



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 13.04.2022

DELIEVERD ON: 19.05.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.8616 of 2015

and

M.P. (MD) .No.1 of 2015

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S.Dhamodaran

... Petitioner

Vs

Tamil University,
Represented by its Registrar,
Thanjavur-631 010.

... Respondent

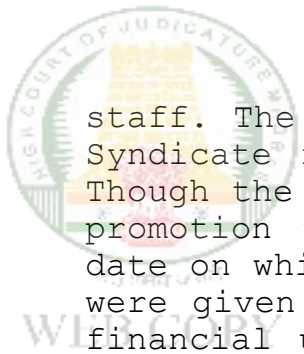
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the order dated 06.05.2015 passed by the respondent in Na.Ka.No.Aa1/816/2015, quash the same, award costs.

For Petitioner : Mr.Ajay Khose
for Mr.S.Arunachalam
For Respondent : Mr.R.Krishnamoorthy,
For Mr.R.Subramanian

O R D E R

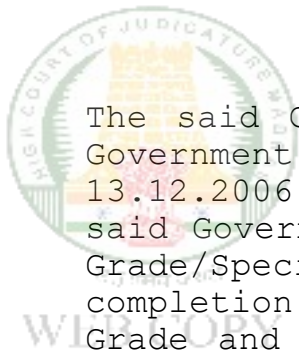
This Writ Petition has been filed to quash the impugned order dated 06.05.2015 passed by the respondent in Na.Ka.No.Aa1/816/2015.

2. The petitioner joined the respondent University as Office Assistant in the year 1985. The University newly created a Clause-III Ministerial Service Non-Teaching Staff category post of Junior Assistant in the year 1987. The said post was not provided in the Statutes, the Respondent University has followed the recruitment rules of the Government of Tamil Nadu for appointment to the post of Junior Assistant, as per the power conferred under Clause xxvi (XX) of the statutes pertaining to the conditions of service of the Universities Act. The Respondent University by its Resolution No.21.12 dated 23.07.1987 approved the petitioner's selection and other 11 persons for appointment to the post of Junior Assistant vide order dated 22.12.1987. The Syndicate by its Resolution No.96.40 dated 25.03.1996 appointed a two-member Sub-Committee to submit a report with regard to career development for teaching staff and time bound promotion for non-teaching staff. The Sub-Committee submitted a report recommending for deemed promotion to the office staff on completion of 7 years of service and also for granting Selection Grade and Special Grade promotion to the non-teaching



staff. The report was accepted and approved by the Syndicate in its Syndicate meeting dated 03.08.1996 under its Resolution No.96.53. Though the financial upgradation under the time bound scheme and the promotion was given under the Career Development Scheme from the date on which the stipulated period was completed, monetary benefits were given only with effect from 01.10.1996. The respondent granted financial upgradation, that is Selection Grade alone from the date of completion of 7 years of service as Junior Assistant with effect from 23.12.1994 and paid monetary benefits with effect from 01.10.1996. Thereafter, the petitioner was given a designation of Deemed Assistant with effect from 23.12.1997 that is from the date of completion of 10 years of service as Junior Assistant vide order dated 13.03.1998. The contention of the petitioner is that based on the order dated 15.03.2012 in W.P.No.1217 of 2011 instead of giving promotion on par with 7 others and from the date on which they were given regular promotion as Assistant, the respondent by an order dated 10.02.2013 promoted the petitioner as Regular Assistant with effect from 01.01.2013. The respondent issued a separate order dated 26.08.2013 for pay fixation. When the petitioner was given promotion with effect from 01.01.2013, in the pay fixation order dated 26.08.2013, the petitioner was given pay fixation only with effect from 01.05.2013. The petitioner was due to retire on 31.05.2015. However, the respondent issued the impugned order dated 06.05.2015 and informed the petitioner that the excess amount paid to the petitioner due to Selection Grade given to the petitioner in the post of Junior Assistant on completion of 7 years and promotion as Deemed Assistant would be recovered from the terminal benefits as per the letter referred in reference column and as per the audit report and paragraph-IV-1.2 for the financial year 2011-2012. However, the said copy of the letter was not furnished to the petitioner and the petitioner sought for the letter. Thereafter, the Financial Officer in-charge, has served copy of the letter dated 10.03.2015. In so far as the due payable under the Serial No.2 namely the festival advance, it was stated that it would be recovered from the petitioner's salary in May 2015 and the petitioner has no objection in the said deduction and this due is not mentioned in the above order dated 06.05.2015. However the said letter has not specifically stated how much has to be recovered and what is the amount paid in excess.

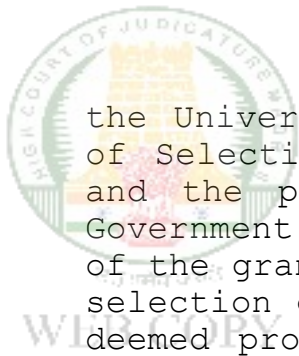
3. The audit objection is based on the Government rules since for non-teaching staff, the promotion and deemed promotion as per the Government rules is only 10 years and the Syndicate decision to grant Selection Grade on completion of 7 years of service is against the Government rules and hence directed to deduct the excess amount from the terminal benefits payable to the respective staff including the petitioner. The petitioner submitted that the Government of Tamil Nadu appointed Dr. S. Muthukrishnan Committee in G.O.2D.No.2 Higher Education Department dated 05.02.1997 to submit a report with regard to the service conditions of the non-teaching staff for bringing uniformity on par with the Government Servants.



