



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.09.2019

CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI**

W.A. (MD) No.865 of 2019

and

C.M.P. (MD) No.7614 of 2019

Tamil University
rep.by its Registrar
Vaigai Valagam
Thanjavur
Thanjavur District

... Appellant/2nd Respondent

-vs-

1.A.Gunasekaran

... 1st Respondent/Complainant

2.The State of Tamil Nadu
rep.by its Secretary
Department of Tamil Development and Culture
Fort St.George
Chennai-600 009

... 2nd Respondent

Prayer in W.A.(MD) No.865 of 2019:-

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 16.02.2018, passed in W.P.(MD) No.5972 of 2014, on the file of this Court.

Prayer in WP(MD). 5972/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling for the records relating to the impugned order issued by the 2nd respondent Tamil University vide Na.Ka.No.A1/9432/2013 dated 28.1.2014, quash the same, and further direct the 2nd respondent university to promote the petitioner to the post of Assistant Librarian in the University from the date of passing Ph.D.Degree i.e., 18.10.2002 and consequently allow the petitioner to continue in service as Assistant Librarian in the university up to the age of Superannuation of 60 years with all attendant benefits.



For Appellant : Mr.A.Thirumurthy
for Mr.T.Sakthikumaran

For Respondents : Mr.M.Ajmal Khan, Senior Counsel
for Mr.T.Cibi Chakraborty for R1
Mr.S.Angappan
Government Advocate for R2

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J U D G M E N T

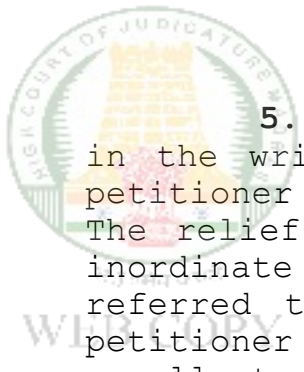
[Judgment of the Court was made by T.S.SIVAGNANAM, J.]

This writ appeal filed by the Tamil University, Thanjavur, is directed against the order dated 16.02.2018, passed in W.P.(MD) No.5972 of 2014.

2. The writ petition was filed by the first respondent herein praying for issuance of a writ of certiorarified mandamus to quash the order, dated 28.01.2014, passed by the appellant University and to direct the appellant University to promote him to the post of Assistant Librarian in the University from the date of passing Ph.D. Degree i.e., from 18.10.2002 and consequently, to allow him to continue in service as Assistant Librarian in the University upto the age of superannuation of 60 years with all attendant benefits.

3. The writ petition was allowed by the impugned order following the case of one Thiru.K.Thirumaran, who had filed W.P.(MD) No.10245 of 2011, which was allowed by order dated 30.04.2013.

4. The service particulars of the first respondent / writ petitioner was that he joined the service of the appellant University as Library Assistant Grade-II on 10.08.1983 and subsequently, he was appointed in the regular vacancy on 11.08.1985 and subsequently, his services were regularized. On completion of ten years of service, selection grade was accorded to the first respondent / writ petitioner and on completion of twenty years of service, special grade was extended to him. At the relevant point of time, the posts of Library Assistant Grade-I and Library Assistant Grade-II were merged and a single post, namely, Librarian Grade-I was created. The case of the first respondent / writ petitioner is that he should be treated on par with Thiru.K.Thirumaran, upgraded to the post of Assistant Librarian and given the scale of pay for the said post and should be permitted to continue in service till the age of 60 years, since the post of Assistant Librarian was considered as a teaching post. This request made by the first respondent / writ petitioner was rejected by the appellant University, vide order dated 28.01.2014, which was impugned in the writ petition.



5. The appellant University resisted the prayer sought for in the writ petition contending that the first respondent / writ petitioner cannot equate himself with that of Thiru.K.Thirumaran. The relief sought for is liable to be dismissed on the ground of inordinate delay and laches. Certain other resolutions were referred to in order to state that the first respondent / writ petitioner is not entitled to the relief sought for and the appellant University sought to sustain their decision dated 28.01.2014.

