding the order of the learned Single Judge, the Division Bench has observed as follows:

"13.In pith and substance, the contention advanced on behalf of the Respondent/Petitioner is that when all retired individuals, who were also re-engaged on contract basis, were given pension and revised pension, the Respondent/Writ Petitioner cannot be denied of the same. Viewed in that perspective, the Respondent/ Writ Petitioner has filed the Writ Petition praying for passing of an order by this Court in directing the 1st Appellant/1st Respondent/ University to pay the difference in Gratuity, Pension, Arrears of Pension, Commuted Value of Pension, Provident Fund and all other benefits on the basis of the revised pay scale applicable to the Respondent/Petitioner after the implementation of the recommendations of the VI Pay Commission as per Gratuity cum Pension cum Provident Fund cum Insurance cum Family Pension Scheme for Teachers, framed by the 1st Appellant/1st Respondent/ University together with interest at 18% per annum.

14.This Court has heard the Learned Counsel for the Appellants and the Learned Counsel for the Respondent/Petitioner and noticed their contentions.

15.It is to be borne in mind that if any Resolution is brought into force by any Competent Authority ordinarily the same will be prospective in nature. It may not apply in a retroactive or retrospective manner, especially when the said Resolution affects the right of concerned persons resulting in civil consequences. Also that, the accrued rights or crystallised rights to and in favour of the individual cannot be displaced in a lighter fashion.

16.As far as the present case is concerned, although a heavy reliance is placed on the Syndicate Resolution of the 1st Appellant/ 1st Respondent/University to the effect that 'the staff members who retired between the academic year 2006-2007 and 2008-2009 and who have declined the offer of appointment be not allowed the benefit of refixation of pension in the revised scale of pay and their pension be fixed as per the pre-revised scale of pay', this court pertinently points out that in the present case, the Respondent/ Writ Petitioner retired on 30.06.2006 and he served on reemployment from 01.07.2006 till September 2007. In this connection, it is not out of place for this Court to make a relevant mention that the Syndicate Resolution No.63 dated 28.07.2010 of the 1st Appellant/1st Respondent/University is not helpful and the same will not come to the aid/rescue of the Appellants because of the reason that the said Resolution is not applicable to the Respondent/Writ Petitioner. Besides that, the Syndicate Resolution No.63 dated 28.07.2010 of the 1st Appellant/1st Respondent/ University is not assailed by the Respondent/Writ Petitioner, yet, this Court is of the earnest opinion that it cannot be put against the Respondent/Writ Petitioner. When the Respondent/Petitioner, in para 4 of the Affidavit in W.P.No.1238 of 2013, had referred to five names of individuals [all retired persons], who were also reengaged on contract basis, were given pension and revised pension, then, the Respondent/Writ Petitioner cannot be differently treated and in short, he cannot be denied of the retirement benefits which he is entitled to receive legally.

17.In view of the foregoing discussions and also, this Court, taking note of the primordial fact that the Respondent/Writ Petitioner was not in service at the time when the Syndicate of the 1st Appellant/1st Respondent/University passed a Resolution No.63 dated 28.07.2010, then, this Court holds that the Respondent/ Petitioner, in Law, is entitled to claim all the terminal benefits due to him from the date of his retirement.

18.Looking at from any angle, the view taken by the Learned Single Judge in directing the Appellants/Respondents to settle the pensionary benefits due to the Respondent/Writ Petitioner after taking into account his date of retirement as 30.06.2006 and resultantly, to pay the revised pay and pension in accordance with the rules etc., they do not suffer from any material irregularities and patent legal infirmities. Resultantly, the Writ Appeal fails.

19.Accordingly, the Writ Appeal is dismissed, leaving the parties to bear their own costs. Consequently, the Order dated 15.12.2017 passed by the Learned Single Judge in W.P.No.1238 of 2013 is affirmed by this Court, for the reasons assigned in this Appeal. Connected Civil Miscellaneous Petition is closed."

Therefore, the learned counsel for the petitioner would submit that in all force, the claim of the petitioner ought to be allowed and her pensionary benefits has to be re-fixed on the basis of revised pay scale.

9.Per contra, Mr.Sathish Kumar, learned counsel entered appearance on behalf of the respondents and made his submissions.

