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W.P.(MD)NO.10890 OF 2019 & etc.,

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.10.2022

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

**W.P.(MD)Nos.10890, 11519 & 11751 of 2019 &
5673, 6429 & 7060 of 2021 &
W.M.P.(MD)Nos.8336, 8788, 8789, 8904, 9414, 9553 of 2019
& 4486, 5036, 5430, 7339, 7491, 7682 & 17123 of 2021 &
CONT.P(MD)No.115 of 2020 in W.P.(MD)No.11751 of 2019,
CONT.P.(MD)No.744 of 2021 in W.P.(MD)No.5673 of 2021,
CONT.P.(MD)No.794 of 2021 in W.M.P.(MD)No.5036 of 2021
and
CONT.P.(MD)No.814 of 2021 in W.P.(MD)No.7060 of 2021**

W.P.(MD)No.10890 of 2019 : -

Dr.S.Irulappan,
Head of Department,
Department of Commerce,
Madurai Kamaraj University College,
Alagarkovil Road,
Madurai -2.

... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Higher Education Department,
St.George Fort, Chennai.
2. The Registrar,
Madurai Kamaraj University,
Palkalai Nagar,
Madurai – 625 021.
3. The Vice Chancellor,
Madurai Kamaraj University,
Palkalai Nagar, Madurai – 625 021.



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4. The Principal,
Madurai Kamaraj University,
Alagar Kovil Road,
Madurai – 625 002.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents to permit the petitioner to continue to work as Head of the Department (Commerce) in the cadre of Associate Professor till the petitioner attains the age of 60 with all service and monetary benefits.

For Petitioner : Mr.M.Ajmal Khan, Senior Counsel,
for M/s.Ajmal Associates.

For R-1 : Mr.N.Sathees Kumar,
Additional Government Pleader.

For R-2 to R-4 : Mr.Isaac Mohanlal,
Senior Counsel,
for M/s.Isaac Chambers.
* * *

COMMON ORDER

Heard Mr.M.Ajmal Khan, the learned Senior counsel,
Mr.T.Lajapathi Roy and Mr.N.Dilipkumar, the learned counsel
appearing for the petitioners and the learned Additional
Government Pleader appearing for the State and Shri.Isaac



Mohanlal, the learned Senior counsel appearing for the University.

2.The writ petitioners herein were working in Madurai Kamaraj University College, Madurai. The only question that arises for consideration is whether their retirement age is 58 or 60. When the writ petitions were filed, interim direction was granted in their favour and they continued to work up to the age of 60 as the writ petitions could not be taken up for disposal earlier. The petitioners however complain that they had not been paid salary for the said period and that they have also not been disbursed with the terminal benefits. In fact, the petitioners have also filed writ petitions seeking such payment. Even though the interim direction was issued, the same has not been complied with. That led to the filing of contempt petitions also.

3.The learned Senior counsel and the learned counsel appearing for the writ petitioners took me through the averments set out in the affidavits filed in support of the writ petitions. They pointed out that MKU college was established



by the Madurai Kamaraj University in the year 1994 and that the syndicate passed a resolution that the scale of pay followed in the University be applied to teaching and non-teaching staff working in MKU college and that they will be governed by the University regulations. A copy of the syndicate sub-committee minutes dated 19.06.1994 has been enclosed in the typed set of papers.

4. My attention has also been drawn to the relevant definitional clauses set out in Section 2 of the Madurai Kamaraj University Act. The argument of the learned Senior counsel and the learned counsel for the writ petitioners is that the college in question is a University college as defined in Section 2(r) of the Act. They contrasted the position of MKU college with reference to the constituent colleges of the University. Clause 7 of Chapter-8 of the statutes of the University states that 60 years will be the retirement age of the teaching staff of the University. Since the petitioners are also governed by the University regulations, their retirement age will be 60 and not 58.



5.The petitioner in W.P.(MD)No.11751 of 2019 was appointed in Madurai Kamaraj University on 09.12.1994 on consolidated basis. Her appointment was regularised as Assistant Professor in the department of Business Administration with effect from 01.07.2006. The Principal in-charge sent a communication dated 28.01.2019 to the Heads of various sections seeking issuance of “No Due Certificate” in respect of the writ petitioner. In the said communication, the date of retirement of the writ petitioner as well as that of Dr.S.Irulappan were mentioned as 31.05.2019 and 30.04.2019 respectively. Hence, Dr.B.Krishnaveni and Dr.S.Irulappan filed W.P.(MD)No.11751 of 2019 and W.P.(MD)No.10890 of 2019 for directing the respondents to permit them to continue in the service of MKU college by fixing their retirement age as 60 along with all consequential benefits.

