BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 28.01.2022

DELIVERED ON: 11.03.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.8706 of 2016

and

W.M.P.(MD).Nos.6955, 6956, 8083, 11907, 12241 of 2016

Dr.M.Selvam ... Petitioner

Vs

1.The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
Higher Education Department,
Chennai.

2.The Director of Local Fund Audit Department,
Kuralagam,
Chennai - 600 108.

3.The Regional Joint Director,
Local Fund Audit Department,
Trichirappalli Corporation Water Tank Complex,
1st Floor, Dindigul Road,
Trichirappalli - 620 001.

4.The Assistant Director,
Local Fund Audit Department,
Bharathidasan University,
Palkalai Perur,
Tiruchirappalli.

5.The Bharathidasan University,
Represented by its Registrar,
Palkalaiperur,
Tiruchirappalli - 620 024. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records relating to the impugned order passed by the third respondent in his proceedings in Rc.No.543/A2/2015 dated 11.06.2015 and the consequential revised and re-fixation order issued by the fifth respondent in his proceedings in Ref.No.46104/H5/2012 dated 25.01.2016 and consequential recovery order passed by the fifth respondent in his proceedings in ந.க.எண்.எச் 4/41070/2013 dated 15.04.2016 and quash the same as illegal.

For Petitioner : Mr.Karthik Raja, For Ajmal Associates.

For R-1 to R-4 : Mr.D.Sachi Kumar, Additional Government Pleader.

For R-5 : Mr.VR.Shanmuganathan

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O R D E R

The present Writ Petition has been filed to quash the impugned order dated 11.06.2015 and the consequential revised re-fixation order dated 25.01.2016 and consequently recovery order dated 15.04.2016.

2. The brief facts of the case are that the petitioner was working as Professor and Head of Department, Department of Commerce and Financial Studies, School of Economics and Commerce, Bharathidasan University, Tiruchirappalli. The petitioner was appointed as Teacher Training Fellow (T.E.F) in Commerce in Center for Distance Education on 18.12.1992 on consolidated pay of Rs.1500/- per month and it was enhanced to Rs.2000/-. The said appointment was made by the fifth respondent University by way of paper advertisement and holding interview on 23.11.1992 by Selection Committee.

3. The contention of the petitioner is on the date of initial appointment, the petitioner was having Ph.D., qualification and it was higher than the minimum qualification. The University was in need of Middle Level Officer and hence the University absorbed in the permanent post of Distant Education Officer on 19.04.1995 and later promoted as Lecturer on 18.12.1997 then as Reader on 18.12.2002 and Associate Professor on 01.01.2006 then Professor on 01.01.2009 then as Head of the Department on 10.10.2015. The Syndicate Sub Committee in the Minutes of 196th Syndicate Meeting held on 24.01.2011 in Additional Agenda II has recommended the petitioner under Career Advancement Scheme without monetary benefits as per G.O.Ms.No.350 dated 09.09.2009. In the 199th Syndicate Meeting held on 29.04.2011 resolved that the report of Vice Chancellor on the Minutes of Meeting of the Syndicate Committee held on 14.09.2010 accepted by the fifth respondent. Based on Resolution No.2011.112 dated 29.04.2011, the fifth respondent vide proceedings dated 06.07.2011, the petitioner's Teacher Training Fellow and

Distance Education Officer in the Bharathidasan University from 18.12.1992 has been taken as qualifying service. Thereafter, his scale of pay was fixed under senior scale of Lecturer with effect from 18.12.1997. The Regional Joint Director of Local Fund Audit, the 3rd respondent herein had objected for such benefit granted to the petitioner vide proceedings dated 11.06.2015. The objection of the Local Fund Audit is award of Senior Scale of Lecturer taking into account five years of service in the post of Teacher Training Fellow for Career Advancement Scheme is contrary to UGC Regulations and Government Norms and therefore directed the Registrar of Bharathidasan University to recover the loss from the officials concerned. The fifth respondent vide impugned proceedings dated 22.06.2015, directed the petitioner to submit explanation for re-fixation of pay. The petitioner submitted an explanation on 13.07.2015 requested to furnish documents which are essential to submit explanation. The fifth respondent vide proceeding dated 07.08.2015 furnished five documents to the petitioner. Thereafter, the petitioner submitted detailed explanation on 24.08.2015 and the fifth respondent again called for another explanation as to why the dates of Career Advancement Scheme promotion should not be revised based on the Resolution No.2015.160 dated 20.10.2015. Again the petitioner submitted his explanation 18.01.2016 stating the audit objection is arbitrary. After the explanation, the fifth respondent passed the impugned order dated 25.01.2016 wherein the date of award of Career Advancement Scheme promotion was revised and the salary was re-fixed.

