



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD) .Nos.6389 and 6390 of 2014

and

M.P. (MD) .Nos.1 and 2 of 2014 and 1 and 2 of 2014

W.M.P. (MD) .Nos.2828, 2829 of 2016, 355 and 356 of 2017

WEB COPY

W.P. (MD) .No.6389 of 2014

G.Mohankumar

... Petitioner

Vs.

1.The Government of India,
Represented by its Secretary to Government,
Ministry of Agricultural and Irrigation Department,
New Delhi.

2.The State of Tamil Nadu,
Represented by its Secretary to Government,
Information and Tourism Department,
Fort St. George, Secretariat,
Chennai - 600 009.

3.The Director of Tourism,
Chennai - 600 015.

4.The Principal and Secretary,
State Institute of Hotel Management
and Catering Technology,
Thuvakkudi, Trichy - 620 015.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of the fourth respondent in Proc.No.SIHM/32nd BOG/2006/670, dated 17.08.2006 and the consequential order of the fourth respondent in Proc.No.SIHM/32nd BOG/2008/886, dated 12.11.2008 and the re-fixation order of the fourth respondent in No.SIHMCT/Estt/2008, dated 21.01.2009 and the recovery order of the fourth respondent in Proc.No.SIHM/Pr1 i/c/38th BOG, dated 14.03.2012 and the recovery proceedings of the fourth respondent in Proc.No.SIHM/Recovery, dated 21.12.2012, quash the same and consequently direct the respondents to implement the orders passed in 31st meeting in Proc.No.SIHM/31st BOG/Restru.001/2006, dated 17.05.2006 with all monetary and service benefits.

W.P. (MD) .No.6390 of 2014



Vs .

1.The Government of India,
Represented by its Secretary to Government,
Ministry of Agricultural and Irrigation Department,
New Delhi.

2.The State of Tamil Nadu,
Represented by its Secretary to Government,
Information and Tourism Department,
Fort St.George,
Secretariat,
Chennai - 600 009.

3.The Director of Tourism,
Chennai - 600 015.

4.The Principal and Secretary,
State Institute of Hotel Management
and Catering Technology,
Thuvakkudi,
Trichy - 620 015.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of the fourth respondent in Proc.No.SIHM/32nd BOG/2006/670, dated 17.08.2006 and the consequential order of the fourth respondent in Proc.No.SIHM/32nd BOG/2008/886, dated 12.11.2008 and the re-fixation order of the fourth respondent in No.SIHMCT/Estt/2008, dated 21.01.2009 and the recovery order of the fourth respondent in Proc.No.SIHM/Pr1 i/c/38th BOG, dated 14.03.2012 and the recovery proceedings of the fourth respondent in Proc.No.SIHM/Recovery, dated 21.12.2012, quash the same and consequently direct the respondents to implement the orders passed in 31st meeting in Proc.No.SIHM/31st BOG/Restru.001/2006, dated 17.05.2006 with all monetary and service benefits.

For Petitioner : Mr.P.Saravana Kumar

For R-1 : Mr.S.Jeyasingh,
Senior Panel Counsel,
Government of India.

For R-2 and R-3 : Mr.P.Thambidurai,
Government Advocate (Civil Side).

For R-4 : Mr.R.Anandharaj
(In both Writ Petitions)



COMMON ORDER

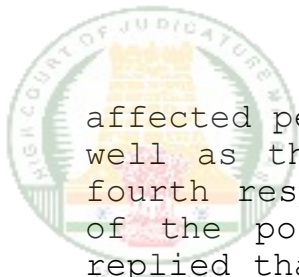
The writ petition is filed to quash the impugned orders wherein it has refixed the salary and recovered the excess payment and to direct the respondents to implement the 31st meeting resolution dated 17.05.2006 with all monetary and service benefits.

2. The petitioner in W.P.(MD)No.6389/2014 namely Mr.G. Mohankumar was appointed in the fourth respondent institute as Assistant Lecturer - cum- Assistant Instructor on 05.12.1986 and promoted as Lecturer-cum-Lecturer from 01.07.1992. Further promoted as Senior Lecturer in the year 2003 as per the minutes of the Departmental Committee held on 28.01.2002, which was approved by the minutes of the 25th Board of Governors meeting held on 25.03.2003 vide Subject 25.10. The petitioner in W.P.(MD)No.6390/ 2014 namely Mr. M.Sugumaran was appointed in the fourth respondent institute as Assistant Lecturer on 02.01.1997 and promoted as Lecturer in the year 2003 as per the minutes of the Departmental Committee held on 28.01.2002, which was approved by the minutes of the 25th Board of Governors meeting held on 25.03.2003 vide Subject 25.10. When the 5th Pay Commission recommendation was introduced by the second respondent to all the State Government employees, the second respondent also issued an order in G.O.Ms.No.445, Information and Tourism Department, dated 27.10.1989 introducing the said scales of pay to the fourth respondent institution also. The scale of pay with respect to teaching staffs are revised as follows:

Name of the Post	Existing Scale	Revised Scale
Instructor/Lecturer	1340-75-1175-90-2435	2200-75-2600-10-4000
Assistant Instructor/Lecturer	1160-50-1460-70-1950	1820-60-2300-75-3200

And subsequent to the said order, the Lecturer in the said fourth respondent institution were getting revised scale of pay.

