

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.2984 of 2021

Dr.J.Anusuya

... Petitioner

-vs-

1. The Director of Collegiate Education,
EVK Sampath Buildings,
College Road,
Chennai-600 006.
 2. The Regional Joint Director of Collegiate Education,
Vellore Region, 43, 1st West Cross Street,
Gandhi Nagar, Vellore 632 006.
 3. The Secretary,
Pachaiyappas Trust,
Pachaiyappas College Campus,
Harrington Road, Shenoy Nagar,
Chennai 600 030.
 4. The Principal,
C.Kandaswami Naidu College (W),
Cuddalore 607 001.
- ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to consider the representation of the petitioner dated 22.12.2020 and to issue necessary orders for refixing the pay of the petitioner at Rs.14940/- with effect from 27.07.1998 as per the proceedings of the Director of Collegiate Education in Na.Ka.No.46875/J1/2018-2 dated 04.10.2018 along with consequential revision of pay and increments so as to enable the petitioner to get revised pension with effect from 09.05.2017.

For Petitioner : Mr.N.Anbazhagan

For Respondents: Mr.S.Karthikeibalan
Government Advocate

O R D E R

The Writ Petition has been filed, seeking a direction to the respondents to consider the representation of the petitioner dated 22.12.2020 and to issue necessary orders for re-fixing the pay of the petitioner at Rs.14,940/- with effect from 27.07.1998 as per the proceedings of the Director of Collegiate Education in Na.Ka.No.46875/J1/2018-2 dated 04.10.2018 along with consequential revision of pay and increments so as to enable the petitioner to get revised pension with effect from 09.05.2017.

2. Mr.S.Karthikeibalan, learned Government Advocate takes notice for Respondents. By consent, final orders are passed in the Writ Petition at the admission stage.

3. The case of the petitioner is that she retired from Service as an Associate Professor and Head of Department, Department of Chemistry in C.Kandaswami Naidu College for Women, Cuddalore in the year 2017. She was conferred with Ph.D in the year 2004 and as per Rules in existence at that time, she was granted two advance increments. However, as per VI Pay Commission's recommendation, her Junior, who is also an Associate Professor working in Zoology Department was granted three advance increments for obtaining her Ph.D in the year 2008. However, the said pay anomaly was removed by the proceedings of the Joint Director of Collegiate Education, dated 17.03.2014 and the pay of the petitioner was also re-fixed from 10.09.2008 on par with her junior. But her pension was not re-fixed as per revised pay on the ground that her juniors belong to different discipline. Though the petitioner made various representations dated 08.09.2020 and 30.10.2020 before the respondents, requesting the Collegiate Authority to re-fix the pension, the same are pending with them without any decision. It is further stated that in the meantime, the Director of Collegiate Education, Chennai, has issued a letter No.Na.Ka.No.46875/J1/2018-2, dated 04.10.2018, wherein it is stated that as per G.O.Ms.No.111, dated 24.03.199, the higher start of pay of Rs.14,940/- may be granted to the Assistant Professor/Lecturers with effect from 27.07.1998, and for that, the total number of years of service may be taken into account. If the pay is re-fixed as stated in the letter No.Na.Ka.No.46875/J1/2018-2, the petitioner may be put in a position of getting equal pay/pension on par with her juniors. Hence, the petitioner again made a representation dated 22.12.2020 to the respondents which is also pending without taking any steps. Having no other effective or alternative remedy, except to approach this Court, the petitioner has come forward with this present writ petition.

4. Learned Government Advocate appearing for the Respondents drew the attention of this Court to the letter dated 14.05.2008 to contend that the increments awarded have been cancelled and the benefits already granted have to be recovered. It is a universal order passed in respect of teachers, who are drawing more pay than the seniors. Learned Government Advocate further drew the attention of this Court to yet another proceedings of the Director of Collegiate Education, Chennai dated 04.10.2018, wherein it has been stated that the Career Advancement Scheme has to be implemented with effect from 27.07.1998 and that taking note of the years of service, the benefits have got to be extended.

5. Learned Government Advocate contended that even assuming that the petitioner's case is accepted, the proceedings of the Director of Collegiate Education, Chennai dated 04.10.2018, issued subsequent to the earlier G.O.Ms.No.111 dated 24.03.1999 is applicable to teachers, who are on roll and working, but not to others, who had retired from service. Learned Government relied upon a judgment of the Apex Court in the case of State of Tamil Nadu vs. Seshachalam, reported in 2007 (10) SCC 138 to contend that the Apex Court, while deciding the limitation aspect in blind consideration of the representation, interfered with the order of the High Court, by holding as under:

"11. Some of the respondents might have filed representations but filing of representations alone would not save the period of limitation. Delay or latches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or latches on the part of a Government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant. Opinion of the High Court that GOMs No. 126 dated 29.5.1998 gave a fresh lease of life having regard to the legitimate expectation, in our opinion, is based on a wrong premise. Legitimate expectation is a part of the principles of natural justice. No fresh right can be created by invoking the doctrine of legitimate expectation. By reason thereof only the existing right is saved subject, of course, to the provisions of the statute.

