



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on:
25.11.2019

Delivered on:
11.02.2020

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CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P. (MD) .No.2390 of 2019

and

W.M.P. (MD) No.5668 of 2019

Dr.G.Thamaraiselvi

.. Petitioner

Vs.

1.Union of India, Rep by its Secretary to Government,
Union of India,
(Department of Higher Education),
Ministry of Human Resources Development,
Shastri Bhavan, New Delhi.

2.The Director,
National Institute of Technology,
Trichy.

3.The Registrar,
National Institute of Technology,
Trichy.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of writ of Certiorarified Mandamus, calling for the records relating to the impugned proceedings No:NITT/Estt./Unit-III/2018-19/91, dated 02.01.2019 issued by the 3rd respondent and quash the same and consequentially direct the 3rd respondent to permit the petitioner to continue in service till petitioner attain age of superannuation i.e., 65 years.

For Petitioner: Mr.V.R.Shanmuganathan
for Mr.AL.Kannan

For R1 : Mr.S.Sivakumar

For RR 2 & 3 : Ms.Maria Roseline
for M/s.Sribalaji

**ORDER**

The petitioner has filed the present Writ Petition to quash the proceedings of the 3rd respondent dated 02.01.2019 bearing No:NITT/Estt./Unit-III/2018-19/91 and to permit the petitioner to continue in service till she attains age of superannuation i.e., 65 years.

Case of the Petitioner:

2. The petitioner joined the services of Regional Engineering College, Trichy as Library Assistant (Non Teaching Staff) with effect from 20.10.1981. The petitioner was awarded with selection grade with effect from 22.10.1999. By the advertisement No.18/98, Regional Engineering College, Trichy called for applications as per the U.G.C. norms from the eligible candidates for the posts of Professors, Assistant Professors, Lecturers, CAD/Cam Engineer and Librarian. The petitioner applied for the post of Librarian as she was fully qualified. After the interview, she was selected and appointed as Librarian with effect from 22.04.1999.

2(a). The age of superannuation for the posts of Teaching staffs was enhanced from 60 to 62 years and by proceedings of the Ministry of Human Resources Development (Department of Education), dated 06.11.1998, the same was made applicable to the posts of Registrars, Librarians, Physical Education Personnel, Controllers of Examination, Finance Officers and such other University employees treating the said posts also as Teaching posts. The petitioner's pay scale was fixed on par with the Teaching staffs in the University. In the year 2003, Regional Engineering College, Trichy is fully funded by the Central Government and from July 2003, the Regional Engineering College is declared as National Institute of Technology, Trichy.

2(b). The 3rd respondent by its proceedings dated 20.05.2006, promoted the petitioner as Librarian (Senior Scale) under Career Advancement Scheme and the benefits for the faculty promoted under Career Advancement Scheme during March 2006 with effect from 01.07.2005 were granted to the petitioner. On completion of five years, the petitioner was awarded with selection grade in the post of Librarian with effect from 01.07.2010 by the 3rd respondent by its proceedings dated 17.05.2012. Subsequently, the 3rd respondent by the proceedings dated 29.08.2017 permitted the petitioner to next Academic Grade Pay (AGP) with effect from 01.07.2013. In the year 1998, the age of superannuation for Teaching staffs was extended from 60 to 62 years and the same benefit was extended to the petitioner also. In the year 2008, as per the U.G.C. norms, the age of superannuation for the post of Teaching staffs i.e.,



Professors, Assistant Professors, Lecturers, CAD/Cam Engineer and Librarian were increased from 62 to 65 years. This benefit was extended to all persons coming within the definition of Teaching staffs as per U.G.C. norms.

2(c). In the year 2013, the 3rd respondent Institution introduced the post of Librarian with pay scale on par with Professor cadre. The 3rd respondent on four times i.e., on 25.08.2013, 18.02.2015, 27.01.2016 and on 16.02.2017 called for applications to fill up the said post of Librarian. The petitioner being fully qualified, applied for the said post. The 3rd respondent did not select the petitioner on the ground that except petitioner, no other eligible candidates had applied for the said post.

