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W.P.(MD)Nos.3025, 3061 and 3065 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)Nos.3025, 3061 and 3065 of 2017
and
W.M.P.(MD)Nos.2425, 2439 and 2444 of 2017

W.P.(MD)No.3025 of 2017:

R.Selvam

... Petitioner

vs.

1.Government of Tamilnadu,
represented by its Secretary,
Tamil Development and Information Department,
Fort St.George, Chennai-600 009.

2.Tamil University,
represented by its Registrar,
Thanjavur-613 006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the 2nd respondent to grant Selection Grade Scale and Special Grade Scale to the petitioner in the post of Technician



WEB COPY

W.P.(MD)Nos.3025, 3061 and 3065 of 2017

from the dates of his completion of 7 years and 14 years respectively as per the time bound promotion scheme approved by the syndicate of the 2nd respondent University in its meeting held on 03.08.1996 and under resolution No.2 with all monetary and other consequential benefits as given to other non-teaching staffs and not to reduce his rank from the post of Technician and not to reduce his pay and not to make any recovery from him in any manner, award costs.

W.P.(MD)No.3061 of 2017:

G.Swaminathan

... Petitioner

vs.

1.Government of Tamilnadu,
represented by its Secretary,
Tamil Development and Information Department,
Fort St.George, Chennai-600 009.

2.Tamil University,
represented by its Registrar,
Thanjavur-613 006.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the 2nd respondent to grant Selection Grade Scale and Special Grade Scale to the petitioner in the post of Technician from the dates of his completion of 7 years and 14 years respectively as per the time bound promotion scheme approved by the syndicate of the 2nd respondent



W.P.(MD)Nos.3025, 3061 and 3065 of 2017

WEB COPY

Technician and not to reduce his pay and not to make any recovery from him in any manner, award costs.

In all cases:

For Petitioner	: Mr.M.Ajmal Khan for M/s.S.Arunachalam
For R1	: Mr.C.Baskaran Government Advocate
For R2	: Mr.B.Vijay Karthikeyan *****

COMMON ORDER

The writ petition in W.P.(MD)No.3025 of 2017 is filed for issuance of Writ of Mandamus, to direct the 2nd respondent to grant Selection Grade Scale and Special Grade Scale to the petitioner in the post of Technician from the dates of his completion of 7 years and 14 years respectively as per the time bound promotion scheme approved by the syndicate of the 2nd respondent University in its meeting held on 03.08.1996 and under resolution No.2 with all monetary and other consequential benefits as given to other non-teaching staffs and not to reduce his rank from the post of Technician and not to reduce his pay and not to make any recovery from him in any manner, award costs.



W.P.(MD)Nos.3025, 3061 and 3065 of 2017

WEB COPY

2. The brief facts as stated in the affidavit filed in W.P.(MD)No.3025 of 2017 are that the conditions of service for both teaching and non-teaching staff are governed by Section 34 of the said Act. The petitioner has passed +2, then acquired Diploma in Electrical Electronic Engineering in 1984 and joined the services of the 2nd respondent University on daily wages as Technical Assistant on 07.03.1986. Thereafter, he was absorbed in the same post on regular basis by an order, dated 03.10.1989. Thereafter, the petitioner with the permission and sanction of the 2nd responder University, pursued higher studies and obtained B.E., in Electronics and Communication Engineering in 1990, P.G.D.C.A in 2000, Master of Computer Applications (M.C.A.) Degree in 2003 and Master of Philosophy (M.Phil.) in Computer Science in 2008. The Syndicate of the 2nd respondent University in their meetings held on 03.08.1996 and 06.12.1996, under Resolution Nos.96.53A and 96.110 resolved to give person oriented promotion to 7 Technical Assistants including the petitioner as Technicians. The University framed and approved a Time Bound Promotion Scheme for all non-teaching staffs and decided to give Selection Grade Pay on completion of 7 years



W.P.(MD)Nos.3025, 3061 and 3065 of 2017

WEB COPY

of service and Special Grade Pay on completion of 14 years of service respectively in the meeting held on 03.08.1996 under Resolution No.2, wherein the scheme was implemented with effect from 01.10.1996. Since the petitioner was holding the post of Technical Assistant with Degree in Electronics and Communication Engineering (B.E), the 2nd respondent by an order, dated 27.12.1996, granted promotion as Technician with effect from 01.10.1996. The University granted to several non-teaching staff belonging to various categories time bound promotion but the audit department has made some objections during the year 2004-2005 for such time bound promotion on completion of 7 years and 14 years of service, instead of giving time bound promotion on completion of 10 years and 20 years. The petitioner stated that the audit objection was raised only in the year 2004- 2005. The University has granted promotion in the year 1996 itself. The Government of Tamil Nadu issued G.O.Ms.No.402, Higher Education (H2) Department, dated 13.12.2006, to bring uniformity in conditions of service to the Non-Teaching Staffs of all State Universities in Tamilnadu including the Respondent University.