6. The learned Single Judge considered the case and found that the first respondent / writ petitioner should be treated on par with Thiru.K.Thirumaran and he being an identically placed person and senior to Thiru.K.Thirumaran cannot be denied equal treatment and if it is done, it would amount to violation of Article 14 of the Constitution of India. Accordingly, the writ petition has been allowed on the same lines as that of the relief granted to Thiru.K.Thirumaran. At this juncture, it is to be noted that the decision in the case of Thiru.K.Thirumaran in W.P.(MD) No.10245 of 2011, dated 30.04.2013, had attained finality as the review application filed against the said order in Rev.Aplw.(MD) No.1 of 2014 was dismissed on 28.01.2014 and the said order was affirmed by the Division Bench by Judgment dated 12.09.2014 in W.A.(MD) No.675 of 2014. To be noted that in the meantime, the first respondent / writ petitioner had filed the writ petition for the aforementioned relief and the matter was pending.

7. Mr.A.Thirumurthy, learned counsel appearing for Mr.T.Sakthikumaran, learned counsel on record for the appellant University, contended that the case of the first respondent cannot be equated with Thiru.K.Thirumaran as the relief was granted to him by considering the effect of the decision taken by the Syndicate of the University in the resolution dated 03.08.1996 (26.06.1996) and the said resolution having been cancelled on 27.02.2015, no benefit can accrue to the first respondent / writ petitioner based on such resolution, which has been cancelled.

8. Further, it is submitted that the resolution was cancelled on 27.02.2015 and the first respondent / writ petitioner having not challenged the resolution is not entitled to the relief. Further, by referring to the number of posts, which have been sanctioned for the appellant University in terms of U.G.C.Guidelines, it is pointed out that there is one post of Librarian, one post of Assistant Librarian and eight posts of Library Assistant Grade-I. Therefore, the first respondent cannot be accommodated as Assistant Librarian at the relevant point of time as there was only one post and in the absence of any vacancy, the question of accommodating the first respondent as Assistant Librarian and extending him the scale of pay does not arise.



9. In support of his contentions, the learned counsel for the appellant University referred to the decisions of the Honourable Supreme Court in **State of U.P. vs. Neeraj Awasthi and others**, reported in (2006) 1 SCC 667 and **Union of India and another vs. Kartick Chandra Mondal and another**, reported in (2010) 2 SCC 422. These decisions have been relied on to buttress the submission that past practice is always not the best practice and if illegality has been committed in the past, it cannot be permitted to be perpetuated. Therefore, on the above grounds, the order passed by the Writ Court calls for interference.

10. Per contra, Mr.M.Ajmal Khan, learned Senior Counsel, assisted by Mr.T.Cibi Chakraborty, learned counsel on record for the first respondent, sought to sustain the order passed in the writ petition. It is submitted that admittedly, the first respondent is senior to Thiru.K.Thirumaran and whatever benefits extended to Thiru.K.Thirumaran, have to be definitely extended to the first respondent and failing to do so would amount to violation of Article 14 of the Constitution of India.

11. Further, it is submitted that the resolution, which was passed by the Syndicate, dated 03.08.1996 (26.06.1996) was based on the person and not based on the post and once a decision is taken to upgrade the candidates, then the monetary benefits payable in the upgraded post has to be extended to them. Further, it is submitted that the fact relating to the cancellation of resolution, dated 27.02.2015, was not pleaded in the writ petition and raised for the first time in the review application filed before the learned Single Judge in Rev.Apl.W(MD) No.55 of 2019, which argument was not accepted and the review application was dismissed on 22.07.2019.

12. It is further submitted that the University constituted a Committee namely "Library Development Committee", which convened a meeting on 18.12.2012 and resolved to recommend to the Syndicate that those the candidates, who have put in more than ten years of service in the post of Librarian Grade-I, may be redesignated as Assistant Librarians in the UGC scale and in case, if they do not possess Ph.D. or NET / SET in Library Science, they may be given a period of five years time to fulfill the requirements, failing which, they may be reverted back as Librarian Grade-II.

