



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**Reserved on : 14.12.2021**

**Pronounced on : 23.12.2021**

**WEB COPY**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE S. SRIMATHY**

**W.P(MD) Nos.4829 and 4831 of 2013 and  
M.P(MD) .Nos.1 and 1 of 2013 in  
W.P(MD) Nos.4829 and 4831 of 2013**

Dr. R. Ramesh :Petitioner in WP(MD).No.4829/13

Dr. R. Jayachandran :Petitioner in WP(MD).No.4831/13

..VS..

1.The Manonmaniam Sundaranar University,  
rep. By its Registrar,  
Abishekpatti, Tirunelveli,  
Tirunelveli District - 627 102.

2.The Registrar (i/c),  
The Manonmaniam Sundaranar University,  
Abishekpatti, Tirunelveli,  
Tirunelveli District - 627 102.: Respondents in both W.Ps.

**COMMON PRAYER:** Writ Petitions filed under Article 226 of the Constitution of to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 2<sup>nd</sup> respondent Registrar (in-charge) in Ref.No.MSU/R/ESTT/T/READER/2013, dated 26.02.2013 and the consequential show cause notice issued by him in Ref. No. MSU / R / ESTT / T / READER PAY FIXATION/2013, dated 28.02.2013 quash the same and further direct the respondents to continue to keep the petitioner in position as Associate Professor with all attendant benefits admissible for the said post including salary and allowance from the date of the re-designation on 30.08.2007 and 05.03.2008, and pass a further or other suitable order / orders of this Court.

For Petitioner in both W.Ps. : Mr. Ragatheesh Kumar  
for M/s. Isaac Chambers

For 1<sup>st</sup> respondent in both W.Ps. : Mr. M. Mahaboob Athiff  
for M/s. Ajmal Associates



C O M M O N O R D E R

The Writ Petitioner in W.P(MD).No.4829 of 2013 is serving as Associate Professor (English) in the first respondent University. The petitioner joined as Reader in English on 30.08.2007 and the appointment was by way of direct recruitment after selection through UGC prescribed norms through Selection Committee. The writ petitioner is praying to quash the show cause notice dated 28.02.2013 and to quash the impugned order dated 26.02.2013 redesignating the petitioner as Associate Professor with effect from 30.08.2010, the date on which the petitioner is having five year experience and direct the respondents to fix their salary from 05.03.2008.

2. The Writ Petitioner in W.P(MD).No.4831 of 2013 is serving as Reader (Hindi) in the first respondent University from 05.03.2008. The appointment was by way of direct recruitment after selection through UGC prescribed norms through Selection Committee. The writ petitioner is praying to quash the show cause notice dated 28.02.2013 and to quash the impugned order dated 26.02.2013 redesignating the petitioner as Associate Professor with effect from 05.03.2008, the date on which the petitioner is having five year experience and direct the respondents to fix their salary from 05.03.2008.

3. The brief facts of the case are that the University Syndicate had adopted and implemented the 6<sup>th</sup> pay commission recommendations of the UGC in its 126<sup>th</sup> meeting, dated 05.11.2009 and the pay commission recommendations took effect from 01.01.2007. In the said recommendation of UGC there shall be only three categories of post with effect from 01.01.2006 viz., Assistant Professor, Associate Professor and Professor in the place of the erstwhile Lecturer, Reader, Professor respectively. The pay commission states the erstwhile Readers scale of pay of Rs.12,000/- 420/- + 18300 would be refixed in the Associate Professor's scale of pay of Rs.37,400/- - 69,000/- + GP 90000/- . The petitioner's appointment was on 30.08.2007 i.e. after 01.01.2006 and therefore, the petitioner seeks to fixation of Rs.37,400/- - 69,000/- + GP 90000/-. Based on the re-fixation arrears amount to be paid to the petitioner was quantified as Rs.6,38,744/- and it was decided to be disbursed in three equal installments and two installments were paid to the tune of Rs.4,66,000/- and the income tax has already been deducted at the source. When the third installment fell due, the further promotion was also assigned, but suddenly the respondents through proceedings, dated 31.03.2001 cancelled the above refixation of pay and also reverted a few persons to the original position as Reader from the date of joining and consequential order dated 19.04.2011 was passed by cancelling the refixation amount and redesignating the petitioner as Reader. The petitioner submitted a representation dated 25.04.2011. In the meanwhile, the term of the then Vice