2(d). While so, the 3rd respondent served the impugned proceedings dated 02.01.2019 bearing No:NITT/Estt./Unit-III/2018-19/91 permitting the petitioner to go on retirement taking the petitioner's age of superannuation as 62 years instead of 65 years.

3. The learned counsel appearing for the petitioner contended that the post of Librarian is a Teaching post as per U.G.C. norms and petitioner was treated as Teaching staff from 22.04.1999, when she was appointed as Librarian. The age of superannuation of Non-Teaching staffs is 60 years, while the age of superannuation for Teaching staffs is 62 years and the petitioner was continued to work after the age of 60 years. The post of Librarian is a Teaching post along with CAD/Cam Engineer and Physical Education Director on par with Teaching staffs like Professors, Assistant Professors and Lecturers. As per U.G.C. norms, Librarian post is a Teaching post. In view of the U.G.C. norms, the petitioner is entitled to be in service till the age of 65 years. The age of superannuation for the posts like Physical Education Director, CAD/Cam Engineer and Librarians is fixed at 65 years on par with Teaching staffs and not extending the same to the petitioner, who is a Librarian is discriminatory and violative of Article 14 of the Constitution of India. The impugned order passed by the 3rd respondent is violative of principles of natural justice. U.G.C. Regulations 2010 permits the respondents to give option for Teaching staffs who attain the age of superannuation to be re-employed for further period of five years.

3(a). The learned counsel appearing for the petitioner further contended that as per circular dated 06.11.1998 issued by Ministry of Human Resources Development (Department of Education), the Librarians are to be treated on par with Teaching staffs. The learned counsel appearing for the petitioner referred to Clause (4) of the said circular, which reads as follows:

**"4.Age Superannuation:**

The age of superannuation of 62 years indicated in para 1(vi) of our letter under reference shall also be applicable to Registrars, Librarians, Physical Education Personnel, Controllers of Examinations, Finance Officers and such other University employees who are being treated at par with the teachers whose age of superannuation was 60 years."

The Regional Engineering College, Trichy by advertisement issued in October 1998, called for applications for various Teaching posts including the post of Librarian with pay as per AICTE norms, which proves that the post of Librarian is also a Teaching post. The petitioner was appointed as Librarian on 22.04.1999 and referred to the Appointment Order filed in the typed set of papers. The learned counsel appearing for the petitioner referred to Service Rules of the Regional Engineering College, Trichy, wherein at Chapter V, Item No.33, the Librarian and Assistant Librarians are included in the list of Teaching staffs. Part III deals with Non-Teaching staffs like draughtsman, etc.,.

3(b). The petitioner was appointed as Librarian, which was a Teaching post based on AICTE scale of pay. The circular of 2009 is not applicable to the case of the petitioner as the same has only prospective effect for Librarian appointed after the year 2009. Even after the circular of the year 2009, the petitioner's service conditions were governed by circular dated 06.11.1998 as the petitioner's age of superannuation was 62 years on par with teaching staffs. All the benefits applicable to Teaching staffs under Academic Grade Pay (AGP) movement under Career Advancement Scheme was given to petitioner by the 3rd respondent on 17.05.2012 and on 29.08.2017. When the age of superannuation of Teaching Staffs was enhanced to 65 years, the petitioner as a Teaching staff is also entitled to the said benefit. The service conditions applicable at the date of entry into service is only applicable and it could be altered to the benefit of the petitioner and cannot be altered to her disadvantage. By change of Service Conditions, the vested right of petitioner to hold office till 65 years of age cannot be taken away.