4. The contention of the petitioner is that the Career Advancement Scheme of promotion was granted based on 196th Syndicate Meeting dated 24.01.2011 and another Minutes of 199th Meeting dated 29.04.2011. There is no misrepresentation or fraud committed by the petitioner and the Government Orders mentioned in the impugned order will not operate retrospectively and the Government Order is not applicable for counting the past service that is rendered from 1992 to 1995. There are more than 1000 audit objections and the respondents have penalized only the petitioner alone. Aggrieved over the impugned orders, the present Writ Petition is filed.

5. The fifth respondent has filed a counter. The contention of the fifth respondent is that the petitioner along with two others namely Dr.A.Singaravel and Dr.B.Backiyavathi appointed as Teacher Training Fellow on consolidated pay of Rs.2000 with effect from 18.12.1992. Subsequently, all the three were appointed as Distance Education Officer on time scale of pay with effect from 19.04.1995. Thereafter, they were promoted as Lecturers from 1999 and it is false to state the petitioner and others were promoted as stated in the affidavit. All the three persons repeatedly requested to consider their past service as Teacher Training Fellow on consolidated pay and service rendered as Distance Education Officer on the time scale of pay for their Career Advancement service promotions. Their request was placed before various sub-committee

from time to time. Finally, the Syndicate Sub Committee considered the issue and submitted its explanation on 14.09.2010. The Syndicate in its meeting held on 29.04.2011 vide Resolution No.2011.112 consider the remarks of the Hon'ble Vice Chancellor on recommendation of grievances committee decided to advance their date of promotion from the date on which they were appointed as Teacher Training Fellow. The UGC guidelines for counting the past service are as follows:-

> *5. I submit that The UGC guidelines for counting of past service are as follows:*
> *"1. Previous service, without any break as a Lecturer or equivalent, in a University, College, National Laboratory, or other Scientific Organizations (CSIR, ICAR, DRDO, UGC, etc) and as a UGC Research Scientist should be counted for placement of Lecturers in Senior Scale/Selection Grade provided that:-*
> *a. the post was in an equivalent grade/scale of pay as the post of a Lecturer;*
> *b. the qualifications for the post were not lower than the qualifications prescribed by the U.G.C for the post of Lecturer;*
> *c. the Lecturers concerned possessed the minimum qualification prescribed by U.G.C for appointment as Lecturers;*
> *d. the post was filled in accordance with the prescribed selection procedure as laid down by the University/State Government;*
> *e. the appointment was not ad-hoc or in a leave vacancy of less than one year duration.*
> *2. No distinction should be made with reference to the nature of management of the institution where previous service was rendered (private/local body/Government) if the above criteria are satisfied".*

6. The Local Audit has objected to their mode of recruitment and advancement of date as Lecturer, since without notifying the vacancies through wide publicity as required by UGC norms the recruitment was carried out. Therefore, the Local Fund Audit raised objections. Therefore, the revised proposed dates for award of Career Advancement Scheme Promotion was communicated to the writ petitioner and the Audit objection were placed before the Syndicate Meeting. In the meeting, the revised proposal was approved. Thereafter, a show cause notice was issued to the petitioner and thereafter only the final orders of revision was passed. The petitioner filed another Writ Petition in W.P.(MD).No.7926 of 2016 challenging the recovery proceedings and it was adjourned without any interim orders on 22.04.2016. Subsequently, the writ petitioner

withdrawn the Writ Petition and filed this present Writ Petition and this Court has granted the interim order of recovery proceedings vide order dated 28.04.2016. Since the audit objections were raised by the Local Fund Audit, the present impugned orders were passed.

7. Heard Mr.Karthik Raja, learned counsel for the petitioner and Mr.D.Sachi Kumar, learned Additional Government Pleader for respondents 1 to 4 and Mr.VR.Shanmuganathan, learned counsel for the fifth respondent.