W.P.(MD)Nos.3025, 3061 and 3065 of 2017

WEB COPY

3. The further contention of the petitioner is that when there were many categories of employee in each University, the Government brought entire staffs into 6 categories with uniform pay and allowances and also directed all universities to grant Selection Grade and Special Grade only after 10 years and 20 years. If any promotion is granted contrary to the directions, the Government would not provide for any financial aid / grant and any extra expenditure to be incurred due to any deviation from their directions shall be met only by the respective University from their own funds. The G.O. is challenged and this Court, vide order, dated 04.04.2012, has declared that the said G.O. was ultra vires and when the Syndicate / Senate of each University is competent to decide and determine the conditions of the Non-Teaching Staffs and the said order has attained finality. Therefore, the respondent not competent to deny the already granted benefits to the petitioners and prayed to allow the writ petition.

4. The respondents have filed a counter affidavit in W.P.(MD)No.3025 of 2017 stating that the University is run by the finance allotted by the Government



W.P.(MD)Nos.3025, 3061 and 3065 of 2017

WEB COPY

of Tamil Nadu. The University Grant Commission is making only to the extent of development activities to the second respondent University. The entire finance is being provided by the Government of Tamil Nadu. The second respondent University accounts are audited by the Local Fund Audit Department of the Government. Further, the Principal Secretary to the Government of Tamil Nadu, Higher Education Department has issued instructions stating that no promotion and pay fixation is given by violating the rules of Government. If any audit objection is raised, the excess payment should be recovered from the said person. For the sanctioned strength in the post of Technician, the salary alone will be obtained from the Government by reducing in the “block grant” and it is not only to the petitioner but also in all such cases of the second respondent University.

5. While granting time bound promotion after completion of 7 years, in the posting order, it has been specifically mentioned that the time bound promotion is granted, which will be subject to audit objection and further the petitioner has affixed his signature and an undertaking has been given accepting recovery, in



W.P.(MD)Nos.3025, 3061 and 3065 of 2017

WEB COPY

case of audit objection. As time bound promotion was not approved by the Government, the audit objections are prevailing and in order to rectify the objection, the time bound promotion was declined. The respondents further submitted that all the Universities are taking decisions in their administrative committee and all the Universities are getting aid from the University Grants Commission but the Tamil University is not getting any grant from UGC. Hence the entire finance provided to run the University is only by Government of Tamil Nadu. As the University is getting entire finance from the Government of Tamil Nadu, the University should act as per the Rules and Regulations of the Tamil Nadu Government. As per the Government Rules selection grade for 10 years service and special grade for 20 years service will be provided. The selection grade and special grade for 7 years and 14 years can be considered only depending upon the Government order. Therefore, for the employees who retired from service after 2000 and the employees and the employees who expired during their service, the excess payment amount is recovered in their terminal benefits. The judgement referred by the petitioner relates only to the change of service



W.P.(MD)Nos.3025, 3061 and 3065 of 2017

WEB COPY

condition and the same is not applicable to the present facts of the case. When the second respondent University at the time of granting promotion itself, informed that the promotion is subject to the approval of the Government of Tamil Nadu and audit objection, the respondents are empowered to recover the amount. Therefore, the respondents prayed to dismiss the writ petition.

6.Heard Mr.M.Ajmal Khan, learned Senior Counsel appearing for the petitioner in all cases, Mr.C.Baskaran, learned Government Advocate appearing for the 1st respondent in all cases and Mr.B.Vijay Karthikeyan, learned Counsel appearing for the 2nd respondent in all cases both the councils and perused the records placed before this Court.

7. The issue of granting selection grade and special bread after completion of 7 years and 14 years in the Universities were considered in the case of Bharathidasan University, Manonmaniam Sundaranar University and Tamil University. In several cases, this Court has repeatedly held that granting of



W.P.(MD)Nos.3025, 3061 and 3065 of 2017

WEB COPY

selection grade and special grade can be granted only after completion of 10 years and 20 years. If the University is passing such a resolution then the University cannot seek any financial aid from the Government to pay selection grade and special grade. The Universities are repeatedly passing such resolutions and creating complicated problems for both Government as well as employees.

8. In the case of Manonmaniam Sundaranar University, the Learned Single Judge in W.P.(MD)No.2368 of 2012, vide order, dated 02.03.2018, has held that there are several irregularities in the University violating the rules and regulations prescribed by the Government of Tamil Nadu as well as UGC. In the case of Tamil University, this court has passed an order declining the claim of the petitioner in W.P.(MD)No.8616 of 2015, vide order, dated 19.05.2022.

9. In the present case, the selection grade was granted based on the resolution of the Syndicate, however, the University has granted the same with a condition that the same is subject to the approval of the Government as well as



W.P.(MD)Nos.3025, 3061 and 3065 of 2017

WEB COPY

completion of 10 years and the same shall be paid to the petitioners within a period of six weeks from the date of receipt of a copy of this order.

11. This Court with great concern is observing that the Universities cannot pass any resolution beyond its power, especially, where it has implications on the Government Exchequer. Before passing such a resolution which has implications on the Government Exchequer, the University ought to have taken prior permission from the Government. More so, it is depending upon the financial assistance from the Government. If such prior permission is obtained, the present complication would have been avoided.

12. For the reasons stated above, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes

21.11.2022

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W.P.(MD)Nos.3025, 3061 and 3065 of 2017

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To

The Secretary to Government,
Government of Tamilnadu,
Tamil Development and Information Department,
Fort St. George, Chennai-600 009.



WEB COPY



W.P.(MD)Nos.3025, 3061 and 3065 of 2017

S.SRIMATHY, J

Tmg

W.P.(MD)Nos.3025, 3061 and 3065 of 2017

21.11.2022