3(c). The learned counsel appearing for the petitioner, in support of his contention, relied on the following judgments:

(i). The order of this Court reported in **1997 (II) CTC 87, [Syed Amin Khalandar Vs. The Director of Collegiate Education Madras and others]**, wherein at paragraph No.12, this Court held as



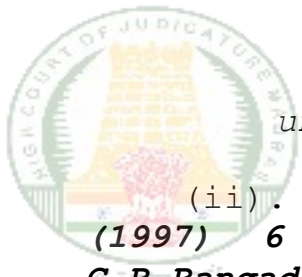
"...12. After hearing the rival submissions, perusing the affidavit and counter affidavit and the provisions of the Act, am of the opinion that the respondent are not justified in not extending the services of the petitioner till 31.5.1989 i.e., till the end of the academic year. As long as librarians are included in the definition of teacher, then they have to be treated only as teacher and not otherwise. Sec.2(10) of the Act defines teachers as follows:

"Teachers" means such Professors, Assistant Professors, Readers, Lecturers, Demonstrators, Tutors, Librarians and other like persons as may be declared to be teachers by the statutes framed under any law for the time being in force governing a University ".

Similarly, 'teacher' has been defined in Sec.2(j) of the Tamil Nadu University Act, 1923, which reads as follows:-

"Teachers" means such Professors, Assistant professors, Readers, Lecturers, Librarians and other like persons as may be declared by the statutes to be teachers.

In excluding the librarians from the purview of G.O.Ms.No.281, Education Department, dated 13.2.1981 and denying the concession to librarians to retire till the end of the academic year on their superannuation is discriminatory and violative of Art. 14 of the Constitution of India. G.O.Ms.No.281, Education Department, dated 13.2.1981 has been clarified under the order in G.O.Ms.No.1489, Education Department dated 5.11.1980, which has been extracted above. The said Government Order has been struck down by this Court. When Act 18 of 1976 and Tamil Nadu University Act, 1923 defines 'teacher' including 'librarians' the petitioner being a librarian, I cannot understand how the Government can alter or withdraw the concession by means of an executive order. Therefore, I am



unable to agree with the Government Advocate."

(ii). The judgment of the Hon'ble Apex Court reported in **(1997) 6 SCC 623, [Chairman, Railway Board And Ors. Vs. C.R.Rangadhamaiah And Ors.]**, wherein at paragraph No.24, the Hon'ble Apex Court held as follows:

"...24.In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon (supra), B.S. Yadav (supra) and Raman Lal Keshav Lal Soni & Ors., (supra)."

(iii). The judgment of the Hon'ble Apex Court reported in **(1997) 8 SCC 350, [P.S. Ramamohan Rao Vs. Andhra Pradesh Agricultural University]**, wherein at paragraph Nos.16 & 17, the Hon'ble Apex Court held as follows:

"...16.In the impugned judgment of the High Court it has been said that merely because Physical Directors are paid the same scales of the teaching staff that does not confer on them the status of a teacher. There is also no discrimination if Physical Directors are retired at the age of 58 years and other teachers are allowed to retire at the age of 60 years. The High Court further said that while it was true that section 2 (n) of the Act contained an inclusive definition of 'teacher', the Physical Directors did not come within the categories mentioned in the inclusive



definition. They are neither professors nor readers nor lecturers nor were they persons appointed or recognised by the University for the purpose of imparting instruction or conducting and guiding research or extension programmes.

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17. In our view, the learned Judges did not go into the meaning of the word "teacher" in the main part of the clause nor assess correctly the effect of the material evidence on record. The learned Judges observed that assuming Physical Directors imparted instructions to his students, unless the University recognised them as teachers they could not claim the benefit of section 2(n) of the act. Obviously the learned Judges were referring to the last part of section 2(n) which includes persons other than those enumerated in the inclusive part if so recognised by the University. As we have held that the Physical Directions come within the main part of the definition of 'teacher', it is in our opinion not necessary that they should be separately recognised as teachers by an order or statute of the University."