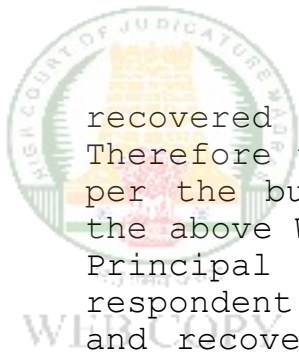
3. Due to increase in strength of students, the second respondent decided to sanction certain additional post. The second respondent issued G.O.Ms.No.110 Information and Tourism Department dated 04.05.1999 sanctioned two posts of Lecturer and two posts of Assistant Lecturer. However, the pay scale was fixed for the Lecturer post at Rs.1820-60-2300-75-3200 and Assistant Lecturer post was fixed at 1640-60-2600-75-2900 and some of the candidates were appointed as per G.O.Ms.No.110. The petitioners in this writ petition were appointed even prior to the said G.O.Ms. No. 110 based on the terms of contract. The petitioner is aggrieved because he was given the lower scale of pay thereby making same set of teaching staffs getting two different scales of pay in the same institute. The first respondent has arbitrarily created a division classifying the same set of teaching staff in a different pay scale. Similarly



affected persons submit a representation to the second respondent as well as the fourth respondent. The second respondent directed the fourth respondent vide order dated 28.08.1996 to state the details of the post of Lecturers and Instructors. The fourth respondent replied that the post of Lecturers and Instructors-cum-Lecturers are one and the same. Likewise, the post of Assistant Lecturer and Assistant-Lecturer-cum-Assistant-Instructor are one and the same. The fourth respondent also stated that such redesignation was done as early as on 30.10.1981 by the Board of Governors in order to have uniformity of designation prevailing in other Government institutions. Even the qualifications for both the posts are the same. Even after this clarification, no steps were taken to rectify the pay anomaly. Therefore, the petitioner is forced to submit representation dated 13.12.1995, 06.02.1996, 25.03.1996 and 11.07.1996 to the third respondent to expediate the grant of proper scale of pay. The entire issue was under consideration.

4. While that being so, on 14.09.1996, three posts of Lecturer and four posts of Assistant Lecturer were called for with a scale of pay found in G.O.Ms.No.447 dated 27.10.1989 and appointments were made and the Juniors are getting higher scale of pay. The petitioner alone getting lower scale of pay. Therefore, the petitioner along with three others approached the Court in W.P. (MD).No.14773 of 1997 for implementation of the pay fixed in G.O.Ms.No.447 dated 27.10.1989. The fourth respondent and the Board of Governors took up the issue in 21st Board meeting, the Board of Governors accorded approval of bunching of six categories of faculty in two categories with notional fixation from the date of joining, but monetary benefits from the date of implementation of the revised scale of pay i.e., 01.01.1996. The fourth respondent by his proceedings dated 19.04.2001 grooved the six categories of faculties staff into two categories on condition that the Writ Petition shall to be withdrawn. Thus based on the bunching of post, notional benefit was given from the date of joining and monetary benefits from 01.01.1996 and as per the condition, W.P.No.14773 of 1997 was withdrawn.

5. After the conversion of the Food Craft Institute into State Institute of Hotel Management, the restructuring of the staff had taken place and internal promotions were decided based on the approval of Board of Governors. The institution was affiliated to the "All India Council for Technical Education" (AICTE). On 17.08.2006, it was ordered that granting higher scale of pay than prescribed in G.O.Ms.No.88, Information and Tourism Department, dated 05.05.1999 by way of upgradation, restructuring and bunching of post, promotion as resolved in earlier Board Meeting without the Government approval after 01.01.1996 was cancelled. Therefore, the Staff Association filed petition before this Court. It was also stated by the 4th respondent that the excess amount paid will not

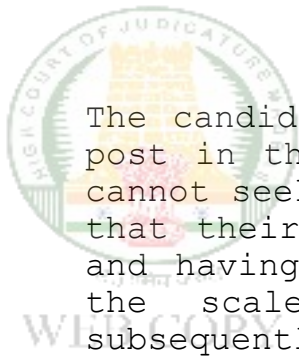


recovered till the consideration and decision of the Government. Therefore this Court granted stay and thereafter pay was granted as per the bunching of post and the promotion order. Unfortunately, the above Writ Petition was dismissed for non-prosecution before the Principal Bench. After dismissal of the writ petition the 4th respondent in the 32nd Board Meeting has implemented the refixation and recovery from the month of November 2000. Before implementing the recovery order no notice was issued to any of the persons including the petitioner.