18. 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.

19. Equally misplaced is the decision of this Court in *The State of Jammu & Kashmir v. Shri Triloki Nath Khosa and Ors.* MANU/SC/0401/1973 : (1974) ILLJ121SC, wherein this Court, inter alia, held that educational qualification can be held to be a criteria for valid classification for different scales of pay. Justice V.R. Krishna Iyer, held:

"The social meaning of Articles 14 - 16 is neither dull uniformity nor specious 'talentism'. It is a process of producing quality out of larger areas of equality extending better facilities to the latent capabilities of the lowly. It is not a methodology of substitution of pervasive and slovenly mediocrity for activist and intelligent-but not snobbish and uncommitted-cadres. However, if the State uses classification casuistically for salvaging status and elitism, the point of no return is reached for Articles 14 - 16 and the Courts jurisdiction awakens to adden such manoeuvres. The soul of Article 16 is the promotion of the common man's capabilities, over-powering environmental adversities and opening up full opportunities to develop in official life without succumbing to the sophistic argument of the elite that talent is the privilege of the few and they must rule, wriggling out of the democratic imperative of Articles 14 and 16 by the theory of classified equality which at its worst degenerates into class domination."

20. Reference has also been made by Mr. Venkataramani to a decision of this Court in *U.P. Raghavendra Acharya and Ors. v. State of Karnataka and Ors.* MANU/SC/8171/2006 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.

21. For the reasons aforementioned, we regret to express our inability to agree with the view of the High Court. The impugned order of the High Court is, therefore, set aside. The appeals are allowed. In the facts and circumstances of the case, however, there shall be no orders as to costs.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. It is not known as to why the Government issued the subsequent proceedings dated 04.10.2018, thereby the petitioner was made to wake up from slumber. Be that as it may, though various averments have been raised in the affidavit filed in support of this petition, considering the fact that the petitioner has sought for the limited relief to the extent of consideration of her representation, which is already pending with the authorities concerned, the Writ Petition is disposed of with the following directions:

i) A direction is issued to the first respondent to consider the representation of the petitioner dated 22.12.2020 and pass appropriate orders, if already not passed, in accordance with law, after affording an opportunity of hearing to all parties concerned, as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order, in the light of the judgment of the Apex Court (supra), if the same is applicable to this case.

ii) In case the petitioner is unable to appear for personal hearing either physically or virtually, the petitioner is entitled to send a written submission within a period of one month from the date of receipt of a copy of this order through registered post or speed post and the same shall be treated as personal hearing. It is made clear that the petitioner can avail the opportunity of either personal hearing or filing written submission and not both;

iii) In case the petitioner fails to appear or file a written submission in time, the 1st respondent shall pass orders based on the available records and the petitioner, cannot at a later point of time take a stand that opportunity of being heard is not given to the petitioner;

iv) The petitioner shall furnish Mobile Number, email ID, if any, etc., along with a copy of the representation dated 05.01.2021 and this order, to the 1st respondent forthwith;

v) The 1st respondent is directed to communicate the decision taken on the representation, to the petitioner within a period of three weeks from the date of decision taken thereon, by way of SMS/Email/registered post/speed post, so that there is no need for the petitioner to file contempt after expiry of the specified period. In case the authorities concerned fail to send communication to the petitioner, they will have to face the civil imprisonment in case of contempt proceedings. If they are unable to serve the order and the cover being returned un-served for one reason or the other, the same shall be kept in the file without opening it for the proof of delivery, so that the petitioner, later on, will not take a plea that the petitioner is not aware of the order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vum

To:

- 1.The Director of Collegiate Education,
EVK Sampath Buildings,
College Road,
Chennai 600 006.
- 2.The Regional Joint Director of Collegiate Education,
Vellore Region, 43, 1st West Cross Street,
Gandhi Nagar, Vellore 632 006.

+1 cc to Mr.N.Anbazhagan, Advocate Sr.No. 9079
+1 cc to The Government Pleader Sr.No. 9187

W.P.No.2984 of 2021

SS(CO)
RMP(22/03/2021)

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