(iv). The order of this Court reported in **2002 (2) CTC 754, [T. Padmanaban Vs. The Tamil University Thanjavur, rep. By its registrar]**, wherein at paragraph Nos.9, 11 & 12, this Court held as follows:

"...9. A combined reading of the Act and the Statutes of the University would lead to the following conclusions namely, a teacher can be a Professor, Associate Professor or Assistant Professor and other like persons as may be declared by the Statutes to be the teachers. The definition of teacher under Section 2(1) is exhaustive as it gives the power to the Syndicate to include the category of the post as teaching post/academic post by declaration under the Statutes. This would be further fortified by the provisions of Section 34 and 34-A of the Act. The said provisions of conditions of service, provide for a selection committee to be constituted for making recommendations to the Syndicate for appointment not only to the post of Professor, Associate Professor, etc., but also for the



post of Librarian of the University maintained by the University. In the table to Section 34-A of the Act, Librarian is also included along with Professor, Associate Professor and Reader as well as Lecturer, Researcher and Assistant Professor. Coming to the Statutes, Chapter XII relates to the teachers of the University wherein the Librarian is also included under Statute V-I(iii) indicating that the teacher also includes the Librarian. The same is also clear by the express declaration of Statute V (4) of Chapter XXVI including the Librarian also for the purpose of Section 34-A. Therefore, as per Section 34-A of the Act, the statutes had declared Librarian also as a teacher.

11. It is no doubt true that in Appendix-I, the post of Director of Documentation and Library Service is shown as non-academic and the said post is included under the category of academic posts. In view of the categorical declaration under Statute V (4) of Chapter XXVI including the post of Librarian (Director of Documentation and Library Service) under the category of teachers for the purpose of Section 34-A, merely because the Appendix speaks of the said post as non-academic, the declaration so made under the statutes as empowered under Section 2(1) and Section 34-A of the Act would be bad. Appendix cannot override the provisions of the Act. When there exists any inconsistency, the provision contained in the statute alone shall prevail as the appendix can utmost be considered as supplementary to the statutes. While interpreting the provisions of the Act, proper rule of construction is to be applied on a bare reading of the provisions of the Act and the Statutes. When the Act enables the University to make provisions declaring anybody as a teacher and when such declaration is made under the statutes under V(4) of Chapter XXVI as further strengthened by statute 5(iii) of Chapter XII providing the method of selection of Librarian under the chapter teachers of the University, I do not find that the Librarian/Director of Documentation and Library Service could be considered as non-academic



merely because it is included in the Appendix to the statutes. The learned counsel for respondent would further submit that the fact that the petitioner was appointed under the impugned order only as non-academician and the same would go to show that the petitioner cannot be considered as teacher. I do not find any justification in the said submission also since when the statutes declares a Librarian as teacher, merely because in the appointment order the post of Librarian (Deputy Director of Documentation and Library Service) is mentioned as non-academic post, it will take away the right conferred on the petitioner to be considered as teacher under the provisions of the Act and the statutes. Moreover, as referred earlier, the object of the University under Section 4-A of the Act is to provide for research and determine the procedures regarding development of Tamil language and literature and by virtue of the powers under Section 4-A of the Act, the University is empowered to confer degree, diploma and other distinctions and for which it can establish and maintain University libraries, research stations, museums for research and publication bureau under Section 4-A(7) of the Act. The post of Librarian is attached to the research activities which could be considered as one of the academic duty of the University as could be seen from Statute I of Chapter XII which provides the power to the University to institute Professorship, etc., including the Professorship, Associate Professorship, Assistant Professorship or other teaching and research posts and the post of Librarian is a research post and therefore only very rightly the post of Librarian has been included in Chapter XII of the Statutes under the heading teachers of the University and declared as a teacher under Section 34-A of the Act in Statute V(4) of Chapter XXVI of the Act.

12. The Tamil University Act, in effect, was borrowed from the Madras University Act, 1923. Almost all the provisions of the said Act have been incorporated in all the subsequent University acts when various Universities like Bharathiyar University, Bharathidasan



