

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.09.2016

Pronounced on : 23-11-2016

CORAM :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Writ Petition No. 40301 of 2016

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1. Dr. P. Sakthivel
2. Dr. V. Senthil Kumar

.. Petitioners

Versus

1. State of Tamil Nadu
rep. by Secretary to Government
Higher Education Department
Fort St. George
Chennai - 600 009
2. Anna University
rep. by Registrar
Guindy, Chennai - 600 025
3. All India Council for Teacher Education
rep. by Chairman
7th Floor, Chanderlok Building
Janpath, New Delhi - 110 001
5. University Grants Commission
rep. by Secretary
Bahadur Shah Zafar Marg
New Delhi - 110 002
5. Dr. K. Shanmugasundaram
Associate Professor
Department of Mechanical Engineering
College of Engineering, Guindy
Anna University, Guindy
Chennai - 600 025
6. Dr. M. Manikandan
Associate Professor
Department of Electronics Engineering
MIT Campus, Chromepet

- Anna University
Chromepet, Chennai - 600 044
7. Dr. S. Ramalingam
Associate Professor
Department of Bio-Technology
College of Technology
Anna University, Guindy
Chennai - 600 025
8. Dr. V.S. Senthil Kumar
Associate Professor
Department of Mechanical Engineering
College of Engineering
Anna University, Guindy
Chennai - 600 025
9. Dr. K. Gunasekaran
Associate Professor
Department of Civil Engineering
College of Engineering
Anna University, Guindy
Chennai - 600 025
10. Dr. V. Sreenivasan
FF University
College of Engineering
Panruti
11. Dr. P. Suresh Kumar
Off: Bharathidasan Institute of Technology
Trichy - 24
12. Dr. S. John Vennison
Off: Bharathidasan Institute of Technology
Trichy - 24
13. Dr. E. Shanmugapriya
Off: Bharathidasan Institute of Technology
Trichy - 24
14. Dr. M. Arulmozhi
Off: Bharathidasan Institute of Technology
Trichy - 24
15. Dr. S. Venkatesan
Off: Bharathidasan Institute of Technology
Trichy - 24

16. Dr. A. Puratchikody
Off: Bharathidasan Institute of Technology
Trichy - 24
17. Dr. G. Geetharamani
Off: Bharathidasan Institute of Technology
Trichy - 24
18. Dr. S. Brahadeswaran
Off: Bharathidasan Institute of Technology
Trichy - 24
19. Dr. G. Senguttavan
Off: Bharathidasan Institute of Technology
Trichy - 24
20. Dr. R. Thiruneelakandan
Off: Bharathidasan Institute of Technology
Trichy - 24
21. Dr. K. Jothivenkatachalam
Off: Bharathidasan Institute of Technology
Trichy - 24
22. Dr. R. Sujatha
Off: Bharathidasan Institute of Technology
Trichy - 24
23. Dr. R. Karunakaran
Off: University College of Engineering
Thirukuvalai
24. Dr. J. Jegan
University College of Engineering
Ramnad
25. Dr. S. Senthil Nathan
University College of Engineering
Pattukottai
26. Dr. T. Sree Renga Raja
Off: Bharathidasan Institute of Technology
Trichy - 24
27. Dr. P. Suresh Kumar
University College of Engineering
Panruti

28. Dr. R. Ilangovan
Bharathidasan Institute of Technology
Trichy - 24

29. Dr. G. Jeyaprabha
Off: University College of Engineering
Dindigul

30. Dr. R. Kannan
Off: University College of Engineering
Dindigul

31. Dr. S. Sutha
Off : University College of Engineering
Dindigul

(Respondents 5 to 31 and impleaded as per
order dated 16.02.2016 passed in WMP
No.4292 and 4775 of 2016 in WP No. 40301
of 2016)

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus after calling for the records from the first respondent relating to G.O. (Ms) No.472, Higher Education (C2) Department dated 18.11.2015 issued by the first respondent as illegal, arbitrary and without jurisdiction and contrary to the UGC Regulations, 2010/AICTE Regulations 2010 and quash the same and for a consequential direction to the 1st and 2nd respondent to implement the G.O. Ms. No.95, Higher Education (C2) Department dated 05.05.2010 in letter and spirit in accordance with UGC regulations, 2010/AICTE regulations, 2010.

For Petitioners : Ms. Nagasaila
for Ms. L. Parvin Banu

For Respondents : Mrs. P. Rajalakshmi
Government Advocate for R1

Mr. L.P. Shanmuga Sundaram for R2

Mrs. AL. Ganthimathi for R3

Mr. P.R. Gopinath for R4

Mr. Muthukumarasamy, Senior Advocate
for Mr. V. Kadhivelu for RR5 to 9

Mr. Silambannan, Senior Advocate
for Ms. Kavya Silambannan for RR10 to 31

ORDER

The petitioners seek to quash the order passed by the first respondent in G.O. (Ms) No.472, Higher Education (C2) Department dated 18.11.2015 as it is contrary to the UGC Regulations, 2010/AICTE Regulations 2010 and for issuance of a consequential direction to the 1st and 2nd respondents to give effect to the order passed in G.O. Ms. No.95, Higher Education (C2) Department dated 05.05.2010 in letter and spirit in accordance with the UGC regulations, 2010/AICTE regulations 2010.