Chancellor came to end on 24.04.2011 and a committee was formed consisting of five members. The committee resolved to keep the reversion in abeyance. The petitioner filed W.P(MD).No.6682 of 2011 before this Court to quash the impugned orders dated 31.03.2011 and 19.04.2011 and this Court by order dated 04.10.2012 directed the respondents to issue show cause notice and thereafter, take a decision afresh. In the meanwhile, the second respondent vide order dated 26.02.2013 have stated that the petitioner's position have been re designated as Associate Professor with effect from 30.08.2010 as per G.O.Ms.No.350 (Higher Education - H1), dated 09.09.2009 as well as the UGC regulations, dated 30.06.2010 and placed the petitioner in the pay Band of Rs.37400/- - 67000/- and the refixation orders in that connection would be issued separately. Since this order was passed, the original order designating the petitioner as Associate Professor stood cancelled with effect from 30.08.2007. Thereafter, the Registrar issued another proceeding dated 28.03.2013 stating that the petitioner's pay in the post of Reader has been refixed at Rs.37,400/- + AGP 9000 by redesignating the petitioner as Associate Professor with the effect from 30.08.2010 and further called upon to show cause why the salary should not be re-fixed as per G.O. Ms. No. 350 (Higher Education - H-1) dated 09.09.2009 and directed the petitioner to submit explanation within 15 days. Aggrieved over the impugned proceedings dated 26.02.2013 and impugned show cause notice dated 28.02.2013 the present Writ Petition is filed with the prayer to cancel the impugned proceedings and set aside the show cause notice and continue the petitioner in the post of Associate Professor with effect from the date of appointment i.e. on 30.08.2007 with consequential benefits.

4. The 1<sup>st</sup> respondent has filed a detailed counter stating initially the "Draft UGC Regulation" was issued for the transit period, wherein under Clause 6.4.12 it has been stated "the incumbent readers who is selected on or after 01.01.2006 shall be redesignated as Associate Professor with effect from the date of his selection and be placed in the pay band IV of Rs.37,400/- 67,000/- with AGP of Rs.9,000/-". Thereafter, the Tamil Nadu Government has issued G.O. Ms. No. 350 (Higher Education) Department, dated 09.09.2009. While adopting the "Draft Regulation" the Tamil Nadu Government has not adopted regulation as such, especially the Clause 6.4.12 was not adopted. The University Syndicate Resolution was passed adopting the G.O. Ms. No. 350. Thereafter, the State Government issued G.O. Ms. No. 179 dated 14.10.2014 granting the benefit notionally from 01.01.2006 and monetary benefit from 01.01.2007. Then the State Government has issued another G.O.Ms.No.328, dated 16.11.2017 wherein G.O. Ms. No. 179 was cancelled. Therefore, the petitioner seeking the benefit of G.O. Ms. No. 179 cannot be entertained.

5. Heard the learned counsel appearing on either side

<https://hcmcs.cemil.com/hcmcs/> materials available on record.



6. The respondents submitted that the "Draft Regulation" except for the Clause 6.4.12, the rest of the clause are unambiguous. The relevant regulations are as follows:

6.4.7. Assistant Professors with completed service of 5 years at the AGP of Rs.7000/- shall be eligible, subject to other requirements laid down by these UGC Regulations, to move up to the AGP of Rs.8000/-.

6.4.8. Posts of Associate Professor shall be in the Pay Band IV of Rs. 37400-67000, with AGP of Rs. 9000. Directly recruited Associate Professors under these Regulations shall be placed in the Pay Band IV of Rs.37400 - 67000 with an AGP of Rs.9000, at the appropriate stage in the Pay Band in terms of the conditions of appointment.

6.4.9. Incumbent Readers and Lecturers (Selection Grade) who have completed 3 years in the current pay scale of Rs.12000 - 18300 on 01.01.2006 shall be placed in Pay Band III of Rs. 37400 - 67000 with AGP of Rs.9000 and shall be re-designated as Associate Professor.

6.4.10. Incumbent Readers and Lecturers (Selection Grade) who had not completed three years in the pay scale of Rs.12000 - 18300 on 01.01.2006 shall be placed at the appropriate stage in the Pay Band of Rs.15600 - 39100 with AGP of Rs. 8000 till they complete 3 years of service in the grade of Lecturer (Selection Grade) / Reader and thereafter shall be placed in the higher Pay Band III of Rs.37400 - 67000 and accordingly re-designated as Associate Professor.

6.4.11. Readers / Lecturers (Selection Grade) in service at present shall continue to be designated as Lecturer (Selection Grade) or Readers, as the case may be, until they are placed in the Pay Band of Rs. 37400-67000 and re-designated as Associate Professor in the manner described in 6.4.9 and 6.4.10 above.

6.4.12. The incumbent Readers who is selected on or after 01.01.2006, shall be redesignated as Associate Professor from the date of his / her selection, and will be placed in the Pay Band IV of Rs.37400 - 67000 with AGP of Rs.9000.



