



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. (MD) No.6298 of 2015

S.Ananthanatarajan

... Petitioner

Vs.

1.Tamil University,
rep. by its Registrar,
Vagai Valagam,
Thanjavur - 613 010.

2.The Secretary,
Government of Tamil Nadu,
Tamil Development Department,
Chennai.

3.The University Grants Commission,
rep. by its Registrar,
New Delhi.

... Respondents

(Respondents 2 and 3 are suo motu impleaded as per the order of this Court dated 12.01.2018 made in W.P.(MD).No.6298 of 2015)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned decision / order of the respondent University under Resolution No.2015:15 in the Syndicate meeting held on 27.02.2015 and communicated in proceedings No.Aa.Ku.Koo.No.187/Ka/2015, dated 04.03.2015, quash the same insofar as revoking the earlier Resolution No.96:56 dated 03.08.1996 and direct the respondent to upgrade /promote the petitioner as Assistant Librarian as per the Resolution No.96:56, dated 03.08.1996 and as given to Thiru K.Thirumaran from the date of completion of Ph.D. Degree in Library Science and with monetary benefits from the date of assuming Office with UGC scale of pay as applicable Assistant Professor with pay protection and all other consequential benefits and award costs.

For petitioner	: Mr.Ajmal Khan, Senior Counsel for M/s.Ajmal Associates for M/s. S. Arunachalam
For 1 st respondent	: Mr.R.Krishnamoorthy
For 2 nd respondent	: Mr.S.Dhayalan, Government Advocate
For 3 rd respondent	: Mr.V.Maharajan



ORDER

Heard the learned counsel for both sides.

2. Learned senior counsel for the petitioner submitted that the petitioner was appointed as Library Assistant Grade II on 26.03.1986 on temporary basis and he was appointed as Regular Library Assistant Grade II on 10.05.1989. Based on a resolution of the Syndicate of the first respondent University, the post of Librarian Grade II was redesignated as Librarian Grade I. Subsequently, based on another resolution dated 03.08.1996, the name of the post of Librarian Grade I was changed as Professional Assistant. Though the petitioner has completed 10 years of service in the post of Librarian Grade I as on 10.05.1999 and completed Ph.D. degree, and though he was entitled to promotion / upgradation as Assistant Librarian with UGC scale of pay as applicable to Lecturers / Assistant Professors, as per the resolution of the Syndicate dated 03.08.1996, he was denied promotion, based on the pendency of the writ petitions by similarly placed persons. As per the direction of this Court in W.P.(MD)No.10245 of 2011, the Syndicate had decided to give notional promotion as Assistant Librarian to a similarly placed person by name K.Thirumaran from the date of completion of his Ph.D degree.

3. Learned counsel for the petitioner would further submit that though the Syndicate had initially decided to promote the petitioner as well as one A.Gunasekaran, who are similarly placed as that of K.Thirumaran, along with K.Thirumaran, the Syndicate has subsequently given benefit only to K.Thirumaran. Thereafter, the above said A.Gunasekaran has filed a separate writ petition in W.P. (MD).No.5972 of 2014 and this Court, by order dated 16.02.2018, has extended the benefit and the said order was also confirmed in the appeal in W.A.(MD).No.865 of 2019, by order dated 24.09.2019. Thus, he prayed to extend the similar benefit to him also.

4. Learned counsel appearing for the first respondent submitted that as the petitioner had not worked in the said post and he is now retired from service, he may not be given backwages.

5. At this juncture, learned senior counsel appearing for the petitioner, on instructions, submitted that as the petitioner has already completed the age of 60, it would suffice, if a direction is issued to the respondents to give notional promotion, service and pensionary benefits without backwages.

6. The issue involved in this writ petition is no more *res integra*, in view of the decision of this Court in the case of A.Gunasekaran Vs. State of Tamil Nadu and others in W.P.(MD).No.5972 of 2014, dated 16.02.2018. The above decision was confirmed by a



Division Bench in the appeal in W.A.(MD).No.865 of 2019, dated 24.09.2019, wherein the Division Bench has held in paragraph Nos.17 to 26 as follows:

"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."

7. The above decision is squarely applicable to this case. Hence, following the above decision, the respondents are directed to give notional upgradation / promotion to the petitioner in the post of Assistant Librarian from the date on which he completed Ph.D decree ie, from 12.09.2005, count the service for pensionary benefits and grant revised pension. The above said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

8. This Writ Petition stands disposed of accordingly. No costs.

Sd/-

Assistant Registrar (Crl.side)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1. The Registrar,
Tamil University,
Vagai valagam,
Thanjavur-613 010.
- 2.The Secretary,
Government of Tamil Nadu,
Tamil Development Department,
Chennai.
- 3.The University Grants Commission,
rep. by its Registrar,
New Delhi.

+1cc to M/s.S. Arunachalam, Advocate in SR No.7644 Dated: 21.02.2020

Order made in
W.P.(MD) No.6298 of 2015

Dated: 20.02.2020

PU (19.05.2020) 6P 5C