IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **12.10.2022**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.17236 of 2022
and
W.M.P.Nos.16530, 16533 and 16536 of 2022

Dr.R.Rakkiyappan ... Petitioner

Vs.

1.The Registrar,
Bharathiar University,
Coimbatore - 641 046.

2.The Regional Joint Director,
Local Audit Fund Department,
Coimbatore - 641 046.

3.The Assistant Director,
Local Fund Audit,
Bharathiar University,
Coimbatore - 641 046.

4.University Grant Commission (UGC),
Bahadur Shah Zafar Marg,
New Delhi - 110 002. ... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the 2nd respondent in his proceedings dated Nil Audit Slip (Audit Para 26-2/2019-2020) communicated by the 1st respondent to the petitioner through letter dated 21.06.2022 and to quash the same as being illegal and unsustainable in law.

For Petitioner	:	Mr.N.Kavitha Rameshwar
For Respondents	:	Mr.Vigneswaran Standing Counsel Assisted by Mr.P.Vasantha Kumar and Mr.Sugan Rajan, Standing Counsel for R1 Mr.L.S.M.Hasan Fizal Additional Government Pleader for R2 and R3 Ms.V.Sudha Standing Counsel for R4

ORDER

This Writ Petition has been filed challenging an Audit Slip issued by the second respondent which has been communicated by the first respondent / University to the petitioner through letter dated 21.06.2022.

2. The petitioner is an Assistant Professor working in the first respondent / University. The fourth respondent (University Grants

Commission) in its XI plan had approved the appointment of the petitioner as Assistant Professor in the first respondent / University and as per the said XI Plan, the fourth respondent (University Grants Commission) agreed to maintain the petitioner by paying the petitioner's salary and other benefits for a period of five years. The first respondent / University, in terms of the XI Plan had also given an undertaking to the fourth respondent (University Grants Commission) that they shall maintain the petitioner and other staffs once the period of five years comes to an end. The period of five years has admittedly come to an end and presently the salary of the petitioner is being paid by the first respondent / University.

3. The petitioner has already been regularized in the service after completion of probation. The petitioner is aggrieved by the communication of the first respondent / University dated 21.06.2022, enclosing the Audit Slip issued by the second respondent. The Audit Slip, according to the petitioner, makes adverse reference to the petitioner. The observations made by the second respondent in the Audit Slip are as follows:

> *a) Since the files related to the appointment of the 23 faculty members appointed under XI*

Plan were not produced to audit. It is not known whether the 200 point Community Roaster was followed or not;

b) Since the guidelines stipulated by the UGC are not followed in the extension of service beyond the XI Plan period, the pay and allowance paid is not in order;

c) The absence Government Nominee and the Chancellors Nominee during the Selection Committee Meeting held on 24.02.2011 raised doubts over the appointments made, the reason for their absence shall be explained to audit;

d) The non adherence of the conditions like getting the approval of Tamil Nadu Government and UGC shall be explained the audit;

e) Since the extension of service beyond the XI Plan period itself is not in order, the total pay and allowance paid to them beyond the XI Plan period is held under Audit objection.

4. The petitioner is also aggrieved by the communication sent by the first respondent / University dated 21.06.2022 enclosing the Audit Slip issued by the second respondent. According to the petitioner, though several Assistant Professors were appointed under the UGC XI Plan, the impugned communication was sent to the petitioner, which is arbitrary and discriminatory. The petitioner is also aggrieved by the fact that under the circular dated 09.07.2021 issued by the first respondent / University, it has been made clear that the faculty members are also requested to specify the Audit objections / DVAC, if any, pending or not and it has been made clear in the said circular that the University will consider the application of the candidates under the UGC Career Advancement Scheme only if there are no Audit / DVAC objections.

5. According to the petitioner, in view of the Audit objections raised, the petitioner will be deprived of getting promotion under the UGC Career Advancement Scheme which is detrimental to the interest of the petitioner and it is also the petitioner's case that the petitioner has been singled out though there are several Professors / Assistant Professors / Lecturers who were appointed pursuant to the very same XI Plan of the UGC. However, it

is the contention of the first respondent / University that the Writ Petition filed by the petitioner is premature as the first respondent / University has communicated to the petitioner only the Audit Slip and have requested the petitioner to submit petitioner's reply. It is also stated by them that the UGC regulations also do not stipulate that if there is pendency of any Audit objections, the application seeking for promotion under UGC Career Advancement Scheme cannot be considered.