University, etc., were established. Section 2 (j) of the Madras University Act defines a teacher meaning such professors, assistant professors, readers, lecturers, librarians and other like persons as may be declared by the Statutes to be teachers. Section 2(m) of the Madurai Kamaraj University Act, 1965 defines the word "teachers" as lecturers, readers, assistant professors, professors and other persons giving instruction in University colleges or laboratories, in affiliated or approved colleges, or in hostels and librarians as may be declared by the statutes to be teachers. Section 2(n) of the Bharathiyar University Act, 1981 defines the word "teachers" as lecturers, Readers, Assistant Professors, Professors and other persons giving instruction in University colleges or laboratories, in affiliated or approved colleges, or in hostels and Librarians as may be declared by the statutes to be teachers. Section 2(n) of the Bharathidasan University Act, 1981 defines the word "teachers" as lecturers, Readers, Assistant Professors, Professors and other persons giving instruction in University colleges or laboratories, in affiliated or approved colleges, or in hostels and Librarians as may be declared by the statutes to be teachers. Section 2(10) of the Tamil Nadu Private Colleges (Regulation) Act, 1976 also defines the word "teachers" as Professors, Assistant Professors, Readers, Lecturers, Demonstrators, Tutors, Librarians and other like persons as may be declared to be teachers by the statutes framed under any law for the time being in force governing a University. In all the above enactments, the word "teacher" is defined either including the Librarian or as declared by the Statutes. Therefore, the object of the various University acts appear to be that the post of Librarian is a research post and without which the department imparting education cannot effectively function and therefore only the post of Librarian is considered as teacher. Therefore, I do not find any justification to exclude the Librarian from the definition of teacher under the Tamil University Act, more particularly, with reference to the statute V



(4) of Chapter XXVI of the statutes declaring the Librarian also as a teacher as empowered under Section 34-A of the Act."

(v). The judgment of the Hon'ble Apex Court reported in **(2011) 6 SCC 570, [J.S.Yadav Vs. State Of Uttar Pradesh & Anr.]**, wherein at paragraph Nos.24 & 29, the Hon'ble Apex Court, held as follows:

"...24. The Legislature is competent to unilaterally alter the service conditions of the employee and that can be done with retrospective effect also, but the intention of the Legislature to apply the amended provisions with retrospective effect must be evident from the Amendment Act itself expressly or by necessary implication. The aforesaid power of the Legislature is qualified further that such a unilateral alteration of service conditions should be in conformity with legal and constitutional provisions. (Vide: Roshan Lal Tandon v. Union of India & Ors., AIR 1967 SC 1889; State of Mysore v. Krishna Murthy & Ors., AIR 1973 SC 1146; Raj Kumar v. Union of India & Ors., AIR 1975 SC 1116; Ex-Capt. K.C. Arora & Anr. v. State of Haryana & Ors., (1984) 3 SCC 281; and State of Gujarat & Anr. v. Raman Lal Keshav Lal Soni & Ors., AIR 1984 SC 161).

29. A Constitution Bench of this Court in *Chairman, Railway Board & Ors. v. C.R.Rangadhamaiah & Ors.*, AIR 1997 SC 3828, dealt with the case where the pension admissible under the Rules in force at the time of retirement was reduced with retrospective effect. This Court held such an action to be unreasonable and arbitrary being violative of Articles 14 and 16 of the Constitution of India. The Court observed as under:

"20. It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed of, e.g., promotion or pay scale, can be assailed as being



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violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.

24. In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution."

Thus, from the above, it is evident that accrued rights cannot be taken away by repealing the statutory provisions arbitrarily. More so, the repealing law must provide for taking away such rights, expressly or by necessary implication."

4. The learned counsel appearing for the 1st respondent contended that as per the Rules and statutes, the post of Librarian is a Non Teaching post. The right of the petitioner was not affected by statutes of National Institutes of Technology or circular dated 06.11.1998 and prayed for dismissal of the Writ Petition.

5. The respondents 2 and 3 filed counter affidavit along with vacate stay petition to vacate the interim stay passed by this Court on 18.07.2019 made in W.M.P.(MD).No.5668 of 2019 in W.P. (MD).No.2390 of 2019.