13. Further, it is submitted that the decision of the Library Development Committee was accepted by the Syndicate in Resolution No.2013:22. Therefore, it is submitted that this decision of the Syndicate has not been withdrawn and the benefit has to be extended to the first respondent. Further, it is submitted that the writ petition having been filed much prior to the cancellation of the resolution, which was made on 27.02.2015, the same cannot be put against the first respondent to deny the relief.



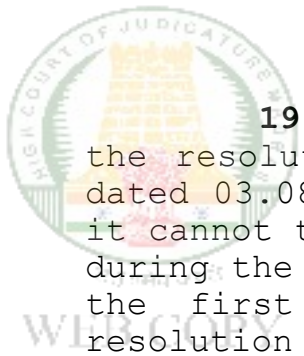
14. The learned Senior Counsel also referred to the order, dated 04.03.2015, passed by the appellant University implementing the directions issued by the Court in the case of Thiru.K.Thirumaran.

15. In support of his contentions, the learned Senior Counsel referred to the decision in the case of **State of Tripura vs. K.K.Roy**, reported in (2004) 9 SCC 65. This decision is pressed into service to support the submission that an Organization that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale and ineffectual performance. Therefore, it is submitted that the vested right in favour of the first respondent / writ petitioner, which accrued pursuant to the resolution dated 03.08.1996 (26.06.1996) was rightly accepted by the Writ Court and therefore, the order passed by the Writ Court does not call for any interference.

16. We have elaborately heard the learned counsel on either side and carefully perused the materials placed on record.

17. The first aspect to be considered is whether the first respondent can be equated with Thiru.K.Thirumaran. Admittedly, the first respondent is possessed Ph.D.Degree having acquired on 18.10.2002. Since the post of Assistant Librarian was treated as a teaching post, Ph.D.Degree is mandatory or in its absence, the candidate should pass NET / SET. As the first respondent has acquired Ph.D.qualification, there can be no dispute as regards his eligibility to function as Assistant Librarian.

18. The second aspect to be considered is whether on the grounds raised by the appellant University, can the case of the first respondent be refused to be considered. The sheet anchor of the arguments of Mr.A.Thirumurthy, learned counsel, rests upon the withdrawal of the resolution dated 03.08.1996 (26.06.1996). Admittedly, the withdrawal of the resolution was done on 27.02.2015. This withdrawal / cancellation was based on the decision of the Syndicate, which obviously can take only prospective effect and not retrospective effect. Furthermore, in the interregnum, the Library Development Committee, which was constituted by the Syndicate by appointing two of its Members to suggest various recommendations, took a conscious decision and recommended that all those Librarian Grade-I (like that of the first respondent), who have put in more than ten years of service may be redesignated as Assistant Librarians in the UGC scale. This decision of the Library Development Committee taken on 18.12.2012 was approved by the Syndicate vide Resolution No.2013:22. It may be true that the resolution cancelling the earlier resolution dated 03.08.1996 was passed on 27.02.2015. But, there appears to be a specific resolution No.2015:15.



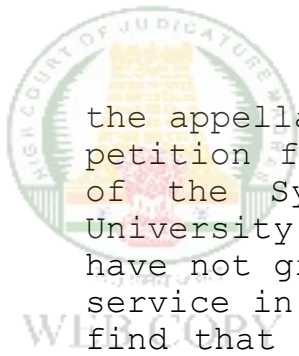
19. Be that as it may, we are of the considered view that the resolution dated 27.02.2015, cancelling the earlier resolution dated 03.08.1996, at that stage, could have prospective effect, but it cannot take away the rights of the incumbents, who were available during the relevant period. Furthermore, the writ petition filed by the first respondent was pending before this Court when the resolution dated 27.02.2015, cancelling the earlier resolution dated 03.08.1996, was passed. Therefore, the first respondent cannot be non-suited based upon the decision taken by the Syndicate much after filing of the writ petition. Furthermore, the said withdrawal of resolution was never placed before the Writ Court and placed before the Writ Court only when the review application was filed, which was not accepted by the Writ Court as it was the decision taken subsequent to the date on which the first respondent became eligible to be redesignated.