6. No counter affidavit has been filed by the fourth respondent (University Grants Commission) but instead the learned Standing Counsel for the fourth respondent (University Grants Commission) has placed before this Court the following:

a) UGC regulation 6.4 of 2010; and

b) Teaching Staff - XI Plan Sanction.

7. The second respondent have not filed their counter though they are represented by the learned Additional Government Pleader.

8. Admittedly, the first respondent / University has only sent a communication to the petitioner enclosing the Audit objections received by the first respondent / University, questioning the appointment of the petitioner. No final orders have been passed either suspending or removing the petitioner from service. Infact, the petitioner is continuing to receive salary and other perks as per the appointment order till date. The same is also not disputed by the learned counsel for the petitioner.

9. Under the impugned communication dated 21.06.2022, the petitioner was only requested to furnish reply to the Audit Report for the year 2019-2020 within a week to enable the first respondent / University to place the same before the Local Fund Audit for settlement. Even before any final decision has been taken pursuant to the Audit report, the petitioner has approached this Court which in the considered view of this Court is premature. However, the petitioner's interest as claimed in this Writ Petition will have to be protected till a final decision is taken, one way or another, with regard to the Audit report. Admittedly, the Audit Report has also not been sent directly to the petitioner and it was only forwarded by the first respondent / University to the petitioner.

10. The petitioner categorically contends in this Writ Petition that only by following the prescribed procedure as per XI Plan of the UGC, the petitioner was appointed and the appointment was legal. It is also contended by the petitioner that apart from the petitioner there were others appointed under XI Plan of UGC by the first respondent / University.

11. According to the petitioner, the petitioner has been singled out and the Audit Report is discriminatory in nature as the other appointments made under the very same XI Plan of UGC have not been questioned. All these contentions, the petitioner can very well raise in the petitioner's reply to be submitted to the first respondent / University, pursuant to the impugned communication dated 21.06.2022.

12. The petitioner categorically contends that in respect of the Audit objections, the petitioner has no role to play and therefore, the petitioner cannot specifically counter those Audit objections.

13. The circular dated 09.07.2021 issued by the first respondent / University with regard to the promotion under UGC Career Advancement

Scheme has made it clear that the University will consider only applications for promotion under UGC Career Advancement Scheme only if the candidates are not referred under any of Audit / DVAC objections. Since there are Audit objections against the appointment of the petitioner, the petitioner may not be in a position to apply under the UGC Career Advancement Scheme. It is also submitted by the learned counsel for the petitioner that the petitioner has already applied for promotion under UGC Career Advancement Scheme.

14. According to the petitioner, the petitioner was not called for interview only due to the fact that there are Audit objections pending against the petitioner, which was communicated to the petitioner by the first respondent / University's communication dated 21.06.2022.

15. The learned Standing Counsel appearing for the first respondent / University on instructions has also made a submission now before this Court that the first respondent / University will process the petitioner's application seeking for promotion under UGC Career Advancement Scheme on par with others in accordance with UGC Career Advancement Scheme

norms. Therefore, till a final decision is taken with regard to the Audit objections raised against the petitioner, the petitioner's right to seek promotion under the UGC Career Advancement Scheme cannot be deprived. Necessarily the first respondent / University will have to process the petitioner's application seeking for promotion under the UGC Career Advancement Scheme. Since the Writ Petition has been prematurely filed, this Writ Petition is disposed of by issuing the following directions:

a) The petitioner is permitted to send a reply to the impugned communication dated 21.06.2022 of the first respondent / University as well as the Audit objections enclosed along with the same, stating all the petitioner's contentions / objections within a period of two weeks from the date of receipt of a copy of this order;

b) On receipt of the said reply, the first respondent / University shall place the same before the Local Fund Audit, namely the second respondent herein, who will have to take an objective decision with regard to the reply sent by the petitioner and communicate the decision to the first respondent / University and fourth respondent (University Grants Commission).

c) On receipt of the communication from the second respondent, the first respondent / University shall communicate its decision to the petitioner. If aggrieved by any adverse decision of the first respondent / University, the petitioner is granted liberty to challenge the same in the manner known to the petitioner under law.

16. With the aforementioned directions, this Writ Petition is disposed of. No Costs. Consequently, connected Writ Miscellaneous Petitions are closed.

12.10.2022

Index : Yes/No
Speaking Order : Yes / No
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To

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ABDUL QUDDHOSE. J.,

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