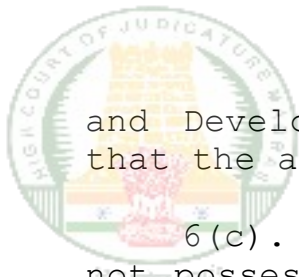
6. The learned counsel appearing for the respondents 2 and 3 contended that the petitioner was appointed as Library Assistant



(Non Teaching staff) in the Regional Engineering College, Trichy with effect from 20.10.1981 and subsequently selected and appointed as Librarian with effect from 22.04.1999. The respondents 2 and 3 in the counter affidavit denied that Ministry of Human Resources Development by its proceedings dated 06.11.1998 treated the posts of Registrars, Librarians, Physical Education Personnel, Controller of Examinations, Finance Officers and such other University employees as Teaching staffs. By the said proceedings, it is said that the age of superannuation of 62 years shall be applicable to above staffs who are being treated on par with Teachers. The Regional Engineering College, Trichy was established in the year 1964 and administered by a Board of Governors.

6(a). As per Service Rules of the Tiruchirappalli Regional Engineering College Society, the post of Librarian and Assistant Librarian were classified as administrative post which was distinct from Teaching post. Subsequently, another supplement to the Service Rules of the Tiruchirappalli Regional Engineering College Society were called as "Regional Engineering College (Tiruchirappalli) Non-teaching, administrative, technical and non-technical staff rules, 1988", wherein the said posts of Librarian and Library Assistant finds place. In the year 2003, the Regional Engineering College, Trichy came under the control of Ministry of Human Resources Development, Government of India, and re-designated as National Institute of Technology, Tiruchirappalli and was given Deemed University status by Memorandum of Association (MOA). The service conditions of Librarian was not altered by Memorandum of Association (MOA) and the rules thereunder. Subsequently, the Parliament had promulgated THE NATIONAL INSTITUTES OF TECHNOLOGY ACT 2007 (Act 29 of 2007), where the National Institute of Technology, Tiruchirappalli was declared to be a body corporate having perpetual and a common seal.

6(b). As per provisions of statute No.22 of the first statutes of the National Institutes of Technology, the Librarian was classified as technical staff. In terms of power conferred under statute 24(ii) of the first statutes of National Institutes of Technology, the Ministry of Human Resources and Development vide its order No.23-1/2008-TSII dated 16.09.2009 had stipulated that the age of superannuation of Librarians as 62 years. In the counter affidavit, the respondents 2 and 3 denied the contention that the post of Librarian was treated as Teaching staff and all the benefits were given to the petitioner on par with Teaching staffs. The fact that at one point of time, the age of superannuation of Librarian was on par with Teaching faculty cannot be a ground for the petitioner to seek for similar extension of age of superannuation especially when the statutes governing the NIIT has specifically classified the post of Librarian as a Technical staff and the Ministry of Human Resources



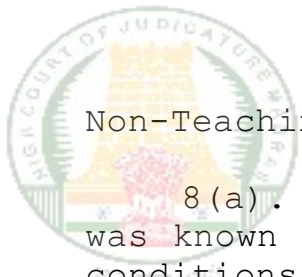
and Development vide its order dated 16.09.2009 has stipulated that the age of superannuation of Librarian as 62 years.

6(c). The petitioner was not selected as Librarian as she did not possess required qualification of atleast ten years as Deputy Librarian in a technical Institute or at least with five years being spent of a post with AGP of Rs.8,700/- or an equivalent post. The respondents 2 and 3 contended that it is wrong on the part of the petitioner that she bonafidely believed that she will be retained in service till she attains the age of 65 years on par with the Teaching staffs. One Dr.L.Parisutharaj, who was working as Librarian (SG) in Central Library, National Institute of Technology, Tiruchirappalli, the immediate predecessor of petitioner was retired on attaining the age of superannuation of 62 years. Immediately after the retirement of the said Dr.L.Parisutharaj on attaining the age of 62 years, the petitioner took charge of Central Library and she is fully aware of the fact that the age of superannuation of the Librarian at the respondent Institute is 62 years only. By the impugned order dated 02.01.2019 bearing No:NITT/Estt./Unit-III/2018-19/91, the petitioner was communicated that she will be superannuated on attaining the age of 62 years on the afternoon of 28.02.2019 under old pension scheme and she was directed to apply for pension, gratuity and GPF final withdrawal in the prescribed format. Instead of complying with the directions issued by the respondents, the petitioner has approached this Court on non-existing grounds.