10.According to the the learned counsel for the first respondent University the Resolution has been passed by Syndicate on 28.07.2010, thereby excluding certain categories of persons from the pensionay benefits on the basis of revised pay scales. Therefore, the petitioner, who belongs to retired staff category, was denied the fixation of her pension on the basis of revised pay scale.

11.Heard the learned counsel appearing for the petitioner and learned counsel appearing for the respondent

University and perused the materials placed on record and also the case laws relied on by the learned counsel for the petitioner.

12.As rightly contended by the learned counsel for the petitioner, the issue is no more res integra calling for any further adjudication by this Court. Both the learned Single Judge as well as the Division Benches have held that the Resolution dated 28.07.2010 of the first respondent University cannot be made applicable to persons who retired prior to the date of the Resolution. In this case, the petitioner retired from service on 30.06.2008, very much before the passing of the Resolution dated 28.07.2010. Therefore, per se the Resolution could not be applied to the petitioner's claim and that cannot be the basis for denying the pensionary benefits to the petitioner on the basis of revised pay scales. Further, the Resolution, as it is, is attempting to make a invidious discrimination between two sets of employees who are all similarly placed. Such action on the part of the respondents cannot be appreciated as the same suffers from blatant discrimination and being violative of Article 14 of the Constitution of India.

13.Even factually, it appears that the persons, who have not been appointed on Contractual basis, after their retirement, have been extended the benefit of pension on the basis of revised pay scales. That being the case, this Court is unable to comprehend as to how the petitioner alone can be singled out for discriminatory treatment, at the hands of the University.

14.Even otherwise, it is factually averred that the petitioner was never offered contractual employment after her retirement. Even assuming for the sake of argument that the person, who served the University after his retirement would stand to benefit more, such classification as between the persons, who are serving contractual employment and not serving such employment, is impermissible for the purpose of payment of pensionary benefits to the retired staff. Once the petitioner is allowed to retire and once she earned pensionable service, she is entitled to get pension on par with other pensioners, regardless of the fact whether she worked in the University subsequently after her retirement on contractual basis or not. At no circumstances, the pensionary benefits can be reduced except on the basis of any disciplinary action initiated against the retired staff.

15.The petitioner, who has retired from service as early as on 30.06.2008, has been unjustly and illegally denied proper pension for the last 11 years. She has been made to receive lower pension all these years by wrong application of the so called Resolution passed by the Syndicate on 28.07.2010. This Court also finds that the University, which passed the Resolution to restrict the full pensionary benefits on the basis of revised pay scales, has really no nexus to the object it seeks to achieve, as payment of pensionary benefits does not depend on the future employment on contractual basis by the retired staff. The payment of full pensionary benefits cannot depend on the subsequent employment offered on contractual basis, after retirement. Due pensionary benefits is a right conferred on the retired employees and such pensionary benefits have been rightly earned by the petitioner and it is not a bounty depending on the benevolence to be shown by the first respondent.

16.For the above said reasons, this Court is in agreement with the submission made on behalf of the petitioner. The petitioner, in view of the above narrative, has made out a clear case for grant of complete relief.

17.In the result, the writ petition stands allowed and the following directions are issued:

(a)The Resolution No.63 dated 28.07.2010 of the first respondent University; the Pension Payment Order dated 08.04.2014, fixing the pension on the basis of unrevised scale and the order dated 25.08.2016 bearing File No.S1/086431/2016 of the first respondent, is hereby declared as illegal, arbitrary and contrary to law;

(b) Consequently the first respondent University is directed to refix the pension of the petitioner in the revised scales of pay from time to time during the past years and pay the revised pensionary benefits, including commuted value of pension, Gratuity etc.

(c) The consequential order is directed to be passed within a period of eight weeks from the date of receipt of copy of this order.

The petitioner is also entitled to be paid a nominal interest of 6% on the belated payment of pensionary benefits from the date it became payable till the date the same is paid on the differential arrears of pension. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

mrm/msk

To

1. Annamalai University,
   rep by its Registrar,
   Annamalai Nagar - 608 002.

+1cc to Mr. Balan Haridas, Advocate, S.R.No. 54391
+1cc to Mr.K.Sathish Kumar, Advocate, S.R.No. 53687

W.P.No.18300 of 2018

VBA(CO)
GN(08/08/2019)