6. On 02.05.2012, the petitioner submitted a representation to the second respondent expressing his grievance about the pay anomaly. Since the petitioner pay would be reduced by nearly Rs.6600/- per month and if recovery is made for no fault of the petitioner, he would be seriously prejudiced. Based on the assurance, the earlier Writ Petition was also withdrawn. Therefore, the petitioner filed this Writ Petition seeking to quash the impugned order dated 17.08.2006 and refixation order dated 21.01.2009 and the recovery order dated 14.03.2012 and the recovery proceedings dated 21.12.2012 and consequently direct the respondents to implement the order of the 31st meeting dated 17.05.2006 with all monetary and service benefits.

7. The petitioner also contended the same issue was challenged before this Court in W.P.(MD).No.8262 of 2009 filed by one Karthikeyan. This Court vide order dated 30.10.2010 directed the Government to pass orders within time frame, but till now there was not final decision taken in the entire issue.

8. The fourth respondent had filed the Vacate Stay Petition along with counter and another counter was also filed. It has been stated that the 4th respondent is registered under the Tamil Nadu Societies Registration Act, 1975 as per G.O. Ms. No. 186 Education Department dated 01.02.1980 and is governed by Board of Governors. The society has its own byelaws and other regulations and as such it cannot be construed as "State" within the meaning of Article 12 of the Constitution. The Board of Governors is empowered to create posts, fix the pay scale depending on the need and fund position of the Institute. The 2nd respondent issued G.O. Ms. No. 110 dated 04.05.1994 sanctioning two posts of Instructor-Cum-Lecturers in the pay scale of Rs.1820-60-2300-75-3200 and two posts of Assistant Instructor-Cum-Assistant Lecturer post was fixed at 1640-60-2600-75-2900 with a view of upgrading the institution to cope with the increase of student strength. Notification calling for the recruitment of the aforesaid posts in the above scale of pay was released in December 1994 and the writ petitioners were appointed.

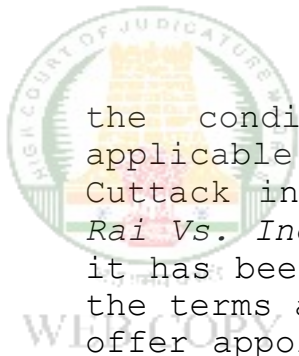


The candidates are fully aware that they would be appointed in the post in the scale of pay as mentioned in the notification and now cannot seek higher pay. The present writ petitioners are fully aware that their terms of contract specifically stated the scale of pay and having accepted the writ petitioners cannot go back and claim the scale of pay applicable for the candidates recruited subsequently.

9. A notification was released on 14.09.1996 for the recruitment of three posts of Lecturer and four posts of Assistant Lecturers in the pay scale indicated in G.O. Ms. No. 447 which is higher than the post held by the petitioner. The petitioners had an opportunity to apply for the higher scale position in response to the notification dated 14.09.1996 like one of the Assistant Lecturers who were recruited through the notification of July 1995 applied for Lecturer post in response to the notification dated 14.09.1996 and was selected as Lecturer. The petitioner had another opportunity to approach the Board of Directors or the High Court to challenge the higher scale of pay in the advertisement 14.09.1996 before the selection of candidates for the said notification, but failed to do so. The petitioner had alleged pay anomaly with the juniors but has not impleaded any of the juniors and the petition suffers from non-joinder of necessary parties. The petitioner along with three other persons filed the Writ Petition in W.P.No.14773 of 1997 for implementing the G.O.Ms.No.447 dated 27.10.1989 which was subsequently withdrawn after the Board of Governors bunched the six categories of posts into two and the anomaly was rectified and monetary benefits were given to the petitioner from 01.01.1996. But the above bunching of posts was done by the Board of Governors without any approval from the Government and the same was cancelled by the second respondent by its impugned order dated 17.08.2006. Therefore, the petitioner is not entitled to any relief as claimed for.

10. Heard Mr.Mr.P.Saravana Kumar, learned counsel for the petitioner and Mr.Nanda Gopal, learned Central Government Standing Counsel for the first respondent and Mr.P.Thambidurai, learned Government Advocate (Civil Side) for the second and third respondents and Mr.R.Anandharaj, learned counsel for the fourth respondent.