2. The grievance of the petitioners, as could be culled out from the affidavit filed in support of the writ petition, is as follows:-

(i) According to the petitioners, as per the impugned order in GO Ms. No.472 dated 18.11.2015, the first respondent directed that the directly recruited Assistant Professors in the pre-revised scale of Rs.12000-18300 in Anna University and their constituent Colleges recruited on or after 01.01.2006 and upto 05.05.2010 be re-designated as Associate Professor and be eligible for scale of Rs.37400-67000. According to the petitioners, such re-designation of directly recruited Assistant Professors, who were recruited on or after 01.01.2006 and upto 05.05.2010 will result in the juniors scaling a march over the directly recruited Readers/Assistant Professors prior to 01.01.2006 and Readers/Assistant Professors promoted and re-designated as Associate Professors under the Career Advancement Scheme (in short 'CAS') on completion of three years to the pay band of Rs.37400-67000+AGP 9000. Thus, the petitioners who were redesignated as Associate Professor under the Career Advancement Scheme will lose seniority

to become Professors because of the *inter se* seniority between the directly recruited Associate Professors and Associate Professors under the CAS especially if it is fixed as on the date of joining of Associate Professor. Further, even at the Associate Professor level, those who were re-designated as Associate Professors will be treated as juniors as per the impugned GO Ms. No.472 dated 18.11.2015. This, according to the petitioners, is contrary to the UGC/AICTE regulations as well as the earlier order passed in GO Ms. No.95, Higher Education Department dated 05.05.2010 issued by the first respondent with respect to implementation of the VI Pay Commission recommendations.

(ii) As far as the petitioners are concerned, the first petitioner joined as Lecturer on 15.04.1999 in the second respondent-University. On 01.04.2003, he was assigned with Lecturer Senior Scale and on 01.04.2008, he was conferred with selection grade in the cadre of Lecturer on completion of Ph.D., Subsequently, on 16.07.2008, the first petitioner was promoted as Assistant Professor under the CAS. Thereafter, on 01.04.2011, under the CAS, the petitioner was re-designated as Associate Professor and placed in pay band 15000-67000+AGP9000 after completion of three years in the pay band of 15000-39000+AGP 8000. According to the petitioner, he is eligible to get the pay band of Rs.37400-67000+AGP8000 from 01.04.2008 itself and consequently, he is eligible to get the promotion as Professor from 01.04.2014.

(iii) As regards the second petitioner is concerned, he joined the second respondent-University as Lecturer on 04.12.2003 and on 07.02.2009, he was given promotion under CAS and re-designated as Associate Professor. On 07.02.2012, he was given promotion under the CAS and re-designated as Professor which was

later re-designated as Associate Professor and placed in the pay band of Rs.37400-67000+AGP9000 and after completion of 3 years in the pay band of Rs.15000-39000+AGP8000. According to the second petitioner, he was eligible to get the pay band of Rs.37400-67000+AGP9000 from 07.02.2009 itself and he is also eligible to get promotion as Professor from 07.02.2015 under CAS.

(iv) According to the petitioners, earlier, in order to implement the VI Pay Commission recommendations with reference to All India Council for Technical Education pay scales to the teachers and equivalent cadres in Technical Universities, Government and Government Aided Engineering Colleges in Tamil Nadu, the Government issued GO Ms. No.95, Higher Education department dated 05.05.2010 in which revised Pay Scales, 2010 were fixed for the teachers and equivalent cadres mentioned above. The said GO Ms. No.95, Higher Education Department dated 05.05.2010 was also given effect to in technical institutions like the second respondent University with effect from 01.01.2016 and monetary benefit from 01.01.2007. As per the abovesaid Government Order, only those designations i.e., Assistant Professors, Associate Professors and Professors were permitted in the teaching side of the institutions. As per the said Government Order, the Assistant Professors, who have less than 3 years in the current pay scale of Rs.12000-18300 on 01.01.2016 shall be placed at the appropriate stage in the pay band of Rs.15600-39100+AGP 8000 and shall be designated as Assistant Professor.

(v) According to the petitioners, earlier, as per 5th Pay Commission Regulation 2000 prescribed for All India Council for Technical Education, the

qualification for the post of Assistant Professor is Ph.D., degree with first class in Bachelor's or Master's level in the appropriate branch of Engineering/Technology with 3 years experience in Teaching/Industry/Research at the level of Lecturer or equivalent. It is only with the above said requirement, direct recruitment was made in the second respondent University under various notifications and number of persons were appointed directly as Assistant Professors between 01.01.2006 and 05.05.2010 in the pay scale of Rs.12000-420-18300 (pre-revised) and Rs.15600-39000+8000 (revised scale) for three years and thereafter they were placed in the Associate Professor pay scale of Rs.37400-67000+AGP9000 as per UGC Regulations on Minimum Qualifications for Appointment of Teachers and other academic staff in Universities and Colleges. It is the contention of the petitioners that by virtue of GO Ms. No.95 dated 05.05.2010, the sixth Pay Commission recommendations were given effect to in the second respondent University i.e., from 01.01.2006 to 05.05.2010 and during this period, recruitments were made according to the qualifications prescribed by UGC Regulations, 1996 and AICTE Regulations, 2000. Thus, from 01.01.2006 to 05.05.2010, several persons working in the second respondent University as Lecturer Selection Grade/Assistant Professor with Ph.D., degree got promotion under CAS and re-designated as Associate Professor and placed in the scale of Rs.37400-67000+AGP9000 as per the UGC Regulations, 2010 and AICTE Regulations, 2010 after they completed 3 years of service as Lecturer Selection Grade/Assistant Professor. Subsequently, as per the clarifications issued by the UGC and AICTE regarding the fixation of pay band for the Readers/Assistant Professors appointed on or after 01.01.2006 till 30.06.2010, clarifying that the Readers/Assistant Professors appointed on or after