6(d). The learned counsel appearing for the respondents 2 and 3 further contended that at no point of time, the petitioner was treated as Teaching staff from the date of inception of the Regional Engineering College, Trichy. The post of Librarian was never treated as Teaching post and the said post continues to remain as such even after incorporation of the National Institute of Technology, Trichy. The petitioner was permitted to remain in service beyond the age of 60 years in compliance with the age of superannuation, provided under Ministry of Human Resources and Development order dated 16.09.2009. The parity of pay scale of the Teaching faculty will not entitle the petitioner who is holding the post of Librarian to claim privileges that are given to the Teaching faculty. There is no merit in the averments made by the petitioner in the Writ Petition and prayed for dismissal of the Writ Petition.

7. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents 1, 2 and 3 and perused the entire materials on record.

8. The issue to be decided in the Writ Petition is whether the post of Librarian held by the petitioner is a Teaching post or



Non-Teaching post.

8(a). Originally the National Institute of Technology, Trichy was known as the Regional Engineering College, Trichy. The service conditions of the employees of the Regional Engineering College, Trichy were governed by the service rules of the Tiruchirappalli Regional Engineering College Society. On 20.10.1981, the petitioner was appointed as Library Assistant, which is a Non-Teaching post and on 22.10.1999, the petitioner was awarded selection grade. The Regional Engineering College, Trichy by advertisement No.18/98 called for applications to fill up the posts of Professors, Assistant Professors, Lecturers, CAD/Cam Engineer and Librarian on AICTE scale of pay. The petitioner applied for the post of Librarian. She was selected and appointed as Librarian with effect from 22.04.1999. It is the contention of the learned counsel appearing for the petitioner that the petitioner is a Teaching staff as she was appointed on AICTE scale of pay and she is being paid salary on par with scale of pay of Associate Professor cadre. In the service rules, the petitioner is shown as Teaching staff.

8(b). The learned counsel appearing for the petitioner referred to Chapter IV Part (ii) of Service Rules, wherein at Item No.33, the post of Librarian is shown as Teaching staff. Part (iii) enumerates Non-Teaching staff - Technical. Part (v) deals with administrative post - Ministerial. On the other hand, the learned counsel appearing for the respondents 2 and 3 relied on a copy of Service Rules of the Tiruchirappalli Regional Engineering College Society. The learned counsel appearing for the respondents 2 and 3 referred to Chapter V, wherein the Teaching post as well as the administrative post were mentioned. In Item No.45 under the heading Administrative post, Librarian and Assistant Librarian were mentioned. The service rules produced by the learned counsel appearing for the petitioner has to be accepted for the following reasons:

(i) The petitioner was appointed as Librarian on AICTE scale of pay and she was paid salary on par with the scale of pay of Associate Professors.

(ii) The petitioner was promoted as Librarian (Senior Grade) under Career Advancement Scheme. The 3rd respondent granted Academic Grade Pay (AGP) to the petitioner. The Career Advancement Scheme and Academic Grade Pay (AGP) are applicable only to Teaching staffs.

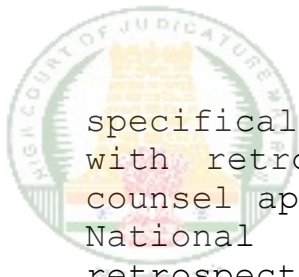
(iii) When the age of superannuation for Teaching staffs was increased from 60 to 62 years, the same was extended to the petitioner also, when she was working as Librarian.