The said Committee submitted a report and it was accepted by the Government in G.O.Ms.No.402, Higher Education Department dated 13.12.2006. The directions were issued by the Government in the said Government Order and one such direction was that the Selection Grade/Special Grade and deemed promotion for non-teaching staff on completion of 7 years shall be stopped and also be given Special Grade and Selection Grade on completion of 10 years and 20 years respectively as in the case of Government Servants. The said Government Order was put to challenge by the employees in W.P.No.11579 of 2007 and the said Writ Petition was disposed of by a common order dated 04.04.2012 and a judgment reported in 2012 (3) CTC Page 337, wherein, this Court has held that the Government have no power or authority to issue such Government Order when the Conditions of Service for non-teaching can be fixed or determined only by the respective University in accordance with the Act and its Statutes. The respondent has not preferred any appeal against the said judgment and the same was attained finality. However, the said audit objections were raised only on the ground that the non-teaching staff in the Respondent University has given Selection Grade and Special Grade and deemed promotion on completion of 7 years and 14 years when the Selection Grade and Special Grade can be given to the Government Servants only on completion of 10 years and 20 years and on the ground that there was no provision in the Statutes for granting deemed promotion or for granting Selection Grade and Special Grade. These Selection Grade, Special Grade and Deemed Promotion has been given based on the decision of the Syndicate which is contrary to the Government rules regarding granting of Selection Grade and Special Grade. Therefore, the contention of the petitioner is that the impugned order is based on the audit report either without reference to the above judgment or by nullifying and sitting in appeal over the above judgment is incorrect.

4. The learned counsel for the petitioner relied on ***State of Punjab Vs. Rafiq Masih (White Washer) reported in (2015) 4 SCC 334***, wherein, it has been held that the recovery of excess payment from retired employees, which mistake is attributable to the employer, cannot be recovered. Furthermore, the belated recovery of pension, when the excess payment was made more than five years back is also not recoverable. Therefore, the petitioner prays to allow the Writ Petition.

5. The respondent had filed a counter stating that the Respondent University does not have income of its own sources and the University solely depend on the Government of Tamil Nadu for all the expenditures. Every proposal for making expenditure has been sent to the Government of Tamil Nadu and the Government has passed the order by issuing Government Order and credit the money in the account of University. The petitioner was due to retire on 31.05.2015 and by letter dated 10.03.2015, the Finance Officer of



the University has informed about the audit objection for granting of Selection Grade to the petitioner on completion of seven years and the promotion of deemed assistant as the same is violating Government norms. The Government which is the sanctioning authority of the grants has found the resolution of the University in granting selection grade/special grade on completion of 7 years/14 years and deemed promotion on completion of 10 years / 20 years are not in consonance of Government norms and refused to pay above upgradation and promotion. Hence the consequential impugned order for making recovery was initiated from the terminal benefits of the petitioner. The granting of selection grade and special grade vide order dated 27.12.1996 and 13.03.1998, it was made clear that the granting of selection grade and special grade is subject to the approval of the Government of Tamil Nadu. The petitioner having accepted the conditional upgradation and promotion cannot now turn around and question the same and hence the respondents prayed to dismiss the Writ Petition.

6. Heard Mr.Ajay Khose, for Mr.S.Arunachalam, learned counsel for the petitioner and Mr.R.Krishnamoorthy, for Mr.R.Subramaniann, learned counsel for the respondent.

7. The Learned Counsel for the petitioner submitted that University Grant Commission has power to make rules and regulations for prescribing qualifications for appointment of teaching and non-teaching staffs. However, UGC has not issued any regulations or guidelines for Career Advancements for the non-teaching staffs. In such circumstances the Syndicate has power to prescribe regulations / guidelines to grant Career Advancements and consequential monetary benefits to non-teaching staff and rightly in the present case the Syndicate through its resolution has prescribed 7 years for selection grade and deemed promotion after 10 years of service and 14 years for special grade and for deemed promotion after 20 years. This contention of the petitioner cannot be accepted for the reason that the University is fully depend on the financial assistance from the Government. The University was allotted grant-in-aid and financial commitment by the University should be within the grant-in-aid allotted to it. The University has no power to decide to grant any monetary benefits over and above the grant-in-aid allotted to it. Therefore this Court is of the considered opinion that the Syndicate has power to decide to grant any Career Advancements / selection grade / special grade with consequential monetary benefits but within the grant-in-aid allotted to it. If it exceeds the grant-in-aid allotted, then the University has no power to grant or formulate any such Career Advancements Scheme.