01.01.2006 till 30.06.2010 shall move to pay band -4 with Academic Grade Pay of Rs.9000 after completing three years of service without insisting on the requirement of API based PBAS System. According to the petitioners, it is also applicable to the Lecturers (Slection Grade) who were given promotion during this period. In the above circumstances, the first respondent issued the impugned Government Order dated 18.11.2015 with reference to the second respondent-University fixing the revision of pay and re-designation of post as Associate Professors to the directly recruited Readers/Assistant Professors from the date of appointment, which is contrary to the UGC Regulations, 2010, AICTE Regulations as well as the clarifications issued by the University Grants Commission on 04.08.2015. According to the petitioners, as per AICTE Regulations, 2010, the REaders/Assistant Professors recruited during the period from 01.01.2006 to 05.05.2010 are based on the qualifications and experience required for Readers/ Assistant Professors (pre-revised) and these qualifications, experiences and other eligibility conditions are not equivalent to the post of Associate Professor (revised) as per the 6th Pay Commission regulations. Therefore, the revision of pay given to the directly recruited Readers/Associate Professors without insisting the 3 years experience in the pay scale of Rs.12000-42-18300 (pre-revised) and Rs.15600-39100+AGP8000 (revised scale) is illegal and without jurisdiction.

3. The learned counsel for the petitioners would contend that those who were recruited as Readers/Assistant Professors with the very same qualification before 31.12.2015 and those promoted under the CAS and re-designated as Readers/ Assistant Professors from 01.01.2006 to 05.05.2010 were not given the

same benefit which is now given to the directly recruited Readers/Assistant Professors from 01.01.2006 to 05.05.2010. As per the UGC Regulations, 2010 and AICTE Regulations, 2010, those directly recruited Readers/Assistant Professors have to be placed in the pay band of Rs.15600-39100+AGP8000 whereas their scale of pay was fixed in the pay band of Rs.37000-67000+AGP 9000 notionally from 01.01.2006 with monetary benefit from 01.01.2007. Further, as per GO Ms. No.95 dated 05.05.2010, the directly recruited Readers/Assistant Professors have to complete three years of service in the pay scale of Rs.12000-420-18300 (Pre-revised) with pay band of Rs.15600-39100+67000+AGP9000 (revised) and after completion of three years, they will have to be placed in the pay band of Rs.37400-67000+AGP 9000 without insisting the 300 points in the Academic Performance Indicator (API) based on PBAS System. The API will be calculated based on the performance of the candidates and their ability by conducting interview inasmuch as the directly recruited Readers/Assistant Professors are possessing Ph.D. for which relaxation was given in the UGC Regulations 2010 with effect from 30.06.2010 itself. Whereas, a Lecturer (Selection Grade)/Assistant Professor promoted under the CAS as Associate Professor was given the pay band of Rs.37400-67000+AGP9000 after completion of three years in the pay band of Rs.15600-39000+AGP8000.

4. According to the learned counsel for the petitioners, the grievance of the petitioners is that if GO Ms. No.472 dated 18.11.2015 is given effect to in favour of directly recruited Readers/Assistant Professors, they will march over the directly recruited Readers/Assistant Professors prior to 01.01.2006 thereby the

petitioners, who were re-designated as Associate Professors under CAS will lose their seniority to become professor. This is more so that the *inter se* seniority between directly recruited Associate Professors and Associate Professors under CAS is fixed based on the date of joining as Associate Professors. On the contrary, as per GO Ms. No.95 dated 05.05.2010, both re-designated Readers/Assistant Professors and directly recruited Readers/Assistant Professors are eligible to become Associate Professors on completion of three years in the pay band of Rs.37400-67000+AGP9000. Thus, according to the learned counsel for the petitioners, if GO Ms. No.95 dated 05.05.2010 is given effect to, a directly recruited Readers/Assistant Professors have to complete six years service to consider him/her for the post of Professor. By giving effect to GO Ms. No.472 dated 18.11.2015, a directly recruited junior will get three years seniority over and above the Readers/Assistant Professors under CAS from 01.01.2006 to 05.05.2010 and it will adversely affect their career. Further, now the 7th Pay Commission is likely to come into force from 01.01.2006 and if the impugned Government Order is given effect to, it will create huge monetary loss to the Readers/Assistant Professors as designated under CAS. In such view of the matter, the learned counsel for the petitioners seek to quash the order passed by the first respondent in G.O. (Ms) No.472, Higher Education (C2) Department dated 18.11.2015 as it is contrary to the UGC Regulations, 2010/AICTE Regulations 2010.

5. Opposing the averments made by the petitioners, the learned Government Advocate appearing for the first respondent, by placing reliance on the counter affidavit of the first respondent would oppose the writ petition. According to

the learned Government Advocate, the order in G.O. (Ms) No.472, Higher Education (C2) Department dated 18.11.2015 has been issued exclusively for Anna University on par with other Universities in the State for the reason that Anna University, Chennai is the only Technical University and is governed by the guidelines issued by AICTE besides the UGC Regulations. According to the first respondent, the petitioners have no *locus standi* to equate the promotees under the CAS with that of the direct recruitees. It is the specific contention of the learned Government Advocate appearing for the first respondent that the mode for direct recruitment is adopted at all levels viz., at entry level, intermediate level and upto highest teaching position namely Lecturer (presently re-designated as Assistant Professors), Assistant Professor (presently re-designated as Associate Professor) and Professor with a minimum prescribed essential qualifications. Whereas, CAS is not a mode of recruitment like direct recruitment. Under CAS, the services rendered at each stage are counted and given time bound increments so as to fix the pay in the next scale of pay and award re-designations, as and when requisite essential qualifications are acquired by the individual. Though, under CAS, incumbents are awarded equivalent scale of pay by taking into consideration the experience and re-designation of the post as and when requisite essential qualification are acquired by the incumbents, they still hold the position of their entry level post and not the promoted post. Therefore, according to the learned Government Advocate, even though the petitioners were re-designated as Lecturer (Selection Grade) and pay fixed in the scale of pay of Rs.12000-420-18300, they were allotted the work load of a Lecturter and not Assistant Professors. The petitioners entered the service as Lecturers (presently re-designated as Assistant