6.Thiru.R.Panneerselvam, petitioner in W.P.(MD) No.11519 of 2019 was appointed as a Lecturer to handle the subject of Hotel Management on 22.07.1995. When the University started Centre for Tourism and Hotel Management in the year 2012, the petitioner was transferred to the said



Centre with effect from 01.10.2014. This was done based on the syndicate resolution dated 21.08.2012. By the impugned communication dated 30.04.2019, he was transferred back to MKU college. Questioning the same, W.P.(MD)No.11519 of 2019 came to be filed.

7.The issue raised in all these writ petitions is one and the same. Interim orders were granted in favour of all the writ petitioners. Even though Madurai Kamaraj University filed petitions for vacating the interim orders, they could not be taken up for disposal. The writ petitioners were also not paid their monthly salaries. That led to the filing of W.P. (MD)Nos.5673, 6429 & 7060 of 2021.

8.The respondents have filed detailed counter affidavits in all the writ petitions and the learned Senior counsel appearing for the University took me through their contents. He contended that the writ petitioners cannot be placed on par with the University teaching staff. He also submitted that their retirement age is only 58 and not 60. He pressed for dismissal of the writ petitions.



9.I carefully considered the rival contentions and went through the materials on record.

10.Madurai Kamaraj University was established by the Tamil Nadu Act 33 of 1965. The statutory scheme contemplates different types of colleges. They can be broadly classified as affiliated colleges, constituent colleges and University colleges. Section 2(a), 2(cc) and 2(r) of the Act are as follows:-

“(a) “affiliated college” means any college within University area affiliated to the University and providing courses of study for admission to the examinations for degrees of the University and includes a college deemed to be affiliated to the University under this Act.

(cc) “constituent college” means Government Arts College, Melur and Sri Meenakshi Government Arts College for Women, Madurai.

(r) “University college” means a college or a college combined with a research institute maintained by the University (whether instituted by it or not) and providing courses of study leading up to the post-graduate and professional degrees. ”



11. There is no doubt that Madurai Kamaraj University college was started only by Madurai Kamaraj University in the year 1994. The syndicate sub-committee resolved on 19.06.1994 to run the said college as a constituent unit of the University. It was further resolved that the scale of pay followed in the University be applied to all the teaching and non-teaching staff working in MKU College and that they will be governed by the University regulations. Though the learned Senior counsel and the learned counsel appearing for the writ petitioners laid considerable emphasis on the aforesaid resolution, I am not impressed by the same. Since the college was established by Madurai Kamaraj University, as its constituent unit, in the very nature of things, it has to be governed by the University regulations. If the staff of the said college are to be treated as University staff for all purposes, then there was no need for passing a specific resolution that the scale of pay followed in the University should be applied to them also. Since resolution of the syndicate was required for extending the benefit enjoyed by the University staff, formal resolution had to be passed on each occasion. It is well known that the University staff are entitled to the benefit of what is



known as Career Advancement Scheme (CAS). The lecturers working in Madurai Kamaraj University college made a request for implementation of revised UGC scale of pay in the year 2000. The finance sub-committee in its meeting held on 23.05.2000 passed the following resolution:-

“Resolved that it be a recommendation to the Finance Committee UGC revised scales of pay for the lecturers of Madurai Kamaraj College be implemented with effect from 01.07.2000 (next academic) subject to the following conditions that,

(i) No arrears be paid in this respect as it is not reimbursable from the State Government or UGC.

(ii) The implementation is linked to the periodical income of the college.

(iii) The fees for the 1st year students be increased at the rate of 10% every year.

(iv) The teachers of the Madurai Kamaraj University College are not entitled for the Career Advancement Scheme.

(v) The age of retirement shall be 58 years.

(vi) The work load of the teacher in full employment should not be less than 40 hours a week for 30 working weeks (180 teaching days) in an academic year. The direct teaching hours per week should be 16 hours. ”



12.This issue was taken up by the syndicate on 24.06.2000 and the following resolution was passed:-

“ Item No.23

Considered the minutes of the meeting of the Finance Committee held on 24.05.2000 in the Chambers of the Secretary, Higher Education Department, Secretariat, Chennai.

FINANCE ACCOUNTS SECTION-I

RESOLVED that the minutes of the meeting of the Finance Committee held on 24.05.2000 be approved with the following modification and that the Vice-Chancellor be authorised to take necessary action.

The Finance Sub-Committee Item No.2 Para IV may be read as follows:

' The teachers of Madurai Kamaraj University College are entitled for Career Advancement Scheme subject to financial viability of the College....”



13. Thus, as early as in the year 2000, the syndicate of Madurai Kamaraj University had decided that the retirement age of the staff of the MKU College will be 58 and not 60. Though there is nothing on record to show that this was formally served on the writ petitioners, one can very well infer that the petitioners were aware of it. This is because, the said resolution itself came to be passed to consider the request of the lecturers working in MKU College to implement the revised UGC scale of pay. They wanted extension of the Career Advancement Scheme. When these benefits were provided to the writ petitioners only by virtue of the aforesaid syndicate resolution dated 24.06.2000, that part of the resolution of the finance sub-committee as confirmed by the syndicate holding that the retirement age will be 58 years would have obviously been known to the petitioners. If what is applicable to the University staff would also be applicable to the teaching staff working MK University college automatically, then, there was no need for passing such a resolution extending the benefit of CAS and providing for implementing the revised UGC scale of pay. In any event, in the typed set of papers served more than a year back, the



respondents had enclosed the copy of the said resolution. The writ petitioners have not chosen to amend the writ prayer. This resolution has remained unchallenged till date.

