



Writ Petition No.25389 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.25389 of 2019
and W.M.P.No.24931 of 2019

K.Meenambigai

... Petitioner

Vs.

1.The Registrar, The Tamil Nadu Agricultural University,
Tamil Nadu Agricultural University,
Coimbatore – 641003.

2.The Board of Management of Tamil Nadu
Agricultural University,
represented by its Member Secretary/Registrar,
TNAU, Coimbatore – 641003.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the order of the 1st respondent passed in his proceedings No.R1/Selvi.KM/Prog./Change of Pay Band/2019 dated 02.08.2019, served on the petitioner on 07.08.2019 and to quash the same.

For Petitioner : Mr.P.Ebenezer Paul
For Respondents : Mr.Abdul Saleem
Standing Counsel

ORDER

The prayer sought for herein is for a Writ of Certiorari to call for the records relating to the order of the 1st respondent passed in his proceedings



Writ Petition No.25389 of 2019

No.R1/Selvi.KM/Prog./Change of Pay Band/2019 dated 02.08.2019, served on the petitioner on 07.08.2019 and to quash the same.

2. The petitioner was appointed as Programmer in the respondent University in the year 2013. Her pay was fixed at Rs.15,600-Rs.39,100 with Grade Pay Rs.5400/-.

3. In that post, with the said scale of pay the petitioner was working for some years and only in the year 2019, the respondent University ie., Registrar of the respondent University has passed the impugned proceedings stating that the proper pay scale which should have been fixed for the petitioner in the post of Programmer was Rs.9300 – Rs.34,500 with Grade Pay of Rs.4,400/- and not the one already been fixed and paid to the petitioner. Therefore, in order to refix the said scale of pay, a direction was given to the Controller of University to revise the pay scale of the petitioner with effect from 11.11.2019 ie., retrospectively and the difference of excess of pay allegedly paid to the petitioner from 11.11.2019 till date of the order has to be recovered. The said order since has been passed on 02.08.2019 without any notice given in this regard to the petitioner, challenging the same on the prime ground of no notice has been given as well as on merits, the petitioner has moved this writ petition with the aforesaid prayer.



Writ Petition No.25389 of 2019

WEB COPY

4. Heard Mr.Ebenezer Paul, learned counsel for the petitioner, who pointed out that, at the time of inviting applications to the post of Programmer it was carrying the scale of pay of Rs.15,600-Rs.39,100 with Grade Pay Rs.5400/- and now after six years of working in that capacity, the present impugned order has been issued as if that the pay scale of the petitioner is not the correct scale of pay.

5. What is the correct scale of pay and on what basis that has been revised has not been stated and before passing the impugned order, no notice was issued for the proposed recovery for the alleged excess payment made to the petitioner and only on that ground the impugned order cannot be sustained, he contended.

6. Heard Mr.Abdul Saleem, learned Standing Counsel appearing for the respondent University. Learned Standing Counsel tried to sustain the impugned order by citing the reasons as averred in the counter affidavit. Though the learned Standing Counsel had made an attempt to sustain the impugned order, since no notice has been issued prior to the impugned order, as no such copy of notice has been filed or produced by the respondent University before this Court, it can only be construed that no such notice has been issued.



Writ Petition No.25389 of 2019

WEB COPY

7. It is a settled proposition of law right from 1978 in **Mohinder Singh Gill's case** that the veracity of the order which is under challenge before the Court of law cannot be improved by filing any counter affidavit / proceedings subsequently by the author of the order, who wants to defend the same.

8. Here in the case on hand, it is an admitted fact that, no notice has been issued to the petitioner before passing the order dated 02.08.2019, under which since it has impacted the pay scale as well as the monetary benefits of the petitioner, which was so far received by the petitioner and also for the future monetary benefits, a show cause notice ought to have been issued and since such show cause notice has not been issued, the order impugned dated 02.08.2019, on that ground itself shall be treated as *non-est* or it cannot be stated as an order passed by following the procedure established under law.

9. Therefore, on this ground this Court has no hesitation to hold that the impugned order shall not stand in the legal scrutiny. With the result, the following orders are passed in this writ petition.

- That the impugned order is set aside and the matter is remitted back to the University for reconsideration.



Writ Petition No.25389 of 2019

- While reconsidering the same, as to on what basis the new pay scale has been fixed for the post of Programmer has to be explained in the show cause notice, and after receipt of the show cause notice, it is open to the petitioner to give reply and based on the reply given by the petitioner, by considering the said reply and input if any to be supplied in this regard by the petitioner, it is open to the respondent University to pass orders afresh on merits and in accordance with law.

10. With these observations, this writ petition is disposed of. No costs.

Consequently, connected miscellaneous petition is closed.

06.07.2022

Index : Yes/No
Internet : Yes/No
KST
To

1.The Registrar,
The Tamil Nadu Agricultural University,
Coimbatore – 641003.

2.The Member Secretary/Registrar,
Board of Management of Tamil Nadu
Agricultural University,
Coimbatore – 641003.



WEB COPY



Writ Petition No.25389 of 2019

R. SURESH KUMAR, J.

KST

Writ Petition No.25389 of 2019
and W.M.P.No.24931 of 2019

06.07.2022