Professors on 15.04.1999 and 04.12.2003 respectively. Under CAS, the petitioners reached the scale of pay of Assistant Professor (presently re-designated as Associate Professor) on 18.07.2006 and 07.02.2009 respectively, but they still hold the post of Lecturer only (presently re-designated as Assistant Professor). Whereas, the incumbents with higher prescribed qualification recruited directly as Assistant Professor (presently re-designated as Associate Professor) in the year 2006, 2007, 2008 and 2009 and whose pay was fixed in the scale of Rs.12000-420-18300 were appointed prior to the petitioners were awarded re-designation under CAS. Thus, the learned Government Advocate would contend that the directly recruited Assistant Professor (presently re-designated as Associate Professor) are senior to the petitioners and therefore they are placed on higher scale of pay and holding the post in the intermediate level i.e., Assistant Professors (presently re-designated as Associate Professor) and not in the entry level post of Lecturer (presently re-designated as Assistant Professor). Therefore, according to the learned Government Advocate for the first respondent, the petitioners cannot be placed on par with the directly recruited Assistant Professors (presently re-designated as Associate Professor). The learned Government Advocate would vehemently contend that in the year 2006 to 05.05.2010, recruitments were made for selection to the post of Assistant Professors (presently re-designated as Associate Professor). The petitioners could not participate in such selection drive because they did not acquire the requisite qualification at that point of time.

6. As regards the order which is impugned in this writ petition, the learned Government Advocate appearing for the first respondent would contend

that GO Ms. No.472, Higher Education Department dated 18.11.2015 came to be issued to clarify the anomaly that existed in implementing GO Ms. No.95, Higher Education Department dated 05.05.2010 with reference to the different eligibility guidelines issued by UGC and AICTE. While UGC prescribed the minimum eligibility for Associate Professor as Ph.D., with eight years of teaching experience, AICTE has prescribed the minimum eligibility as Ph.D., with five years of teaching experience. While prescribing such eligibility criteria, the statutory bodies namely AICTE and UGC has left it to the discretion of the concerned State Government to take note of the local conditions and other factors to introduce scales of pay higher than those mentioned in their Regulations with effect from 01.01.2006. Accordingly, as a measure of clarification, the government has issued GO Ms. No. 179, Higher Education Department dated 14.10.2014 to all the Universities in the State. As far as Anna University is concerned, the government has separately issued GO Ms.No.472, Higher Education Department dated 16.11.2015. Thus, the government order dated 16.11.2015, which is impugned in this writ petition, has been issued to clarify certain anomalies existed in the pay scales to different categories and the Government has not shown any favouritism to any one, as alleged by the petitioners. The Government issued the Government Order in GO Ms. No.472 dated 16.11.2015 only to rectify the anomaly that occurred in pay fixation and re-designation of the Readers directly recruited after 01.01.2006 that existed in GO Ms. No.350, Higher Education Department dated 09.09.2009, which was issued on the basis of AICTE Regulations to Anna University.

7. It is further stated by the learned Government Advocate that UGC and

AICTE have different regulations and guidelines on eligibility criteria and the same was also discussed at length in the Judgment dated 23.06.2014 made in W.P. No. 18255 of 2010 by the Andhra Pradesh High Court whereby the High Court directed the Government of Andhra Pradesh and the Universities to set right the anomaly. The learned Government Advocate also brought to the notice of this Court that the first petitioner himself is a beneficiary of the pay commission implementation. The first petitioner reached the scale of pay of Rs.12000-420-18300 even as on 01.04.2008. He had acquired Ph.D., degree only on 18.07.2008 after completion of three years in the post of Lecturer (selection grade) and he was also re-designated as Associate Professor on 01.04.2011. Therefore, according to the learned Government Advocate, the fixation of the pay and re-designation of the post held by the first petitioner was not made after acquiring Ph.D., i.e., from 18.07.2011 and even prior to the same, the first petitioner was benefitted in the matter of fixation of his scale of pay. Therefore, the claim of the petitioners that they lost their seniority is without any basis as the pay of directly recruited Assistant Professors (re-designated as Associate Professors) were fixed in the scale of pay of Rs.12000-420-18300 with effect from their dates of appointment and the petitioners had reached the scale of Rs.12000-420-18300 only on 01.04.2008 and 07.02.2009. Further, the requirement to possess Ph.D. qualification for directly recruited Assistant Professors (presently re-designated as Associate Professor) was completely relaxed in favour of re-designated Assistant Professor (presently re-designated as Associate Professor) under the CAS. Further, a notional benefit of three advanced cumulative increments was given in the corresponding basic pay from the date of acquirement of Ph.D., qualification for the incumbent Lecturer

