



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2019

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P. (MD) No.16448 of 2013

M.Seeni Muthu

... Petitioner

Vs.

1.State of Tamil Nadu represented
by the Secretary,
Department of Higher Education,
Fort St. George,
Chennai-9.

2.The Vice Chancellor,
Madurai Kamaraj University,
Madurai.

3.The Registrar,
Madurai Kamaraj University,
Palkalai Nagar,
Madurai.

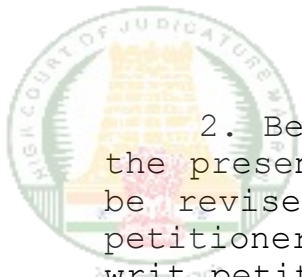
... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned G.O.Ms.No.402 dated 13.12.2006 and the subsequent Communication in Letter No.4254062/2009-1 dated 11.03.2009 on the file of the Respondent No.1 and quash the same and consequently to direct the Respondent No.3 to re-fix the pension by revising and re-fixing the scale of pay of the petitioner in the post of Driver notionally with effect from 01.01.1996 within the time stipulated by this Court.

For Petitioner	: Mr.T.Lajapathi Roy
For R1	: Mr.K.Mu.Muthu, Additional Government Pleader
For R2	: No appearance
For R3	: Mr.M.Muthu Geethayan

ORDER

The order impugned issued in G.O.Ms.No.402, dated 13.12.2006 and the subsequent communications in letter, dated 11.3.2009 are sought to be quashed. Further direction is sought for to re-fix the scale of pay of the writ petitioner in the post of Driver notionally with effect from 01.01.1996.



2. Before considering the facts, the very relief sought for in the present writ petition shows that the scale of pay is sought to be revised with retrospective effect from 1.1.1996 and the writ petitioner admittedly retired from service on 30.04.2000 and the writ petition is filed on 3.10.2013 after a lapse of 13 years from the date of retirement. The claim set out in the writ petition itself is to re-fix the pay with effect from 1.1.1996. First of all, it is to be examined whether the claim of the writ petitioner is made out within a reasonable period of time. The writ petitioner even at the time of filing of the writ petition was aged about 72 years and now he would be around 77 years.

3. The writ petitioner was appointed as a driver in the third respondent University and retired from service on 30.04.2000 in the cadre of Special Grade driver.

4. The grievance of the writ petitioner is that the pay band for the post of Driver was revised and re-fixed notionally with effect from 1.1.1996 with monetary effect from 11.12.2008 in accordance with the resolution of the Syndicate dated 11.12.2008 by awarding Selection Grade in the scale of pay of Rs.5,500-175-9000 on completion of 7 years in Ordinary Grade and Special Grade in the scale of pay of Rs.6500-200-10500 on completion of 13 years in Selection Grade or a total of 20 years put together irrespective of service in the selection grade post.

5. Admittedly, the Government Order issued in G.O.Ms.No.402 of 2006 dated 13.12.2006 was quashed by the Courts in the case of **Madras University Staff Association represented by its President vs. State of Tamil Nadu reported in (2012)4 MLJ 152**. The Court quashed the Government Order mainly on the ground that the Government cannot issue any such order in respect of the decision taken by the University which is an autonomous body. However, subsequently the University also had taken a decision and the minutes of the Syndicate dated 11.12.2008 was referred by the Registrar in his letter, dated 13.2.2009 which reads as under:-

"In accordance with the resolution of the Syndicate cited, the pay of the incumbents in the post of Driver is revised and re-fixed notionally W.E.F.01.01.1996 with monetary effect from 11.12.2008 as stated in the pay fixation statement enclosed, by awarding Selection Grade in the scale of pay of Rs.5,500-175-9000 on completion of 7 years in Ordinary Grade and Special Grade in the scale of pay of Rs.6500-200-10500 on completion of 13 years in Selection Grade or a total of 20 years put together irrespective of service in the selection grade post, as applicable to the individual.

The above pay revision is subject to final verdict of the High Court on implementation of the Government Order No. 402, Higher Education (H2) Department, dated 13.12.2006



passed on the recommendation of Dr.S.Muthukumaran Committee report.

If any excess in fixation is noticed at a later date, the excess amount drawn by such fixation will be summarily recovered. The individuals concerned are directed to give an undertaking to this effect."

6.The learned counsel appearing on behalf of the third respondent states that the resolution of the Syndicate was passed in respect of the serving drivers in the University and the revision of scale of pay is inapplicable in respect of the retired drivers. The reference made by the learned counsel for the petitioner regarding W.P.No.14965 of 2011 was in respect of the serving drivers and not the retired drivers. This apart, the relief in that writ petition is unconnected with the prayer set out in the present writ petition. Thus, there cannot be any comparison in respect of the earlier orders of this Court dated 8.10.2012 passed in W.P.No.14965 of 2011. All those petitioners are the inservice employees and the writ petitioner was allowed to retire from service on 30.04.2000.

