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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 09.11.2022

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

WP(MD)No.5700 of 2018

and

**WMP(MD)Nos.5584, 5585, 11127 of 2018, 10997, 10998 of
2019 & 7821 of 2022**

S.Baskaran

... Petitioner

vs.

1.State of Tamil Nadu,
Rep.by its Secretary,
Tamil Development Department,
Fort St.George, Chennai – 600 009.

2.Tamil University,
Rep.by its Registrar,
Tamil University,
Thanjavur – 613 005.

3.The Syndicate of the Tamil University,
Rep.by its Secretary,
Tamil University,
Thanjavur – 613 005.

4.The Assistant Director,
Local Fund Audit,
Tamil University,
Thanjavur – 613 005.

... Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the entire records leading to the issue of proceedings bearing Na.Ka.No.A1/1883/2016, dated 08.12.2017 on the file of the 2nd respondent herein and quash the same and forbear the Respondents 1 to 4 herein from disturbing the petitioners functioning as Senior Programmer / Associate Professor and Head of the Department of Computer Science, Tamil University, Thanjavur till he attains superannuation at the age of 60 years.

For Petitioner : Mr.K.Sridhar

For Respondents : Mr.M.Sathees Kumar,
Additional Government Pleader for
R1 and R4

Mr.T.Sakthi Kumaran for R2 & R3

ORDER

Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader appearing for R1 and R4 and the learned standing counsel appearing for R2 and R3.

2.The petitioner questions the impugned communication dated 08.12.2017 issued by the second respondent calling for petitioner's response to the audit objections raised with regard to treating the petitioner as an academic staff.



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3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition and called upon this court to quash the impugned communication and directed the respondents to disburse the terminal benefits payable to him.

4.The university as well as the local fund audit have filed their counter affidavits and the learned counsel took me through their contents. Their stand is that the petitioner is not qualified to hold the teaching post. According to them, he was erroneously made as Assistant Professor and later Associate Professor and career development scheme was also wrongly applied. They also contended that the petitioner was wrongly treated on par with the teaching faculty and that he had drawn emoluments which he was not eligible to draw. They further add that objections have been raised right from the year 2002 onwards. The objections were never dropped. In any event, the impugned communication merely calls upon the petitioner to offer his response and nothing more. They would submit that the very filing of this writ petition is misconceived and premature. They called for dismissal of the writ petition.



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5.I carefully considered the rival contentions and went through the materials on record. The Tamil University was founded in the year 1981. A notification was issued on 27.12.1985 calling for applications from eligible candidates for the post of programmer. The petitioner applied in response thereto. The petitioner had earlier entered service as a Data Compiler in the year 1984 and he was appointed as Data Entry Operator with effect from 10.02.1985. He was found eligible and appointed with effect from 18.07.1986 as Programmer in the cadre of Lecturer. The petitioner has enclosed a copy of the one man committee report dated 30.05.1994 in the typed set of papers. A careful reading of the same indicates that some of the staff appointed under Computer Centre were brought under the category of academic staff. The petitioner was one of the three persons who were treated as academic staff. This distinction between academic and non-academic staff found in the report of the one-man committee contains the key to the issue raised in this writ petition. The moment the petitioner was considered as an academic staff, then, obviously, he will have to be considered only as part of the teaching faculty. In the year 1994, the syndicate had accepted the recommendation of the academic staff promotion committee and promoted the petitioner as Senior Programmer in the rank of Associate Professor vide Resolution No.94.107. The petitioner



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was made Senior Programmer with effect from 01.10.1996. Copy of the statement of payment of fixation of pay has been enclosed in the typed set of papers. On going through the same, one can note that it was approved by every official starting from the Assistant Director, Local Fund Audit up to the Vice Chancellor of the University. Only in the year 2002, objections appears to have been raised for the first time. The syndicate of the university had been consistently supporting the case of the petitioner and calling upon the local fund audit to drop the objections. It is true that the objections were raised from the year 2002 onwards. It has to be noted that it never culminated in any formal order. Following the nudging in the year 2016, the impugned communication came to be issued by the Registrar, Tamil University.

6.Let me consider the question as to whether the writ petition has been prematurely filed. It is true that in normal circumstances, the writ court will not interfere at the notice stage. It is well settled that a notice calling upon a person to offer his response does not infringe the rights of the noticee. In such circumstances, the employer concerned would give an opportunity to the noticee to file his explanation to the notice. But in the present case, there is a clear give away in the notice itself. It states that the petitioner has to retire on 30.06.2018 at the



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age of 58. In other words, the Registrar of the University had already made up his mind that the petitioner does not belong to the academic staff category. If the petitioner is treated as belonging to the teaching faculty, then, his retirement age is 60. Since the Registrar of the University had acted following audit objections, the petitioner was called upon to offer his views regarding refund of the so called excess payment. Therefore, I reject the objection anchored on maintainability.

7.Coming to the merits of the matter, the records filed by the petitioner clearly indicate that the petitioner did not commit any misrepresentation. It was the syndicate which treated the petitioner as an academic staff and conferred all the corresponding benefits. It made him lecturer, Associate Professor and also HOD. It also granted the benefit of career development scheme. When the employer on his own chose to grant certain pay and other service benefits to the employee and when there is nothing illegal about the same, the same cannot be subsequently withdrawn. The writ petition was admitted by this Court and after taking into account the overall circumstances, it granted interim order of stay. The petitioner has also served the university up to the age of sixty years. Now, the only question that arises for consideration is whether the petitioner should be called upon to refund what is characterized as excess payment.



8. The issue raised in this writ petition is no longer res integra.

The Hon'ble Supreme Court in the decision reported in **(2015) 4 SCC**

334 (State of Punjab vs. Rafiq Masih) had held that recovery from retired employees or who are due to retire within one year of the order of recovery would be impermissible in law. The Hon'ble Supreme Court has held as follows :

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher



post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

The case of the petitioner would fall within the aforesaid clause (ii) and (iii). I have already noted that it was the university which conferred all the benefits on the petitioner. When the petitioner cannot be imputed with any act of wrong doing, the impugned notice smacks of arbitrariness and unfairness. The learned counsel for the petitioner has enclosed slew of material indicating that the petitioner was treated as an academic staff all along. The books authored by him have been produced before me and his services have been recognized by the government of Tamil Nadu. What surprises me is that the University which stood like rock on the side of the petitioner all along had suddenly chose to turn turtle at the fag end. This is probably because everyone is afraid of audit objection. The impugned notice is quashed. It is declared that the petitioner was rightly treated as an academic staff. He should be allowed to retire as Associate Professor in the



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respondent university. His pay and pensionary benefits will be reckoned accordingly and the respondents are directed to disburse the pensionary and other terminal benefits within a period of twelve weeks from the date of receipt of copy of this order.

9.This writ petition is allowed. No costs. Connected miscellaneous petitions are closed.

09.11.2022

Index : Yes / No
Internet : Yes/ No
skm

To

- 1.The Secretary, Tamil Development Department,
Fort St.George, Chennai – 600 009.
- 2.The Registrar, Tamil University, Tamil University, Thanjavur – 613 005.
- 3.The Secretary, The Syndicate of the Tamil University,
Tamil University, Thanjavur – 613 005.
- 4.The Assistant Director, Local Fund Audit,
Tamil University, Thanjavur – 613 005.



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G.R.SWAMINATHAN, J.

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