



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.01.2022
Pronounced on : 17.02.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) No.17476 of 2015 and
M.P(MD) .No.1 of 2015

S. Vaidyanathan

: Petitioner

..vs..

- 1.The Director,
Local Fund Audit Department,
Kuralagam, Chennai.
- 2.The Regional Joint Director,
Local Fund Audit Department,
Trichirappalli Corporation Water Tank Complex,
1st Floor, Dindigul Road,
Trichirappalli - 620 001.
- 3.The Assistant Director,
Local Fund Audit Department,
Bharathidasan University,
Palkalainagar,
Tiruchirappalli - 620 024.
- 4.The Bharathidasan University Tiruchirappalli,
Rep. by its Registrar,
Palkalai Nagar,
Tiruchirappalli.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings of 2nd respondent in Na.Ka.No.543/A2/2015, dated 03-2015, signed by him on 30.03.2015 and the consequential proceedings of 4th respondent in Na.Ka.No.B3/00406, 2014 dated 22.04.2015 and impugned proceedings of 3rd respondent in A.Thi.Mul43/A2/2015, dated 28.04.2015 and the impugned proceedings of 4th respondent in Na.Ka.No.B3/00406/2015, dated 03.06.2015 and quash the same and consequently direct the respondents to return back the sum of Rs.2,20,839/- recovered from the petitioner along with interest within the time limit fixed by this Court.



For Petitioner : No appearance
For R1 to R3 : Mrs.D.Farjana Ghoushia
Special Government Pleader
For R4 : Mr.A.L.Kannan, Advocate
for Mr.V.P.Shanmuganathan, Advocate

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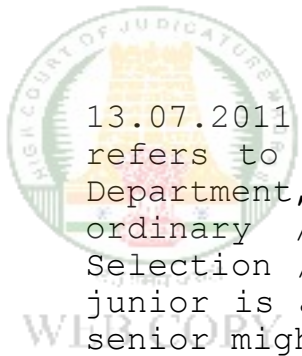
O R D E R

The Writ Petition has been filed to quash the impugned proceedings of 2nd respondent in Na.Ka.No.543/A2/2015, dated 03-2015, signed by him on 30.03.2015 and the consequential proceedings of 4th respondent in Na.Ka.No.B3/00406, 2014 dated 22.04.2015 and impugned proceedings of 3rd respondent in A.Thi.Mul43/A2/2015, dated 28.04.2015 and the impugned proceedings of 4th respondent in Na. Ka. No. B3 / 00406 / 2015, dated 03.06.2015 and quash the same and consequently direct the respondents to return back the sum of Rs.2,20,839/- recovered from the petitioner along with interest within the time limit fixed by this Court.

2.The petitioner joined in the 4th respondent University on 01.07.1987 as Office Assistant. Then, promoted as Junior Assistant on 01.02.1988 and then, as Assistant Section Officer on 05.12.1997 and then, as Section Officer on 19.11.2014 and thereafter, attained superannuation on 30.04.2015. The contention of the petitioner is if the employee works in a particular cadre after 7 years he was granted deemed promotion. Based on one man commission which was approved by syndicate on 08.06.2001, the said deemed promotion which were already granted modified as Selection Grade and for then, after more than 20 years they will be granted Special Grade. For future cases 10 years will be Selection Grade and 20 years will be Special Grade as in the case of Government Servants.

3.The contention of the petitioner is one Late K. Gunalan was appointed as Junior Assistant on 01.01.1987. About 100 employees were also appointed between 1987 to 1990 as Junior Assistant in the 4th respondent University. The said Gunalan was awarded deemed promotion as Deemed Assistant on 01.01.1994, since he did not pass account test - Part I, which is mandatory under the statute of promotion as Regular Assistant and he was continued to hold the post of Deemed Assistant. On 08.06.2001, after granting exemption from passing account test Part I, he was promoted as Regular Assistant under Rule 3 of Chapter VI of Bharathidasan University. Statute gives power to syndicate to relax any of the provisions of the said statute to any individual or group of individuals. On the other hand many employees, including the petitioner herein passed Account Test - Part I and where promoted as regular Assistant. The petitioner was also promoted as regular Assistant on 15.12.1997.

4.The contention of the petitioner is that the said Gunalan was awarded Selection Grade in the post of regular Assistant on 09.06.2001 by calculating his service in the post of deemed Assistant. The contention of the respondent is from 01.01.1994. Since the said Gunalan died on

