



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) Nos.22981 & 22982 of 2021
W.M.P(MD).Nos.19479 and 19496 of 2021

I.K.Manonmani ... Petitioner in W.P(MD).No.22981 of 2021
A.Balasubramani ... Petitioner in W.P(MD).No.22982 of 2021
Vs.

1.The Registrar,
Madurai Kamaraj University,
Palkalai Nagar,
Madurai,
Madurai District.

2.The Deputy Director of Local Fund Audit,
Madurai Kamaraj University,
Palkalai Nagar,
Madurai,
Madurai District. ... Respondents in both petitions

Common Prayer:-Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari Mandamus, calling for the records relating to the impugned order passed by the first respondent in his proceedings in Memo.No.Estt-II/T/2021 dated 25.11.2021 and quash the same as illegal and consequentially to direct the respondents to allow the amount pay as fixed on the appointment as Assistant Professor within the period that may be stipulated by this Court.

In both cases

For Petitioner	: Mr.Ajmal Khan Senior Counsel for M/s.Ajmal Associates
For Respondents	: Mr.Ragatheeswaran for M/s.Isaac Chambers for R1 Mr.N.Satheesh Kumar, Additional Government Pleader for R2



C O M M O N O R D E R

The writs on hand have been instituted questioning the validity of re-fixation and recovery made against the petitioners in proceedings dated 25.11.2021.

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2. The petitioners are working as Assistant Professors in the Department of Geography School of Earth and Atmospheric Sciences and the Department of Zoology, Directorate of Distance Education, Madurai Kamaraj University.

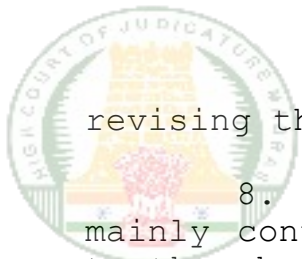
3. It is not in dispute that the petitioners were initially appointed as Technician on 14.02.1991 and 13.01.1992 in the respondent University on regular basis on time scale of pay and the post of Technician was re-designated as Technical Officer. The petitioners were awarded with selection grade in the post of Technical Officer, on completion of 10 years of service.

4. The respondent University invited applications from the eligible candidates for recruitment to the post of Assistant Professor in the Department of Geography, School of Earth and Atmospheric Science and the Department of Zoology, Directorate of Distance Education, Madurai Kamaraj University. The petitioners submitted their application for selection to the post of Assistant Professor, pursuant to the recruitment notification issued. They were selected and appointed by the respondents in proceedings dated 15.10.2010 and 03.12.2013 as Assistant Professors.

5. The petitioners state that they made representations to the University to grant pay protection under clause 11(a)(i)(a) of the Madurai Kamaraj University Statute. As per the said provision, the initial substantive pay of a University servant who is appointed substantively to a post on a time scale shall be regulated. By relying on the said provision, the petitioners claim that they are entitled for pay protection.

6. It is contended that pay protection was approved by the Syndicate. Accordingly, pay fixation was done protecting the pay of the petitioners in the cadre of Assistant Professor, taking into consideration the pay which they have received from the post of Technical Officer.

7. The audit objection was raised on the ground that under the Fundamental Rules, fixation made in favour of the petitioners was erroneous and impermissible. Pursuant to the audit objection, the order of re-fixation and recovery was issued by the Authorities. Thereafter, the petitioners have filed writ petitions in W.P(MD). Nos.9349 & 9352 of 2021 and in view of the fact that no opportunity was given to the petitioners, the matters were remanded for issuing show cause notice and to pass fresh order, considering the materials available on record. Thereafter, the order impugned is passed



revising the fixation and imposing recovery.

8. The learned Senior Counsel appearing for the petitioners mainly contended that the explanation submitted by the petitioners to the show cause notice was not considered in its real spirit. The petitioners mainly relied on clause 11(a)(i)(a) of the Madurai Kamaraj University Statute and in accordance with the Statute, pay protection was granted. Such protection need not be taken away as it is permissible. Thus, the consideration of explanation is lacking in the impugned order. The petitioners are entitled for pay protection under the said clause and therefore, the impugned order is in violation of the Madurai Kamaraj University Statute.

9. The learned counsel appearing for the respondents objected the said contention raised on behalf of the petitioners by stating that the pay protection is available only in respect of persons, who are appointed from the teaching post to another teaching post and in respect of direct recruitment, no such pay protection is available under clause 11(a)(i)(a) of the Madurai Kamaraj University Statute.