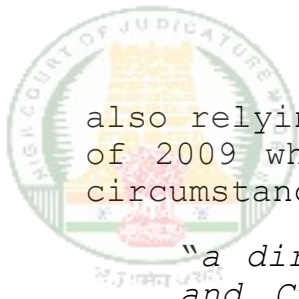
11. The contention of the petitioner is that he should be treated on par with existing employees who are working in the said post and that they should be paid service and monetary benefit as stated in G.O.Ms.No.447. The contention of the respondents is that since the petitioner was appointed under G.O.Ms.No.110 they cannot seek the benefits of G.O.Ms.No.447. It is an admitted fact that the petitioner and others were recruited through G.O. Ms. No. 110 and



the condition stipulated in that Government Order will be applicable. The issue was considered in the High Court of Orissa at Cuttack in *W.P.(C).No.21593 of 2016 in the case of Abhishek Kumar Rai Vs. Indian Institute of Technology, Bhubaneswar, Khurda*, therein it has been held as once the contract has been entered by accepting the terms and conditions, thereafter, it was issued in the shape of offer appointment and once it has been accepted, the same cannot be re-written by the Court of law by striking it down after accepting it for substantial period. Therefore, this Court is of the considered opinion that the petitioner cannot seek to rewrite the contract or terms of agreement or contents of Government Order and hence the petitioner is not entitled to claim any benefits on par with the existing employees who are recruited under G.O.Ms.No.447 since the petitioner is already recruited under G.O.Ms.No.110.

12. The contention of the petitioner is that the Board of Governors have accepted the plea of the petitioners and have granted the salary on par with other staff from 01.01.1996 onwards. It is seen that the fourth respondent was originally a society registered under Tamil Nadu Societies Registration Act, 1975, thereafter the Government is granting financial assistance to run the institution and has renamed as State Institute of Hotel Management and Catering Technology. The Government is not administering the fourth respondent, it is the Board of Governors who are administering the day-to-day affairs of the institution. The Board of Governors is empowered to create post fix the pay scale depending on the need and fund position of the Institute. The Government is supporting through financing the institution. If any financial assistance is taken by the Board of Governors from the Government, then the salary should be increased or modified with the concurrence of the Government. If it is taken without any concurrence from the government, then the Board of Governors are responsible to pay the amount from its own fund and not the Government. Therefore, the contention of the petitioner that the Board of Governors have approved and the Government has no power cannot be accepted. Therefore, this Court is of the considered opinion that if the Board of Governors is taking any policy decision to bunching of posts and granting monetary benefits, the 4th respondent shall pay from its own fund. If the government has to pay the said amount, then the 4th respondent ought to place the proposal to the government and if the government sanctions the same, then and then only the bunching of posts and the salary on par with the juniors shall be paid.

13. The petitioner contended three other similar persons went for appeal in W.A.(MD).Nos.924 to 926 of 2017 and this Court has given liberty to the appellants to pursue their remedies with the first respondent and the fourth respondent. The petitioner is seeking liberty as stated in the Writ Appeal. The petitioner



also relying on another judgment passed on 31.10.2012 in W.P.No.8262 of 2009 wherein this Court has held in Para 15 in the above said circumstances,

"a direction is issued to the Secretary to Government, Tourism and Culture Department, Secretariat, Chennai to consider the aspect of disparity of the above said posts stated to one and the same and take appropriate decision in the matter of issuing revised Government Order, if necessary, by fixing appropriate scale of pay to the post of Assistant Lecturer and Assistant Instructor within a period of two months from the date of receipt of a copy of this order. As the scale of pay is stagnated for long number of years from 1998, the first respondent is directed to pass order within a stipulated time".

In both the Writ Petitions and Writ Appeals, this Court has directed the Government to take appropriate policy decision in the entire issue.

14. Therefore, this Court is also directing the 4th respondent to submit the proposal of bunching of the post and consequential monetary benefits and thereafter the 1st respondent shall take policy decision in this issue. However, no positive direction can be issued to the first respondent to pay the salary on par with other existing employees.

15. With the above direction, the Writ Petitions are disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Nsr

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Secretary to Government,
The Government of India,
Ministry of Agricultural and Irrigation Department,
New Delhi.

2.The Secretary to Government,
The State of Tamil Nadu,
Information and Tourism Department,
Fort St.George,
Secretariat,
Chennai - 600 009.

3.The Director of Tourism,
Chennai - 600 015.

4.The Principal and Secretary,
State Institute of Hotel Management
and Catering Technology,
Thuvakkudi,
Trichy - 620 015.

W.P. (MD) .Nos.6389 and 6390 of 2014
15.02.2022

RD(12.04.2022) 9P 5C