6.4.13. Assistant Professors completing 3 years of teaching in the AGP of Rs.8000 shall be eligible, subject to other API conditions prescribed by these regulations, to move to the Pay Band IV of Rs.37400 -67000 with AGP of Rs. 9000 and to be redesignated as Associate Professor"

7. The aforesaid "UGC Draft Regulations 2009" has stated the post of Associate Professor shall be placed under the pay band of Rs.37,400/- - 67,100/-, the directly recruited shall also be placed under the same pay band. But the incumbent Readers / Lectures (selection grade) completed 3 years in current pay of Rs.12000-18300 on 01.01.2006 shall be placed in Rs.37,400/- pay band and shall be re-designated as Associate Professor. The incumbent Readers / Lecturers who are not completed 3 years in the same scale of pay as stated above Rs.12000/- 18300/- as on 01.01.2006 shall be placed at the appropriate stage in the pay band of Rs.15600/- - 39,100/- with AGP of Rs.8000/- till they complete three years. Until the three years of service is completed their designation also would be kept as Readers / Lecturers and they will not be given the redesignated nomenclature as Associate Professor. When all these regulations have categorically stated the post will be kept as Reader / Lecturer and the pay band shall be Rs.12,000/- - 18,300/- until the incumbents completes 3 years of service, the only clause that is misleading is "6.4.12" where it is stated that "the incumbent would be kept pay scale Rs.37,400/-as well as re-designated name as on 01.01.2006". The petitioner is relying on Clause 6.4.12 and his claim ought to be rejected for more than one reason. A comprehensive reading of regulations Clauses 6.4.8, 6.4.9, 6.4.10, 6.4.11 are taken into account, then clause 6.4.12 can never be implemented. If the petitioner's claim ought to be accepted, then "mischief clause 6.4.12" alone will prevail and the other clauses would become redundant. This Court is of the considered opinion that the said "Clause 6.4.12" in "UGC Draft Regulations 2009" is a mischief clause and cannot be implemented and the petitioner's claim is illegal and is rejected.

8. The State Government has issued G.O. Ms. No. 350 Higher Education (H1) Department, dated 09.09.2009 and has adopted the "UGC Draft Regulations 2009" and in the said G.O. the "mischief clause 6.4.12" was not adopted. Hence based on the said G.O. 350 the petitioner is not entitled to.

9. The University Syndicate resolution was passed adopting the G.O. Ms. No. 350, wherein it has been resolved as follows:

*"Resolution: Recorded and ratified the action taken for the implementation of the UGC revised scale*

<https://hcservices.ecourts.gov.in/hcservices/>



of pay to the teachers and equivalent cadres in this University w.e.f. 01.01.2006 as per G.O.ms.No.350, Higher Education (H1) Department, dated 09.09.2009 and subsequent clarifications issued by the Higher Education Department in the said G.O."

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Since the respondent / University has adopted the G.O. 350 only, then the petitioner is entitled to the benefits of G.O. 350 and not the "mischief clause 6.4.12".

10. Thereafter, UGC has passed the new Regulations in the year 2010 and in that new Regulation "mischief clause 6.4.12" from the draft regulation was deleted. Therefore as per new Regulation, 2010 the petitioner is not entitled to the said benefits claimed in the present writ petition.

11. In the meanwhile, the Tamil Nadu Government has issued G.O.Ms.No.179, dated 14.10.2014 wherein the Government has stated in paragraph No.5 as follows:

"5. The Government after careful examination have decided to consider that the directly recruited Readers redesignated as Associate Professors / Associate Professors (on or after 01.01.2006 shall be placed at the minimum of the pay band of Rs.37400/- 67,000/- with AGP of Rs.9000/- subject to the fulfillment of necessary qualification and experience prescribed for the post of Associate Professor and also subject to giving notional benefit from 01.01.2006 and monetary benefit from 01.01.2007 and issue orders accordingly."

12. The State Government after so many years has passed the G.O. 179 granted the benefits of "mischief clause 6.4.12" notionally 01.01.2006 and then monetary benefit from 01.01.2007.

13. But the State Government after realizing the impractical "mischief clause 6.4.12" has cancelled the said G.O. The Government has issued another G.O.Ms.No.328, dated 16.11.2017, wherein G.O.Ms.No.179 was cancelled. The relevant portion is as follows:

5. The Secretary, University Grants Commission, New Delhi in his letter No.D.O.F.No.3-2/2009 (PA), dated 04.08.2015 has clarified that Readers appointed on or after 01.01.2006 till the issue of UGC Regulations, 2010 i.e., 30.06.2010 shall move to Pay Band - 4, with Academic Grade Pay of Rs.9000/- after completing 3 years of service without insisting on the requirement of API based PBAS System. This shall also apply to the Lecturers (Selection Grade) promoted during the above

period.