10. The learned counsel appearing for the respondents reiterated that the petitioners were appointed directly as Assistant Professor by participating in the direct recruitment process, pursuant to the recruitment notification issued by the University. Therefore, the appointment of Assistant Professor is no way connected with the appointment of Technical Officer which is governed under the different set of Rules and even as per clause 11(a)(i) of the Statute, "if he holds a lien on a permanent post".

11. In the present case, the petitioners did not had the lien in respect of the post of Technical Officer. The lien seized to exist, in view of the fact that they were directly recruited to the post of Assistant Professor which is a teaching post falling under the University Grants Commission Regulations. Thus, the clause itself is in-applicable as far as the petitioners are concerned, since they were holding the post of Technical Officer which is not falling under the teaching line in the University.

12. Considering the arguments as advanced by the learned Senior Counsel for the petitioners and the learned counsel appearing for the respondent, the question arises whether clause 11(a)(i)(a) of the Madurai Kamaraj University Statute is applicable or clause 11(a)(i) is applicable or otherwise. Secondly, whether the post of Technical Officer which is falling under the cadre adopted from the Tamil Nadu Government Service Rules can be a ground for granting pay protection in respect of the cadres falling under the University Grants Commission Regulations.

13. Let us now consider the University Statute.



14. Clause 11(a)(i)(a) of the Madurai Kamaraj University Statute reads as under:

"11. The initial pay of a University servant who is appointed to a post on a time scale of pay shall be regulated as follows:-

(a) The initial substantive pay of a University servant who is appointed substantively to a post on a time scale shall be regulated as follows:

(ii) if he holds a lien on a permanent post

(a) when appointment to the new post involves the assumption of duties or responsibilities of greater importance than those attaching to such former post, he shall be entitled to draw as initial pay, the stage of the time scale next above his substantive pay in respect of the old post".

15. The learned Senior Counsel refers Clause 11(a)(i)(a) of the Madurai Kamaraj University Statute. However, the learned counsel appearing for the respondents relied on Clause 11(a)(i). Clause 11(a)(i) of the Madurai Kamaraj University Statute states that if a person holds a lien on the permanent post, then only, Clause 11(a)(i)(a) will be applicable. Because clause 11(a) is a separative clause relating to initial substantive pay of a University and Clause 11(a)(i) states that in the event of any lien on permanent post, then pay protection is to be granted under clause 11(a)(i)(a) of the Statute. Therefore, it is unambiguous that if at an employee holds the lien on permanent post, the pay protection would be applicable under clause 11(a)(i)(a) of the Statute.

16. This apart, in respect of the Ministerial and Technical posts in the University, the cadres are governed under the Tamil Nadu Government Service Rules. The University has adopted the pay scale applicable to the posts in the Tamil Nadu Government Service. In other words, the Government Order issued regarding fixation of pay is adopted by the University on such Ministerial and Technical posts. Only in respect of teaching posts, the qualification method of recruitment and other benefits are implemented, as per the University Grants Commission Regulations. The scale of pay prescribed by the University Grants Commission is followed in respect of teaching posts including Assistant Professor, Professor, Head of the Department, Principal etc., However, those scale of pay is unconnected with the Ministerial and Technical posts which are governed under the Tamil Nadu Government Service Rules. In respect of those employees, Fundamental Rules are applicable. Pay fixations are done as per the Government Orders passed. Therefore, there is absolutely no lien in respect of the services in the Cadre of Technical Officer and the post of Assistant Professor as both are distinct and unconnected.



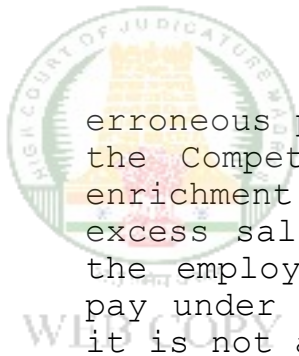
17. This apart, the petitioners were not appointed to the post of Assistant Professor by way of transfer or otherwise and they have submitted their application pursuant to the recruitment notification issued by the University. They participated in the process of selection along with all other open candidates, and they were selected and appointed as Assistant Professor. Therefore, for all purposes, it is the direct recruitment for the post of Assistant Professor and thus, the scale of pay applicable to the post of Assistant Professor was granted. This apart, there is no lien in respect of the post of Technical officer [Non-teaching post] and Assistant Professor [Teaching Post].

18. Ruling (6) under F.R.22(B) regarding pay protection reads as under:

"If a serving employee is appointed to another post through T.N.P.S.C or through other appointing authorities, he will get the minimum of the time scale relating to such post. Under no circumstances fixation of pay under F.R.22 (B) or F.R.22 is admissible".