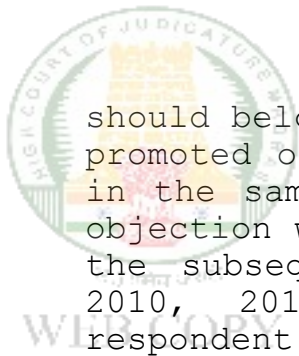


13.07.2011 his wife has received all the benefits. The petitioner refers to G.O. Ms. No. 68, Personnel and Administrative (Per. M.) Department, dated 23.01.1986 and states that senior person in the ordinary / selection category will also be appointed to the Selection / special category with effect from the date on which the junior is appointed to the Selection / Special category even though senior might not have actually put in 10 / 20 years of service. The said G.O was adopted by the 4th respondent university. The said benefit was also granted to the employees who were promoted and working as regular Assistant. One Mr. V. Vedandha Desikan was also granted exemption and was similarly placed to Gunalan who retired later was also given all retirement benefits. Thereafter, the audit report for the period 2008-2009 an objection has been raised that the said Gunalan has been wrongly exempted from passing Accounts Test Part - I and that based on such wrong exemption, he has wrongly been awarded Selection Grade in the post of Regular Assistant and that based on such wrong award of Selection Grade, petitioners and others have also been wrongly awarded Selection Grade placing rely on G.O.Ms.No.68, dated 23.01.1986. Thereafter, the 4th respondent appointed an Adhoc Committee to go into the issue, after an enquiry submitted a report dated 09.06.2010 and recommended to the Local Fund Audit to remove the Audit Objections and the syndicate in its meeting dated 13.08.2010 accepted the committee report and forwarded the same to the 1st respondent. However, the second respondent vide letter dated 28.03.2015 has refused to remove the audit objections. Therefore, the 4th respondent vide, its proceeding dated 22.04.2015 has refixed the petitioner's scale of pay and ordered for recovery. The third respondent vide its proceeding dated 28.04.2015 has stated that only after completing the recovery is made from the pensionary benefits and audit objections could be rectified.

5.In this regard, similarly placed 70 persons had filed Writ Petition in W.P(MD).No.8032 of 2015 before this Court and this Court has granted interim direction directing the respondents not to initiate the recovery proceedings. The petitioner has attained superannuation on 30.04.2015 and the 4th respondent vide proceedings dated 03.06.2015 has permitted the petitioner to retire and initiated recovery proceedings to the tune of Rs. 2,20,839/- from the retirement benefits. Aggrieved over, the present writ Petition is filed.

6.The first respondent has filed counter affidavit on his behalf and for the respondents 2 and 3.

7.The exemption granted and the consequential promotion granted to the deceased Gunalan was i correct. It was pointed out that the so called pay anomaly on par with K.Gunalan in respect of 90 other staffs resulted in exorbitant excess payment to the university. The said Gunalan was senior to all the Assistant Section Officers, who have claimed anomaly in the original post of Junior Assistant. As



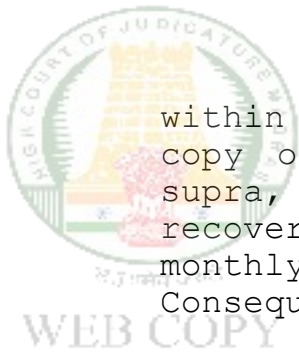
should belong to the same cadre and the post in which they have been promoted or appointed should be an identical scale of pay and also in the same cadre". Therefore, F.R. 22(B) Ruling 2(I) a suitable objection was raised in the audit report for the year 2001-02 and in the subsequent years from 2001-2002, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014. The fourth respondent is responsible for all the above lapses and the 4th respondent has not taken any action to rectify the audit defects pointed out for the past 14 years.

8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. The petitioner relied on Writ Petition filed by batch of petitioners on W.P(MD).No.8032 of 2015 and an interim order was granted. When the writ petition was taken up for final hearing the respondents circulated the final order passed by this Court in W.P (MD).No.8032 of 2015. In the order of this Court has observed in paragraph 19, that the claim of the petitioners herein revolves around the awarding of Selection Grade to one Mr.Gunalan. Hence, the validity or otherwise of the Selection Grade awarded to Mr.K.Gunalan, who had completed only 7 years of service in the cadre, instead of 10 years, by way of Resolution of the University Syndicate, which was objected to by the Local Fund Audit Department would give a quietus to the issue. The issue was considered elaborately in the order and the same is culled out hereunder:

"34. The petitioner will not fall in any of these exceptional categories, over and above, there was a stipulation in the fixation order that in the condition of irregular / wrong pay fixation, the institution in which the petitioners are / were working would be responsible for recovery of the amount received in excess from the salary / pension. In such circumstances, this Court finds no reason to interfere with the order impugned. However, this Court orders that the excess payment already made be recovered from the petitioner's salary / pension equal monthly instalments.

40. In view of the foregoing reasonings, this Court finds absolutely no reason to interfere with the impugned orders. Hence, all the Writ Petitions filed by the present as well erstwhile staff of the Bharathidasan University stand dismissed. All the Contempt petitions stand closed. However, as the matter involves payment of pension, all the respondents are directed to take a decision on the Audit objections raised. Respondents 1 to 3 are directed to take action to process the pension proposals of the retired employees of the fourth respondent / University with correct pay for which they are entitled and to pay pension



within a period of four weeks from the date of receipt of a copy of this order. However, as stated in paragraph 34 supra, this Court orders that the excess payment made by recovered from the petitioner's salary / pension in equal monthly instalments, starting from August 2019. No costs. Consequently, connected WMPs are closed."

10.Following the said Judgment, this Court is also passing the similar order and the Writ Petition is dismissed. The respondents are directed to recover the excess payment in equal monthly instalments from the petitioner. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

To

- 1.The Director,
Local Fund Audit Department,
Kuralagam, Chennai.
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Local Fund Audit Department,
Trichirappalli Corporation Water Tank Complex,
1st Floor, Dindigul Road,
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Local Fund Audit Department,
Bharathidasan University,
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Tiruchirappalli - 620 024.
- 4.The Registrar,
Bharathidasan University Tiruchirappalli,
Palkalai Nagar,
Tiruchirappalli.

+1 CC to M/s.SPL GP (SR-6838[F] dated 17/02/2022)

**W.P(MD) No.17476 of 2015 and
M.P(MD) .No.1 of 2015
17.02.2022**

RS(25.02.2022) 5P-6C

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