20. The next argument of Mr.A.Thirumurthy, learned counsel, is that as per the number of posts, which have been sanctioned, there is only one post of Assistant Librarian sanctioned in terms of the UGC Guidelines and therefore, the question of accommodating or appointing the first respondent as Assistant Librarian in a non-existence post does not arise.

21. Under normal circumstances, this interpretation can be applied. But, on close reading of the resolution dated 03.08.1996 (26.06.1996), it is clear that the benefit was granted to the candidates, who have put in more than ten years of continuous service in the post of Librarian Grade-I. The object of extending such benefit was that on account of denial of career upgradation, there was lot of resenting among the persons, who had completed ten years of service. Therefore, the resolution was carefully worded to mean that the candidates, who have completed ten years of service, will be entitled to the scale of pay payable to the Assistant Librarian. Therefore, the correct way to interpret the decision is not to state that the person should be promoted to the post of Assistant Librarian, but, should be extended the benefits of Assistant Librarian as per the UGC guidelines. Therefore, we are of the considered view that the resolution will have full effect on the case of the first respondent.

22. The decisions in the case of **Neeraj Awasthi** and **Kartick Chandra Mondal** (cited supra) lay down the principle that past practice is not always the best practice and if illegality has been committed in the past, it cannot be allowed to be perpetuated.

23. We find that no illegality can be attributed to the decision taken in the case of Thiru.K.Thirumaran. If such interpretation is to be accepted, then it would amount to misinterpreting the orders of the Court in the case of Thiru.K.Thirumaran, which had attained finality and implemented by



the appellant University. The decision, which was taken in the writ petition filed by Thiru.K.Thirumaran was based upon the resolution of the Syndicate, which is the highest academic body of the University to extend such benefits to such of those employees, who have not granted promotion despite of having ten years of continuous service in the category of Library Assistant Grade-I. Therefore, we find that those decisions do not render any assistance to the case of the appellant University.

24. Insofar as the decision in the case of **K.K.Roy** (cited supra) relied on by the learned Senior Counsel is concerned, that pertains to benefit of promotion opportunity and career advancement. There can be no quarrel as to the legal position, which has been set out in the writ petition. But, the issue involved in the present case is not with regard to promotion opportunity and career advancement, but with regard to extending higher scale of pay. Therefore, we find that these decisions may not render any assistance to the case of the first respondent.

25. In the light of the above reasons, we are of the considered view that the decision rendered by the learned Single Judge, does not call for any interference. The learned Single Judge noted that the first respondent / writ petitioner was willing to give-up the monetary benefits payable to him for the period during which he did not function as Assistant Librarian. We make this position clear by holding that the first respondent was allowed to retire from service on attaining 58 years of age on 31.01.2014. Had he been successful in the writ petition earlier, he could have continued in service till 31.01.2016 i.e. 60 years of age. However, having not discharged the duties as Assistant Librarian, the scale of pay of Assistant Librarian cannot be granted to the first respondent for the said period. However, for all other purposes, the period should be treated as Assistant Librarian, so that the first respondent can get the benefits of higher pension and other retirement benefits.

26. For the above reasons, we find no ground to interfere with the order and direction issued in the writ petition. Accordingly, the writ appeal fails and stands dismissed. The appellant University is directed to implement the decision of the Writ Court, within a period of eight weeks from the date of receipt of a copy of this Judgment. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

/TRUE COPY/

Sub Assistant Registrar



To:

The Secretary to Government of Tamil Nadu,
Department of Tamil Development and Culture,
Fort St.George,
Chennai-600 009.

+1 CC to M/s.T.CIBI CHAKRABORTHY, Advocate (SR-89101[F] dated
25/09/2019)
+1 CC to M/s.T.SAKTHI KUMARAN, Advocate (SR-88990[F] dated
24/09/2019)
+1 CC to M/s.GP (SR-89834[F] dated 26/09/2019)

W.A. (MD) No.865 of 2019

and

C.M.P. (MD) No.7614 of 2019

24.09.2019

krk

JM/01.10.2019/8P/5C