8(c). The issue whether the Librarian is a Teaching staff or not came up for consideration before the Principal Bench of this Court. The Principal Bench of this Court by the order dated 27.03.2002, reported in **2002 (2) CTC 754, [T.Padmanaban Vs. The Tamil University Thanjavur, rep. By its registrar]**, cited *supra*, held that the post of Librarian is a Teaching post. The learned counsel appearing for the respondents 2 and 3 contended that the said order is not applicable to the facts of the present case and it was delivered on a different circumstances. The learned counsel appearing for the respondents 2 and 3 has not stated as to how the said order is not applicable to the facts of the present case and the grounds on which he is distinguishing the said order.

8(d). The Hon'ble Apex Court in the judgment dated 31.07.1997, reported in **(1997) 8 SCC 350, [P.S. Ramamohan Rao Vs. Andhra Pradesh Agricultural University]**, cited *supra*, held that Physical Director working in the University is a teacher as per Andhra Pradesh Agricultural University Act and also Andhra Pradesh Agricultural University (Conditions and Service Regulations, 1965). Applying the said principle, the petitioner who is working as a Librarian and appointed as per Service Rules of the Tiruchirappalli Regional Engineering College Society is a Teaching staff. The learned counsel appearing for the respondents 2 and 3 contended that as per statute No.22 of the first statutes of the National Institutes of Technology, Librarian is a Technical staff. The learned counsel appearing for the petitioner contended that statute relied on by the learned counsel appearing for the respondents 2 and 3 are not applicable to the facts of the case of the petitioner as she was appointed long before the statutes came into force. The said statutes do not have retrospective effect and can be applied prospectively i.e., to the persons who are employed on or after the statutes came into force. The petitioner having been appointed as per Service Conditions of the Regional Engineering College, Trichy, she is a Teaching staff and the said post cannot be altered retrospectively affecting the vested interest of the petitioner.

8(e). The learned counsel appearing for the petitioner relied on two judgments of the Hon'ble Apex Court. In the judgment reported in **(1997) 6 SCC 623, [Chairman, Railway Board And Ors. Vs. C.R.Rangadhamaiah And Ors.]**, cited *supra*, the Hon'ble Apex Court has held that benefits accrued to retired employee cannot be adversely altered to the disadvantage of retired employee. In the judgment of the Hon'ble Apex Court reported in **(2011) 6 SCC 570, [J.S.Yadav Vs. State Of Uttar Pradesh & Anr.]**, cited *supra*, the Hon'ble Apex Court has held that Service Conditions of a serving employee can be altered retrospectively, but it must be



specifically mentioned therein that Service Conditions are altered with retrospective effect. It is not the case of the learned counsel appearing for the respondents 2 and 3 that statutes of the National Institutes of Technology has come into force retrospectively and the post of Librarian became a Technical staff from the date of inception of the Regional Engineering College, Trichy and Service Conditions of serving employee became automatically altered as per the first statutes.

8(f). Considering the service rules of the Tiruchirappalli Regional Engineering College Society and the judgments relied on by the learned counsel appearing for the petitioner, this Court is of the considered view that the post of Librarian is a Teaching post and the petitioner is a Teaching staff, when she was appointed as Librarian with effect from 22.04.1999 on AICTE scale of pay and as per U.G.C. norms. The petitioner is entitled to be in service till the date of superannuation as per the age prescribed for Teaching staff.

9. For the above reason, the Writ Petition is allowed. The impugned proceedings No:NITT/Estt./Unit-III/2018-19/91, dated 02.01.2019 issued by the 3rd respondent is quashed and the 3rd respondent is directed to permit the petitioner to continue in service till the petitioner attains age of superannuation i.e., 65 years. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

krk/rgr

To

1.The Secretary to Government,
Union of India,
(Department of Higher Education),
Ministry of Human Resources Development,
Shastri Bhavan, New Delhi.

2.The Director,
National Institute of Technology,
Trichy.



3.The Registrar,
National Institute of Technology,
Trichy.

+1 CC to M/s.J.MARIA ROSELINE, Advocate (SR-5649[F] dated
11/02/2020)

+1 CC to M/s.A.L.KANNAN, Advocate (SR-5911[F] dated 12/02/2020)

W.P. (MD) .No.2390 of 2019
11.02.2020

SKR(CO)
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