19. Regarding the non-consideration of the explanation to the show cause notice as raised by the petitioner, this Court is of the considered opinion that the order impugned dated 25.11.2021 is a self-speaking. The facts and service particulars as well as the Rules relied upon by the petitioner have considered and recorded. The objections raised by the petitioner with reference to the pay protection under University Statute is also considered and recorded in the impugned order. Therefore, the said contention deserves no merit consideration. This Court is of the considered opinion that the consideration of representation is done by the Authorities in a particular manner. The way of expression may differ from Authority to Authority. What is required is to ensure that the explanation submitted by the aggrieved person is considered with reference to the Statute and Rules in-force. In the present case, the facts are recorded and the relevant Rules are also considered including the Fundamental Rules and the reason has also been furnished. The order impugned categorically states that the petitioners were appointed through open advertisement in various newspapers and there is no specification about the pay protection in the advertisements. Thus, it is very clearly made that the scale of pay applicable to the post of Assistant Professor was notified in the recruitment notification and agreeing the said conditions in the notification, the petitioners participated in the recruitment process and after joining in the post of Assistant Professor, they claim pay protection which itself is not in consonance with the terms and conditions of the notification.

20. The employees are entitled for their pay strictly in accordance with the pay Rules in-force. Even in cases where

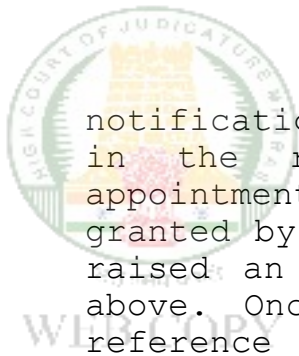


erroneous pay fixations are made and the excess payments are paid, the Competent Authorities are bound to recover the same. Unjust enrichment of public money is impermissible. In the event of any excess salary paid, then such excess money is to be recovered from the employees concerned. No employees are entitled to draw excess pay under the Pay Rules. This being the principles to be followed, it is not as if the erroneous fixation can be allowed and the excess payment received can be allowed to be taken away by the employees. If such activity is permitted, the ultimate sufferer would be the tax payer and the public money cannot be dealt with in such a manner. The Courts have carved out such exception only in cases of Group-C and D employees, if in case of recovery, extreme hardships are caused, but not otherwise. Therefore, only in the event of extreme hardship in respect of Group-C and D employees, the Courts have held that the excess payment may not be recovered. However, the fixation is to be corrected in accordance with the Rules in-force and correct salary as applicable must be paid.

21. The Hon'ble Supreme Court of India has fixed the ratio in the case of **Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others reported in (2012) 8 SCC 417**, wherein, it has been held as follows:-

"14. We are concerned with the excess payment of public money which is often described as "taxpayers' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the Government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid / received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment."

22. In the case on hand, admittedly, the petitioners were appointed as Technical Officer which is falling under the Tamil Nadu Government Pay fixation. Admittedly, they appeared for selection to the post of Assistant Professor, pursuant to the recruitment



notification issued. They were aware of the scale of pay as notified in the recruitment notification and accepted the offer of appointment made. In the present case, the protection of pay was granted by the Syndicate erroneously and therefore, the audit party raised an objection, based on the fundamental rule as discussed above. Once the employee is not entitled for pay fixation with reference to the Fundamental Rules for the post of Technical Officer, then such pay protection cannot be granted in the post of Assistant Professor which is a teaching post governed under the University Grants Commission Regulations and there is no lien in between the post of Technical Officer and the Assistant Professor. In the absence of any lien, even the Madurai Kamaraj University Statute is not applicable as per clause 11(a)(i) and even for the post of Technical Officer, pay protection cannot be granted in view of Ruling (6) of FR 22(B). For all these reasons, the petitioners have not established any acceptable legal ground for the purpose of assailing the order impugned. However, the learned Senior Counsel raised a point that the huge amount has been sought to be recovered. In this regard, the order impugned itself clarifies that the excess amount shall be recovered by way of monthly installments.

23. This being the factum, the Writ Petitions are devoid of merits and stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(T & P)

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/ /2022

Sub Assistant Registrar(CS)

ssb

To

1 The Registrar,
Madurai Kamaraj University,
Palkalai Nagar, Madurai, Madurai District.

2.The Deputy Director of Local Fund Audit,
Madurai Kamaraj University,
Palkalai Nagar, Madurai, Madurai District.

+2 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-12046 & 12047[F] dated 15/03/2022)

+2 CC to M/s.ISAAC CHAMBERS, Advocate (SR-12280[F] dated 15/03/2022)

+1 CC to M/s.SPL GP (SR-12454[F] dated 16/03/2022)

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