6. The Government have examined the matter and noted that Lecturers (Selection Grade) / Readers in the pay Scale of Rs.12000/- 18,300, who were recruited from 01.01.2006 to 09.09.2009 should continue to be designated as Lecturers (Selection Grade) of Readers and they shall be placed at appropriate stage in the pay band of Rs.15,600/- 39100 with AGP of Rs.8000/- till they complete three years of service in the Grade of Lecturer (Selection Grade) / Reader and thereafter, they shall be placed in the higher pay band of Rs.37400-67000 with AGP of Rs.9000/- and accordingly re-designated as Associate Professors.

7. The Government have therefore decided to cancel the orders issued in G.O(Ms.).No. 179, Higher Education (H1) Department, dated 14.10.2014, in which the directly recruited Readers had been re-designated as Associate Professor / Associate Professors on or after 01.01.2008 and were placed at the minimum of the pay scale of Rs.37400 - 67000 with AGP of Rs.9000/- and order accordingly, consequent to this, the Government direct the Registrars of all Universities coming under the control of Higher Education Department (except Anna University), the Director of Collegiate Education and Pay and Accounts Officer / Treasury Officers concerned to recover the excess emoluments already paid in accordance with the orders issued in G.O(Ms.).No.179, Higher Education (H1) Department, dated 14.10.2015, from the teachers concerned. The action taken report shall be sent to Government."

14. The draft regulation was issued in the year 2009 and then the new regulation was issued in the 2010, the G.O. 179 was issued after the issuance of the new regulation, therefore the State Government has issued G.O. 328, thereby cancelling the G.O. 179. Under these circumstances, the petitioner is not entitled to revise the scale of pay from the date of his original appointment since he has not completed three years of experience as stated in the new Regulations, 2010 and as well as the G.O. 328.

15. As rightly pointed out by the respondent 6.4.12 is mischievous clause and since it is only a "Draft Regulation" and subsequent new Regulations has come into force in the year 2010 where the mischievous clause is not there and the same is deleted. Moreover, it is seen the Tamil Nadu Government has adopted the "Draft Regulation" in G.O.Ms.No.350. Even though the State Government ought to have adopted UGC regulation as such, if there is any illegality and that the same has not been adopted by the State Government, then G.O.Ms.No.350 will prevail. The Tamil Nadu



Government has passed G.O.Ms.No.179, taking into consideration that the draft regulation Clause 6.4.12, when that was pointed out that G.O. Ms. No. 179 is not in consonance with subsequent original regulation the same was cancelled through G.O.Ms.No.328, dated 16.11.2017.

**WEB COPY** 16. Therefore, this Court is of the considered opinion that the Regulation Clause 6.4.12 can never be implemented which is mischievous clause and the Writ Petition fails.

17. The petitioner has prayed that it is not his mistake and he is entitled to the benefits and therefore, the respondent cannot direct the petitioner to refund the amount. Since this Court is of the considered opinion that amount is illegal in petitioner's hands and the petitioner has no right to claim the amount. However, the respondents shall collect the amount in installments.

18. The petitioner submitted that in earlier round of litigation this Court has directed the respondents to issue show cause notice before passing an order of recovery but the respondents has passed an order dated 26.02.2013 and has issued show cause notice 28.02.2013. The respondents have explained that the order dated 26.02.2013 was passed fixing the Rs.37,400/- - 69,000/- + GP 90000/- by redesignating the petitioner as Associate Professor with effect from 30.08.2010. Since the petitioner has completed three years and has eligibility for Rs.37,400/- pay band along with the designation, the same was granted to the petitioner. However the petitioner is not entitled from the prior date therefore the show cause notice is issued for the period for recovery from 2006 to 2009. Therefore this Court is of the considered opinion that for the reasons stated supra, the petitioner is entitled to benefits from 30.08.2010 and there is no infirmity in the impugned order dated 26.02.2013. As far as the show cause notice dated 28.02.2013 is concerned, since this Court has held that the claim is under the "mischief clause 6.4.12", and the petitioner is not entitled to the benefits for the reasons stated supra, the show cause notice is only an empty formality. Therefore, this Court quashing the show cause notice. The respondents are directed to recovery the amount in easy installments.

19. For the reasons stated above, these Writ Petitions are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)



To

1.The Registrar,  
The Manonmaniam Sundaranar University,  
Abishekpatti, Tirunelveli,  
Tirunelveli District - 627 102.

2.The Registrar (i/c),  
The Manonmaniam Sundaranar University,  
Abishekpatti, Tirunelveli,  
Tirunelveli District - 627 102.

+2 CC to M/s.Ragatheesh Kumar (ISAAC CHAMBERS), Advocate  
( SR-40284 & 40285[F]dated 23/12/2021)

Order made in  
W.P(MD) Nos.4829 and 4831 of 2013 and  
M.P(MD).Nos.1 and 1 of 2013 in  
W.P(MD) Nos.4829 and 4831 of 2013  
23.12.2021

SK(CO)  
GC(12.01.2022) 9P 5C