(Selection Grade) during the three years he is in AGP 8000/-. Thus, it is evident that the petitioners want only the advantage of career advancement of becoming Associate Professor without Ph.D., qualification and be placed in higher pay band of Rs.37400-67000+AGPRs.9000/- when they were protected in their designation as well as the pay in the Sixth Pay Commission. Therefore, the petitioners cannot have any grievance over the order passed by the Government in GO Ms. No.472 dated 18.11.2015 which was issued only to set right the anomaly in the pay fixation. Consequently, the contention of the petitioners that their seniority is lost deserves no merit consideration when they were basically not eligible for direct recruitment as Assistant Professor. The petitioners themselves became eligible only on 16.07.2008 and 07.02.2009 when they acquired Ph.D., qualification, therefore, they cannot claim that those Associate Professors, who have been benefitted and got career advancement as Associate Professors without Ph.D., till date on par with directly recruited Assistant Professors (pre-revised) (now Associate Professor) when merits of entry into service as directly recruited Assistant Professors have been kept at higher standard at Ph.D., The learned Government Advocate therefore prayed for dismissal of the writ petition.

8. The learned counsel for the second respondent placed reliance on the counter affidavit and opposed the prayer in the writ petition. According to the learned counsel, the petitioners have no *locus standi* to file the writ petitions. The object of giving effect to career advancement scheme is to count the services rendered by an individual at each stage and give time bound increments to fix them in next scales of pay, award re-designations as and when requisite essential

qualifications are acquired by the individual. Even after such re-designation under the CAS, the individual can still hold the position of their entry into service and not the promoted position. Thus, though the petitioners were re-designated as Lecturer (Selection Grade) in the scale of pay of Rs.12000-420-18300, they were allotted the work load of a Lecturer and not Assistant Professor. The petitioners have entered the service as Lecturers (re-designated as Assistant Professors) on CAS and they reached the scale of Assistant Professor (re-designated as Associate Professor) on 16.07.2008 and 07.02.2009 respectively. On the contrary, the directly recruited candidates on merit with higher essential qualification recruited during 2006, 2007, 2008 and 2009 as Assistant Professor (re-designated as Associate Professor) on various dates earlier to the re-designation of the petitioners through CAS and therefore, they are seniors in position and have to be placed on a higher scale of pay and they also hold the post in intermediate level i.e., Assistant Professor (re-designated as Associate Professor) and not in the entry level i.e., Lecturers (re-designated as Assistant Professors) as held by the petitioners. The learned counsel for the second respondent also reiterated and asserted that the order in GO Ms. No.472 is only a clarification to clarify the anomaly that existed in giving effect to GO Ms. No.95, Higher Education Department dated 05.05.2010 and therefore it is not in violation of any pay commission related orders issued by the Government earlier. Further, both the Government of Tamil Nadu and the state run University as well as the second respondent University has accepted the anomaly and clarified the removal of such anomaly through GO Ms. No.179, Higher Education Department dated 14.10.2014 and GO Ms. No.472, Higher Education Department dated 18.11.2015 respectively.

Therefore, according to the learned counsel for the second respondent, the relief sought for in this writ petition need not be granted.

9. The learned counsel for the third respondent has filed a counter affidavit of the third respondent and based on the same, it was contended that in exercise of the powers conferred under Sub-Section 1 of Section 23, read with Section 10 (i) and (v) of the All India Council for Technical Education Act, 1987, AICTE makes the Regulations called All India Council for Technical Education (Pay Scale, Service Conditions and Qualifications for the teachers and other academic staff in Technical Institutions - Degree) Regulation 2010. The said Regulations came into force on 05.05.2010 which clearly provides for three designations in respect of Teachers in Universities and Colleges viz., Assistant Professors, Associate Professors and Professors. As per the said Regulation in clause 1 (a) (i), a person entering a teaching profession in Technical Institutions shall be designated as Assistant Professor and placed in Pay band of Rs.15600-39100 with AGP of Rs.6000/-. As per Clause (ii), an Assistant Professor with 4 years of experience and who is possessing Ph.D., degree in the relevant branch/discipline shall be eligible for moving upto AGP of Rs.7000/-. Clause (iv) thereof provides that Assistant Professors, who obtained Ph.D., or a Master's Degree in relevant branch/ discipline shall be eligible for AGP of Rs.7000/- on completion of 8 years of service as Assistant Professor.

10. According to the learned counsel for the third respondent, several representations were received seeking clarification arising out of implementation of

AICTE Regulations dated 05.03.2010 with reference to revised Pay Scales, Service conditions and qualifications for the teachers and other academic staff in Technical Institutions (Degree and Diploma) Regulations, 2010 dated 08.11.2012 with particular reference to CAS for the teachers and other staff in the Technical Institutions. Therefore, the third respondent, by a notification dated 04.01.2016 issued clarifications on certain issues/anomalies pertaining to the above aspects. According to the learned counsel for the third respondent, it appears that the essential requirement of Ph.D., as mandated for directly recruited Assistant Professor (presently re-designated as Associate Professor) was completely relaxed in case of the petitioners and outgoing Professors through CAS. As such, it is for the second respondent to decide as to the qualification of the petitioners and to decide on the legality of the Government Order under challenge. However, as far as the third respondent is concerned, the re-designation and revision of pay band can be made only in accordance with AICTE Regulations as aforesaid.

11. The learned Senior counsel appearing for the respondents 5 to 9, who were subsequently impleaded in this writ petition, would vehemently contend that the Government Order, which is impugned in this writ petition, was issued in respect of revision of pay and re-designation of the post to the directly recruited Assistant Professors in the second respondent University and their constituent colleges on or after 01.01.2006 and upto 05.05.2010. Therefore, in all fairness, the petitioners, while filing the present writ petition, ought to have impleaded the respondents 5 to 9 who are likely to be affected in the event of any order passed by this Court in this writ petition. The writ petition is therefore liable to be dismissed

for misjoinder of necessary parties.