8. For running private colleges, the Tamil Nadu Government has issued Private Colleges Regulation Act. Under Section 15, UGC has power to prescribe qualification for teaching staff and Tamil Nadu Government has power to prescribe qualification for non-teaching staff. Even though the Private Colleges Regulation Act is



not applicable to the Tamil University, the analogy stated in the provisions can be taken for deciding this issue. The provisions states that the State Government has power to prescribe qualification for non-teaching staff. If so, the State Government has power in stating that the career advancements or granting the selection grade, special grade or deemed promotion cannot be granted to the non-teaching staff before completion of 10 years service in the said post. In the present case the Syndicate has decided / granted selection grade if the candidate completes 7 years period and deemed promotion after completing 10 years, which is against the provisions in granting selection grade after completion of 10 years and special grade after completion of 20 years. The uniformity is followed in all teaching institutions that selection grade and special grade will be granted after completion of 10 years / 20 years respectively and there is no deemed provision for granting promotion. Even UGC has not prescribed such selection grade / special grade and deemed promotion even for teaching staff. Therefore, this Court is of the considered opinion that the selection grade shall be granted only after completion of 10 years and special grade shall be granted only after completion of 20 years and there is no such post of deemed promotion at all and hence the Syndicate has exceed its power.

9. The learned counsel for the petitioner relied on the Division Bench judgment. However, there is no discussion in the Division Bench judgment and no issue was raised who is having power to prescribe qualification and other service benefits. Since this Court has held that the syndicate has exceeded its power as stated supra, the Government cannot be penalized for such irresponsible resolution.

10. In a similar case filed against the Bharathidasan University several persons were seeking the same benefits which was granted by the Syndicate Resolution and declined by the audit objections, which were challenged in W.P.(MD).No.8032 of 2015 and in W.P.(MD).No.4044 of 2016 batch and this Court had held that the Government instructions for awarding Selection Grade is after completion of 10 years and Special Grade after completion of 20 years. Thus, the Bharathidasan University failed to adhere to the Government rules and therefore audit objections were raised. In that writ petition, this Court has held that the employees are not entitled to the payment, recovery can be ordered if the employee is having the knowledge that the amount paid is excess and the University is entitled to recover the amount. The petitioner has relied on the judgment rendered in **Rafiq Masih** case. The said judgment was considered in the subsequent case rendered in **Punjab and Haryana and others Vs. Jagdev Singh reported in (2016) 14 SCC 267**. In Jagdev case the Hon'ble Supreme Court has distinguished and clarified the judgment rendered in **State of Punjab and others Vs. Rafiq Masih (White Washer) reported (2015) 4 SCC 334**, In the **Jagdev**



Singh case, the Hon'ble Supreme Court has held in Para 11 is as follows:-

"The Officer to whom the payment was made in the first instance was clearly placed on notice that the payment found to have been made in excess would be required to be refunded".

Applying the Jagdev Case, this Court is of the considered opinion that the petitioner is well aware that the amount is liable for recovery if the payment is not approved subsequently.

11. It is seen from the records that the Tamil University has no income on its own sources and the University is being run based on the grant-in-aid granted by the Tamil Nadu Government. The syndicate having power to administer the University and take certain decisions. However, such decision cannot be taken and impose those decisions on the Government and this is one such case. The Syndicate has exceeded its power and has granted the Selection Grade and Special Grade on completion of 7 years and 14 years and has granted Deemed Promotion on completion of 10 years and 20 years which is unknown to the service jurisprudence either in the Government employment or under University employment. If the syndicate decides to grant selection grade and special grade after completion of 7 years/14 years, then the syndicate should pay the monetary benefits from its own source of income and University has no right to claim any monetary assistance from the Government for such illegal payment. The syndicate shall exercise its power within its limits and is cannot arm twist the Government by passing any resolution and exceeding its power. Generally, grant-in-aid is granted in one lumpsum for a particular academic year. The petitioner can seek the monetary benefits from the Tamil University and the Tamil University cannot claim any monetary assistance from the Government. Therefore, the petitioner cannot claim any benefits from the respondent University.

12. Therefore, this Court is of the considered opinion that the respondents shall revoke the monetary benefits. The petitioner is entitled to selection grade and special grade only after completion of 10 years / 20 years and there is no concept of granting deemed promotion at all. The University shall recover the excess amount paid to the petitioner and deposit to the State Government. The syndicate if they have financial viability on its own, then the University shall pay from its own source and the University has no right to arm twist the Government for grant-in-aid. The University is imposed with a cost of Rs.10,000/- to be paid to the Government.



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WP(MD)No.8616 of 2015

13. With the above observations, this Writ Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Vacation Officer/
Assistant Registrar (CS-III)

// 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

The Registrar,
Tamil University,
Thanjavur-631 010.

+1 CC to M/s.S. ARUNACHALAM, Advocate (SR-23749[F] dated 19/05/2022)

+1 CC to M/s.R.SUBRAMANIA, Advocate (SR-23795[F] dated 19/05/2022)

Order made in

W.P. (MD)No.8616 of 2015

19.05.2022

SJ(CO)

GC(02.06.2022) 7P 4C