



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.11.2021

Pronounced on : 06.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) No.2226 of 2014

M. Ramaswamy : Petitioner

..vs..

1.The Registrar,
Tamil University,
Thanjavur.

2.The Finance Officer,
Tamil University,
Thanjavur.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order passed by the 1st respondent, dated 16.08.2010 in Na.Ka.No.A1/4463/2009 and the impugned proceedings passed by the 2nd respondent in Finance 8 / Pension, dated 19.06.2013 and the impugned order passed by the 1st respondent, dated 02.08.2013 in Mu.Mu.No.A1/5691/2013, quash the same and direct the 1st respondent to refund the recovered amount of Rs.1,17,473/- to the petitioner forthwith together with interest at the rate of 12% per annum, award costs.

For Petitioner : Mr. S. Arunachalam
For R1 : Mr. M. Senthilkumar

O R D E R

This Writ Petition has been filed to quash the impugned order passed by the 1st respondent, dated 16.08.2010 in Na.Ka.No.A1/4463/2009 and the impugned proceedings passed by the 2nd respondent in Finance 8 / Pension, dated 19.06.2013 and the impugned order passed by the 1st respondent, dated 02.08.2013 in Mu.Mu.No.A1/5691/2013, and consequently, direct the 1st respondent to refund the recovered amount of Rs.1,17,473/- to the petitioner forthwith together with interest at the rate of 12% per annum, award costs.

2. The petitioner has challenged the order of deducting Rs.1,17,473/- towards excess payment of salary and has prayed for refund of the amount.



3. The brief facts of the case are that the petitioner is a Post Graduate M.A., Tamil Literature and has done Ph.D., Degree course in the year, 1973. The petitioner was appointed as Lecturer in Folklore in the Department of Tamil Studies in Madurai University with effect from 11.08.1975. He has successfully completed Ph.D., Degree in the year 1978. The first respondent has issued an advertisement to fill up the post of Associate Professor of Survey Preservation and Documentation of Dramatic Acts in the Department of Drama. The petitioner applied and was selected and appointed vide order, dated 12.02.1982 and joined in the said the post on 05.06.1982.

4. The pay and allowance as per the 5th pay commission under new Carrier Advancement Scheme has been notified by the UGC with effect from 1996. In the meanwhile, the Government of Tamil Nadu, vide its letter dated 19.05.1999 issued a direction to all the Universities not to grant promotion / Carrier Advancements till the carrier Advancement scheme is notified by the UGC. Since it took a very long time for UGC to notify, several universities and other institutions had permitted promotions / carrier advancements as per their own schemes. The Government of Tamil Nadu has issued G.O.Ms.No. 435, dated 25.10.2000 lifting the ban imposed in their letter, dated 19.05.1999 and issued directions to accept and not to disturb the promotions already given by respective universities prior to the notifications of new Carrier Advancement Scheme by UGC with effect from 27.07.1998 and consequently, directed to bear the expenditure towards promotions given by them before the UGC new scheme.

5. It is based on the request of the various universities, the Government of Tamil Nadu vide G.O.Ms.No.121, dated 11.03.1997 introduced Carrier Development Scheme for the university teachers, which is a stop gap arrangement till the UGC announce the new advancement scheme. The first respondent gave option to the teaching staff either to choose carrier development scheme announced by the Government of Tamil Nadu or carrier development scheme notified by UGC. The petitioner has opted carrier development scheme announced by the Government of Tamil Nadu. Carrier development scheme was implemented with effect form 01.06.1998 and the petitioner was given promotion as professor after due process of selection vide order, dated 07.12.1996 with effect from 01.10.1996 and the basic pay was fixed at Rs.5,250/- in the scale of pay of Rs. 4,500/- 150- 5700 - 200 - 7300/- with effect from 01.10.1996 and thereafter, promoted as Head of the Department with effect from 05.09.1995.

6. Thereafter, based on the objection of the Local Fund Audit Department, the first respondent has issued a Circular dated 30.07.2009 that the Government permitted the promotion under carrier development scheme only with effect from 27.07.1998, by its order dated 25.09.2009. Hence, the payment given to the petitioner from



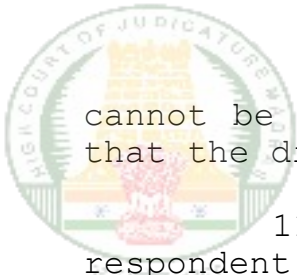
01.01.1996 to 27.07.1998 was an excess payment. Then, notice was issued to the petitioner, why the deduction of excess payment could be collected. The petitioner has submitted his objection on 29.09.2009 stating various reasons. Thereafter, nearly after one year, the first respondent issued the impugned proceeding, dated 16.08.2010 that in the proceedings, dated 08.10.2009 and on 07.01.2010 already issued orders refixing the pay of the five professors including the petitioner and separate order of recovery of excess payment would be issued. It is also stated that the amount of Rs.1,17,473/- would be deducted, in which Rs.57,500/- would be deducted from monthly salary in 23 months at the rate of Rs.2,500/- per month and remaining amount of Rs.59,973/- would be deducted from the pensionary benefits. The first respondent started to recover the amount from the month of August 2010. Since several representations were given, the respondents continued to deduct the amount. Aggrieved over, the present Writ Petition is filed.

7. The first respondent has filed counter. In which, it has been stated that the Tamil University fully depends upon the Government funds and the University pays salary from only the grant received from the Government. The Government of Tamil Nadu, Vide G.O.Ms.435 has allowed the promotions under the Carrier Development Scheme only with effect from 27.07.1998. Therefore, mandatory benefits extended to the petitioner with effect from 01.10.1996 to 22.07.1988 was paid without the sanction of Government. The respondent denied the allegations that the petitioner's representation was not considered. In the counter it is clearly stated that G.O.Ms.435 has saved the promotion already given by the University as per their own CDS and refused to cancel such promotion. However, clarified that the respective University shall bear the expenditure towards the difference in salary if the promotions were given prior to 27.07.1980.

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

9. The only issue that has to be decided whether the petitioner is entitled to salary in the Carrier Development Scheme post prior to 27.07.1988, if so who has to bear the costs.

10. It is seen that G.O.Ms.NO.435, dated 25.10.2000 has allowed promotion under the Carrier Development Scheme only with effect from 27.07.1998. The Government has clearly clarified that the promotions already granted by the universities as per their own Carrier Development Scheme and directed not to cancel such promotions. The GO has also clarified that the respective universities shall bear the expenditure towards the difference in salary if the promotions were given prior to 27.07.1998. It is the specific plea of the respondent that the Tamil University fully depends upon the Government fund and the University pay the salary from the grant received from the Government. The said plea



cannot be accepted since in the GO it has been specifically stated that the difference in salary should be bear by the University only.

11. Therefore, the impugned order passed by the 1st respondent is quashed and the Writ Petition is allowed. The amount collected from the petitioner shall be refunded to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (AD II)

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/ /2021

Sub Assistant Registrar(CS)

trp

To

1.The Registrar,
Tamil University,
Thanjavur.

2.The Finance Officer,
Tamil University,
Thanjavur.

W.P (MD) No.2226 of 2014
06.12.2021

MGJ(15.12.2021) 4P 3C