14. There is yet another aspect and that is Clause 38 in Chapter XXVI of Statutes of Madurai Kamaraj University. Sub-clause 3-A of Clause 38 in Chapter XXVI of the Act clearly states that the teaching and non-teaching staff of Madurai Kamaraj University shall be treated as a separate unit for the purpose of appointment, promotion and deputation except in the case of teaching and non-teaching staff who are drafted from the University on deputation. This Sub Clause 3-A of Clause 38 clearly reveals the true character of MKU College. If MKU College is a part of the University, then the question of deputation will not arise at all. It is true that in the case of Thiru.R.Paneerselvam, the petitioner in W.P.(MD)No.11519 of 2019, the expression “transfer” has been used in the impugned order. But in the minutes of the meeting of the Syndicate dated 21.08.2012, which is the basis of the order dated 01.10.2014, one can note that Thiru.R.Panneerselvam was sent only on deputation from Madurai Kamaraj University College to the Centre for Tourism and Hotel Management.



15.Madurai Kamaraj University college was set up as a self-sufficient unit. In other words, it was not receiving any grant from UGC directly and it was not receiving any grant from the University also. Teaching and non-teaching staff were to be paid out of the fees received from the students. The expression “ University college ” is defined in Section 2(r) of the Act as the college maintained by the University. In this case, strictly speaking, the University has not been maintaining the college. The income generated by MKU College on its own alone has been helping it to maintain itself. Therefore, it is doubtful if it would fall within the expression “University college”.

16.Of course, my attention has been drawn to the order dated **10.11.2021** made in ***W.P.(MD)No.6344 of 2020 (R.T.Saroja V. Mother Terasa Women's University, Rep. By its Vice Chancellor, Kodaikanal)***. A learned Judge of this Court has held that the staff working in the Women's University College of Education, Kodaikanal must be treated as an University employee and that her retirement age must be considered as 60 and not 58. The reply given under the



RTI Act by the Alagappa University also is on the same lines.

But the case on hand is different. It is not known as to whether the features mentioned above are obtaining in the said two Universities.

17.I sustain the contention of the learned Senior Counsel appearing for the University and hold that the retirement age of the writ petitioners who worked as teaching staff in MKU College must be taken only as 58 and not 60. To sum up, the following are the reasons for coming to the said conclusion:-

“a)The Syndicate resolution dated 24.06.2000 had clearly held that the retirement age of the writ petitioners will be 58 and not 60. Though the writ petitioners are aware of the same, they have not chosen to challenge it. The Syndicate resolution is obviously binding on the writ petitioners.

b)If the petitioners are also University staff, the question of the Syndicate having to pass resolutions extending the scale of pay followed in the University to them also or to implement the



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revised UGC scale of pay or to extend the Career Advancement System would not have arisen at all.

c) Clause 38 of Chapter XXVI of the Act mentions that MKU college will be a separate unit. The college is a self-sustaining institution. The University has not assumed the exclusive responsibility of maintaining it. It cannot be considered as an University college as defined in the Act.

d) The resolution of the syndicate of the University as well as the UGC norms refer to MKU College as a constituent college.”

18. Though I have held that the petitioners ought to have been retired at the age of 58, the fact remains that they had worked till the age of 60 years. The principle of quantum meruit is applicable. The petitioners however will be paid the same scale of pay which they enjoyed when they reached the age of superannuation, namely 58. Their pension and other retirement benefits will be fixed based on the said pay. The employer will send the pension proposals without any delay and the pensionary and retirement benefits shall be disbursed to the petitioners within a period of sixteen weeks from the



date of receipt of copy of this order. The petitioners shall also be paid the salary as mentioned above for the period of two years that is the period between the date when they reached the age of superannuation and the date when they reached the age of sixty.

19. With these directions, the writ petitions are disposed of. Consequently, connected miscellaneous petitions are closed. No costs. In view of the orders passed in the writ petitions, contempt petitions are closed.

11.10.2022

Index : Yes / No
Internet : Yes/ No
PMU/skm

To:

1. The Principal Secretary to Government,
Higher Education Department,
St. George Fort, Chennai.
2. The Registrar, Madurai Kamaraj University,
Palkalai Nagar, Madurai – 625 021.



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3. The Vice Chancellor,
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4. The Principal,
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Madurai – 625 002.



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W.P.(MD)NO.10890 OF 2019 & etc.,

G.R.SWAMINATHAN, J.

PMU/skm

W.P.(MD)No.10890 of 2019 & batch

11.10.2022