12. According to the learned Senior counsel appearing for the respondents 5 to 9, the petitioners herein are not directly recruited Assistant Professors and they joined only as lecturer. Subsequently, under the CAS, the petitioners were re-designated as Assistant Professors. Therefore, the order which is impugned in this writ petition has no application to the petitioners at all inasmuch as they relate to directly recruited Assistant Professors and consequently, the petitioners cannot have any grievance against the order in GO Ms. No.472 dated 18.11.2015. It is further submitted by the learned Senior counsel for the respondents 5 to 9 that the qualification, experience and mode of recruitment of the respondents 5 to 9 and that of the petitioner are entirely different and the petitioners cannot lay any claim to treat them on par with the respondents 5 to 9.

13. According to the learned Senior counsel for the respondents 5 to 9, the respondents 5 to 9 were directly recruited as Assistant Professors in the pre-revised scale of Rs.12000-420-18300 as per GO Ms. No.472, Higher Education Department dated 18.11.2015. The said Government Order has been issued directing that the directly recruited Assistant Professors like the respondents 5 to 9 in the pre-revised scale of Rs.12000-420-18300 in the second respondent University from 01.01.2006 till 05.05.2010 be re-designated as Associate Professors and are eligible to get the scale of pay of Rs.27400-67000 with AGP of Rs.9000/-. The said Government Order in GO Ms. No.472 dated 18.11.2015 has been issued exclusively in respect of the faculties in the second respondent

University inasmuch as the second respondent University is the only Technical University and governed by the Regulations of UGC and AICTE. A similar order was also issued by the Government in GO Ms. No.179, Higher Education Department dated 14.10.2014 and it was implemented by all the Universities in Tamil Nadu. The petitioners wanted to project as if directly recruited Assistant Professors (pre-revised scale) and Lecturer (Selection Grade) (re-designated as Assistant Professor) are equal based on the pre-revised scale of pay of Rs.12000-420-18300 without regard to the eligibility norms applicable to the directly recruited Assistant Professors and those who were re-designated under the CAS. While those who were re-designated under the CAS were given a new nomenclature as Assistant Professor with a minimum educational qualification of M.E., in relevant discipline and placed in the entry level pay band of Rs.15600-39000 with AGP 6000/- without insisting Ph.D., qualification. Thereafter, still, without insisting Ph.D., qualification, after three years of experience, they wre re-designated as Associate Professor and placed in the higher pay band of Rs.37400-67000 with AGP of Rs.9000/-. Thus, according to the learned Senior counsel for the respondents 5 to 9, from the entry into service, till re-designation as Associate Professor, the petitioners hold the post of Lecturer only. Therefore, the petitioners cannot contend that those Associate Professors who have been benefitted and got career advancement, promoted as Associate Professors without Ph.D., till date are equal with those who were directly recruited as Assistant Professors especially when directly recruited Assistant Professors, at the entry of service, on merits, have to possess the Ph.D., qualification, while the persons like the petitioners possess such qualification during the course of their service. In such view of the matter, the

learned Senior counsel for the respondents 5 to 9 prayed for dismissal of the writ petition.

14. The learned Senior counsel appearing for the respondents 10 to 31 would contend that the respondents 10 to 31 were directly recruited on merits with the essential educational qualification between June 2009 to December 2009 as Assistant Professors (now re-designated as Associate Professor) in the scale of pay of Rs.12000-42-18300. Even at the time of their appointment, they possessed Ph.D., degree while so, the writ petitioners cannot attempt to equate themselves with the respondents 10 to 31 who came to hold the post of Assistant Professor under CAS without Ph.D., qualification. Therefore, the respondents 10 to 31, who were directly recruited Assistant Professors (re-designated as Associate Professors) were ordered to be placed in the top of the seniority list. The learned Senior counsel would further submit that admittedly, the respondents 10 to 31 are holding the post in the intermediate level and not in the entry level as that of the writ petitioners viz., Lecturers (re-designated as Associate Professor). The University Grants Commission has prescribed a minimum eligibility for holding the post of Associate Professor as Ph.D., with eight years of teaching experience, whereas the third respondent/AICTE has prescribed minimum eligibility as five years. However, both the statutory bodies namely UGC and AICTE have conferred discretionary power on the State government to take into consideration the local conditions and introduce scales of pay higher than those sanctioned and may give effect from 01.01.2006.

15. The learned Senior counsel for the respondents 10 to 31 while reiterating the submissions made by the learned Senior counsel appearing for the respondents 5 to 9, would contend that the Government Order in GO Ms. No.472 dated 18.11.2015 has been to clarify certain anomaly that existed in giving effect to GO Ms. No.95, Higher Education Department dated 05.05.2010. Admittedly, there were anomaly in the pay fixation and re-designation and it has necessiated the government to issue GO Ms. No.472 dated 18.11.2015 as a measure of clarification. The petitioners contention that they are losing their *inter se* seniority as Associate Professor is untenable inasmuch as the petitioners, who came to hold the post by taking advantage of CAS. It is not only the petitioners but every one who are holding the post of Assistant Professor (re-designated as Associate Professor) in the scale of Rs.37000-67000+AGP of Rs.9000/- with three years and Ph.D., are eligible to be re-designated as Professor. As far as the respondents 10 to 31, they were directly recruited as Assistant Professors during 2006 and 2009 and at that time, the petitioners were only holding the post of Lecturer which is an entry level post. The respondents 10 to 31 have been directly appointed in the post of Associate Professor, which is an intermediate post. Subsequently, the petitioners came to hold the post of Assistant Professor on re-designation under CAS. Merely because the post held by the petitioners have been re-designated, it will not confer them any right to equate themselves with the respondents 10 to 31 in any manner. Therefore, the learned senior counsel for the respondents 10 to 31 justify the passing of the order in GO Ms. No.472, Higher Education Department dated 18.11.2015 which was issued for clarifying the anomaly existed in pay for directly recruited Assistant Professors and it was based on AICTE and UGC

regulations.