7. This Court is of the considered opinion that the revision of scale of pay given in respect of the inservice candidates cannot be directly adopted for the retired employees. As far as the retired employees are concerned, a separate decision or a policy is required for revision of pension or to grant arrears of pension. There is no direct application in respect of revision of scale of pay applicable to the inservice employees. This being the principles settled, this Court is of the considered opinion that the very claim set out in the present writ petition by the writ petitioner is not only stale but highly belated.

8. In order to substantiate the contention, the learned counsel for the third respondent cited the judgment of the **State of Tamil Nadu vs. Seshachalam reported in 2007(10)Supreme Court Cases 137** and the relevant paragraphs are extracted hereunder:-

"6.The said Government Order further stipulated that undertaking should be given by the seniors getting upgradation of their pay with their juniors in the Finance Department in the format enclosed to the effect that they accept the terms and conditions thereto. Respondents before us, save and except R. Ragothaman in CA No.1955 of 2007 indisputably had retired much prior to issuance of the said Government Order dated 29.5.1998. They also made representations before the appellant demanding fixation of their pay at par with their juniors in the Finance Department. As the said request was not acceded to, a large number of original applications were filed before the Tamil Nadu Administrative Tribunal.



9. It was further held that the said Government Order applied not only to the existing staff but also to the retired employees and as such a beneficial interpretation to the said Government Order should be given as the said provisions have to be read in consonance with Article 14 of the Constitution of India.

10.(iv) as in terms of Articles 14 and 16(1) of the Constitution, no employee has any fundamental right of promotion, upgradation, allocation of any particular department or to receive any benefit after superannuation the impugned judgment is unsustainable.

21. Interpretation of GOMS No.126 would, no doubt, depend upon the backdrop of the events in which it was made but it is trite that the intention of the maker of the policy must be drawn from the language used therein. For the said purpose, the entire document should be read in its entirety. Original Application No.166 of 1990 was filed by two serving employees. The State could in obedience to the Tribunal's order create two supplementary posts and promote them thereto so as to treat them at par with their juniors working in the Finance Department. The Notification envisages a personal pay by way of stepping up of pay. It was given the prospective effect. No arrear of pay was to be paid. The upgradation sanctioned was to lapse in the event of retirement of the individuals or their promotion to the upgraded post. The said upgradation were to be subject to the terms and conditions contained in clause 12 of the said order, a reading whereof would clearly, in our opinion, lead to only one conclusion that it was meant to be applied to the existing employees. By reason thereof, on upgradation, the seniors were required to continue to perform the duties attached to the existing post till they get their normal promotion to the next higher category. Upgradation of their posts was further dependant on the fact as to whether they had been promoted in their normal course only. It was meant to be a one time affair. In respect of some categories of employees, the question of upgradation was deferred as specified in paragraph 12(6).

25. This Court therein was dealing with the provisions of the West Bengal Special Courts Act. The said decision, in our opinion, has no application with the facts and circumstances of this case, particularly, when in the said decision itself, it has been pointed out that Article 14 does not insist that every piece of legislation must have universal application and it does not take away from the State the power to classify person for the purpose of legislation.



26.As to what, therefore, is necessary for this purpose is that classification must be rational and in order to pass the test: (1) the classification must be founded on an intelligible differentia, and (2) the differentia must have a rational relation to the object sought to be achieved by the Act.

28.Reference has also been made by Mr. Venkataramani to a decision of this Court in U.P.Raghavendra Acharya v. State of Karnataka wherein it was held that pension is not a bounty and it is a deferred salary. This Court is not concerned herein with such a situation. In the said decision, this Court was concerned with a case where an employee retiring on a particular date was to receive 50% of the pension on the enhanced salary. In the fact situation obtaining therein that as the revision of pay and consequent revision in pension had come into force and by reason of a notification, the modality of computing the pension was required to be determined, those who had fulfilled the conditions laid down therein were held to be entitled to the benefits provided for thereunder holding that the concerned employees had a vested right therein.

9. On a perusal of the entire judgment, it is made clear that the benefits granted to the inservice employees cannot be automatically applied to the retired employee. In respect of the retired employees, a separate policy decision and the administrative order is required. Thus, the writ petitioner, who filed the present writ petition at the age of 72 years and after a lapse of 12 years from the date of retirement, cannot claim the benefits which were granted to the inservice drivers working in the University.

10.This being the principles to be adopted, the writ petitioner has not established any acceptable legal grounds for granting the relief sought for in the present writ petition. Accordingly, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar(T & P)

// True Copy //

Sub Assistant Registrar(CS)

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To

The Secretary,
Department of Higher Education,
Fort St. George,
Chennai-9.

+1CC TO MR.M.MUTHUGEETHAYAN, Advocate Sr. No.81594
+1CC TO MR.T.LAJAPATHI ROY, Advocate Sr. No.81863
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 81976

W.P. (MD) No.16448 of 2013
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KM(CO)
TR (26.08.2019) 6P 5C