16. The petitioners have filed a rejoinder and by placing reliance on the same, it is contended by the learned counsel for the petitioners that the petitioners have completed Ph.D., during the course of their employment and they were re-designated as Assistant Professor under CAS on 16.08.2008 and 07.02.2009 respectively. However, according to the learned counsel for the petitioners, there is no difference to be adopted between the petitioners and the private respondents. According to the learned counsel for the petitioners, as per the clarifications issued by AICTE on 10.09.2003, the direct recruitees will be considered as seniors to those who were conferred promotion CAS, provided if both are having the same date of joining/date of acquiring Ph.D., otherwise seniority will be based on date of joining if it is different dates as per the Tamil Nadu State and Subordinate Service Rules. According to the learned counsel for the petitioners, CAS is not a mere time bound increment, as contended it is a process of selection by similar committees set up by appointing authorities to select direct recruits. It is therefore vehemently contended that the petitioners who came to hold the re-designated post under CAS and the private respondents 5 to 31 who were directly recruited cannot be treated differently and it is contrary to the clarification issued by the third respondent on 10.09.2003. According to the counsel for the petitioners, the impugned order has not been issued for clarifying the pay anomaly, rather it is giving rise to anomaly in settled pay scales/pay band already fixed by GO Ms. No.95 dated 05.05.2010 besides it is contrary to UGC/AICTE guidelines.

17. I heard the learned counsel on either side and perused the materials

placed on record. The question that arise for consideration in this writ petition is whether the order passed in G.O. (Ms) No.472, Higher Education (C2) Department dated 18.11.2015 contravenes UGC Regulations, 2010/AICTE Regulations 2010 in any manner and whereby it resulted in the petitioners losing their seniority to become Professors because of the *inter se* seniority drawn between the directly recruited Associate Professors and Associate Professors under the CAS.

18. The private respondents namely 5 to 31 are admittedly recruited directly as Assistant Professors on various dates which is presently re-designated as Associate Professors and on such appointment, fixed in the scale of pay of Rs.12000-420-18200. On the other hand, the petitioners herein were not directly recruited to the post of Assistant Professors. The petitioners joined the second respondent University as lecturer on 15.04.1999 and 04.12.2003 respectively. Subsequently, under the CAS, the petitioners were re-designated as Assistant Professors and upon such re-designation, their scale of pay was fixed or the petitioners have reached the scale of pay of Rs.12000-420-18300 only on 01.04.2008 and 07.02.2009 respectively. In other words, the petitioners reached the above said scale of pay after rendering five years or more service in the post of Lectutrer. On the other hand, this scale of pay namely Rs.12000-420-18300 was fixed in respect of the private respondents 5 to 31 immediately after their appointment as directly recruited Assistant Professors from 01.01.2006.

19. As regards the qualification for holding the post of Assistant Professors, the private respondents 5 to 31 possessed the qualification of Ph.D.,

even at the time of their appointment on various dates from 01.01.2006. Admittedly, the petitioners acquired such qualification only on 16.07.2008 and 07.02.2009 respectively. However, even without the requisite qualification of Ph.D., the petitioners were conferred with re-designation as Assistant Professors on the basis of the recommendations made in the Sixth Pay Commission for granting exemption to the qualification. On the basis of such exemption given in the Sixth Pay Commission Rules, the petitioners continued to hold the position of Lecturers (re-designated as Assistant Professors) and not Assistant Professors (re-designated as Associate Professors). Thus, as per the Sixth Pay Commission Rules, Ph.D., qualification was not mandatory for reaching the scale of pay of Rs.37400-67000+AGP9000/- and for getting re-designation as Associate Professor through CAS. In other words, those who are in the scale of Rs.37400-67000+AGP9000/- with three years experience without even Ph.D., is eligible for being re-designated as Professor. It is seen that as per the Sixth Pay Commission Rules, a Lecturer (Selection Grade) in the CAS is placed in the scale of pay of Rs.15600-39000+AGP 8000 and on completion of three years, even without Ph.D., gets re-designation as Assistant Professor (re-designated as Associate Professor). On the contrary, with a Ph.D., qualification, a directly recruited Assistant Professor (re-designated as Associate Professor) gets the same scale of pay in the pre-revised scale. Therefore, the argument advanced on behalf of the respondents that the directly recruited Assistant Professors in the pre-revised scale, as that of the private respondents 5 to 31 are seniors than the petitioner having entered the service in the intermediate teaching possession with all eligibility and qualification and experience merits acceptance. Consequently, the contention of the petitioners

that the *inter se* seniority to become Professor is from the date of becoming Associate Professor deserve only to be rejected. It could be seen that an Associate Professor in the scale of Rs.37400-67000+AGP 9000/- with three years experience and an educational qualification of Ph.D., alone is eligible to become Professors and the mere re-designation of Associate Professor under CAS will not entitle the petitioners to place them in seniority list to become professors.

20. On perusal of the averments made in the affidavit filed in support of the writ petition as well as the counter affidavit filed by the respective respondents, it is clear that the directly recruited Assistant Professors (pre-revised scale) (re-designated as Associate Professor) and Lecturer (Selection Grade)/re-designated as Assistant Professor were in receipt of the same scale of pay i.e., Rs.12000-420-18300. Further, as per the Sixth Pay Commission norms set out by the third respondent as well as UGC it is mandatory that for the directly recruited Assistant Professor (re-designated as Associate Professor) they should compulsorily possess Ph.D., besides the minimum experience prescribed. However, on the strength of CAS, a Lecturer (re-designated as Assistant Professor) entering the service is given a new nomenclature as Assistant Professor with a minimum educational qualification of a Masters Degree in the relevant discipline and is placed in the entry level pay band of Rs.15600-39100 with AGP Rs.6000/-. After completion of five years of experience, without insisting Ph.D., qualification, such persons who entered the service as Lecturer, are placed in the same scale of pay of Rs.15600-39100 with AGP of Rs.7000/-. Thereafter, after completion of further five years of experience, they were fixed in the scale of pay of Rs.15600-39100 with AGP of

Rs.7000/- without insisting Ph.D., On completion of further three years of service, they were fitted in the scale of pay of Rs.15600-39130 with AGP of Rs.8,000/-. Thus on completion of thirteen years of service from the date of entering into service as a Lecturer, he or she is re-designated as Associate Professor and placed in the higher pay band of Rs.37400-67000 with AGP of Rs.9000/-. However, from the date of entry into the entry level post of Lecturer in the pre-revised scale without Ph.D., qualification, on completion of thirteen years of service, till they are re-designated as Associate Professor, they hold only the post of Lecturter. Only after completion of thirteen years of service, without possessing the Ph.D., qualification, he or she will become a Professor. This is how the petitioners, who entered service as Lecturer, have been benefitted under the CAS, however, they cannot make any comparision or claim themselves to be equivalent with those who were recruited directly as Assistant Professor during various period between 2006 and 2009. The claim of the petitioners to claim themselves to be equivalent with that of the directly recruited incumbent who holds the post of Associate Professor, who enter the service with Ph.D., qualification and are placed in the higher scale of pay at their entry level itself. In the present case, admittedly, the petitioners have passed Ph.D., during the course of their employment on 16.07.2008 and 07.02.2008 respectively. Therefore also, the claim made by the petitioners to place them in the top of the seniority list than that of the directly recruited Assistant Professor (now re-designated as Associate Professor) deserve no merits.

21. The petitioners challenge the order passed by the first respondent in

G.O. (Ms) No.472, Higher Education (C2) Department dated 18.11.2015 on the ground that it is arbitrary and contrary to the UGC Regulations, 2010/AICTE Regulations 2010. It is seen from the said Order dated 18.11.2015 that it was issued on the request made by the second respondent - University for enhancement of pay to faculty members of Anna University who were appointed as Assistant Professor on or after 01.01.2006 and upto 09.09.2009 in the pre-revised scale of pay of Rs.12000-420-18300 in direct mode on par with GO Ms. No.179, Higher Education Department dated 14.10.2014. Upon considering such request made by the second respondent-University, the Government ordered that the directly recruited Assistant Professors in the pre-revised scale of Rs.12000-420-18300 in the second respondent University and it's constituent colleges between 01.01.2006 and 05.05.2010 be re-designated as Assistant Professors and be eligible to get the scale of pay of Rs.37400-67000 with AGP of Rs.9000/- subject to their terms and conditions of appointment and also subject to giving notional benefit from 01.01.2006 and monetary benefit from 01.01.2007. Thus, it is evident that the order in GO Ms. No.472, Higher Education Department dated 18.11.2015 came to be issued on the request made by the second respondent-University with respect to revision of pay applicable to the directly recruited Assistant Professors between 01.01.2006 and upto 09.09.2009. Admittedly, the petitioners were not directly recruited Assistant Professors. They hold the post of Assistant Professor under the CAS and therefore, in my considered view, the order, which is impugned in this writ petition, has no application at all to the petitioners and consequently, they cannot have any grievance against the implementation of the same. Even otherwise, while issuing the Regulations during the year 2010, AICTE and UGC

have clearly indicated that the concerned State Government, in their own discretion, shall take note of the local conditions and other factors to introduce scales of pay higher than those mentioned in their Regulations with effect from 01.01.2006. In exercise of such discretion conferred on the State Government, depending on the need and as a measure of clarifying the anomaly that existed between the directly recruited Assistant Professors and those who came to hold the post of Assistant Professor on re-designation under CAS, the order has been issued by the Government in GO Ms. No.472 dated 18.11.2015 and I see no reason to interfere with the same.

22. For the reasons stated above, the writ petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

23-11-2016

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Index : Yes

Internet : Yes

To

1. State of Tamil Nadu
rep. by Secretary to Government
Higher Education Department
Fort St. George
Chennai - 600 009
2. Anna University
rep. by Registrar
Guindy, Chennai - 600 025
3. All India Council for Technical Education
rep. by Chairman
7th Floor, Chanderlok Building

Janpath, New Delhi - 110 001

5. University Grants Commission
rep. by Secretary
Bahadur Shah Zafar Marg
New Delhi - 110 002

B. RAJENDRAN, J

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Pre-delivery Order in
WP No. 40301 of 2015

23-11-2016
<http://www.judis.nic.in>