8. The Local Fund Audit has raised objections through the impugned order dated 11.06.2015. In the objection it has been stated that Dr.Backiyavathi, Dr.M.Selvam and Dr.Singavel were joined the service in the consolidated service of Rs.1500/- per month as Teacher Training Fellow Centre for Distance Education in the University on 21.12.1992. It was resolved in the Syndicate Resolution No.92-2006 dated 18.09.1992 that the fellowship holders will not claim absorption in the University service. Inspite of it, they were awarded Lecturer (Senior Lecturer) taken into account of five years of service rendered in the post of Teacher Training Fellow. As the post of Teacher Training Fellow is purely temporary, considering the service for Career Advancing Scheme is contrary to UGC regulations and Government norms. This issue was brought to the knowledge of the Government and the Government vide Letter No.Ms.No.174/ Hr.Edu (K1) Department dated 25.09.2013, has directed the Registrars of all the University to strictly take suitable action to refix the pay and revise the wrong promotion / increments given as pointed out in the audit so as to avoid recurrence of audit paras and related excess expenditure in subsequent grants and to recover the excess payment from the individual staff concerned. The Government has also requested the Registrars to recover the loan from the official concerned who are authorized the excess wrong payment and to settle all the audit objections including those related to administration by furnishing appropriate replies with records to audit. Based on the audit objections, the fifth respondent has issued three show cause notices and the petitioner has submitted explanation. Thereafter, the consequential order of revision and re-fixation was issued vide order dated 25.01.2016 and the recovery order was passed on 15.04.2016 challenging the three orders, the present Writ Petition is filed.

9. On perusing the impugned order dated 11.06.2015, it is seen that the petitioner was appointed on consolidated pay as Teacher Training Fellow. The service period served as consolidated pay, non provisionalised post, daily wages employees can never be taken for service period calculations. It is from the date of regular appointment in the permanent post with the time scale of pay alone can be taken for any service period calculations.

10. The Bharathidasan University ought not to have pass such an order in its Syndicate Meeting. In a similar case, the

Bharathidasan University has committed such an error while granting promotion in a non teaching staff category. One K.Gunalan was appointed as Junior Assistant on 01.01.1987 and he was promoted as deemed Assistant on 01.01.1994. He was holding the post of deemed Assistant but he has not passed the Account Test Part-I which is monetarily prescribed under the statute for the promotion of regular Assistant. On 08.06.2001, he was promoted as regular Assistant granting exemption from passing Account Test Part-I by invoking Rule 3 of Chapter 6 of Bharathidasan University. Thereafter, similarly placed persons started seeking the same benefits and the University has granted such benefits to several persons. The audit report for the period of 2008-2009, an objection was raised stating that the said Gunalan has been wrongly exempted from passing Accountant Test - I and based on the wrong exemption he has been wrongly awarded Selection Grade and the audit has also objected to several persons and they preferred Writ Petitions in W.P.(MD).No.8032 of 2015 batch and this Court vide order dated 25.06.2015 granted an interim order. In the meanwhile, some of them retired and their pension proposals were rejected citing the pendency of W.P.(MD).No.8032 of 2015. Questioning the said proceedings several Writ Petitions were again preferred in W.P.(MD). No.4044 of 2016 batch. The issue in that Writ Petition is that the employees were granted deemed promotion after the employee completes seven years of service. Thereafter, the said deemed promotion were modified wherein the Selection Grade and Special Grade was granted after the completion of 20 years of service. But the Government instructions for awarding Selection Grade is after completion of 10 years. Thus, the Bharathidasan University failed to adhere the Government rules and therefore audit objections were raised. In that Writ Petition, this Court has held recovery can be ordered if the employee is having the knowledge that the amount paid is excess.

11. In the Bharathidasan University, the University has committed so many errors in paying excess money by deviating the Government Orders or the UGC regulations. Therefore, the audit objection is correct in stating that it ought to be recovered since the University and the individuals are responsible for such excess payment. In the above said case, it has been held as under:

> *33. The concept of fraud or misrepresentation is being brought in such situations that 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. The question to be asked is whether excess money has been paid or not, may be due to a mistake, bonafide or intention. 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. Hence, this Court is of the view that except few instances pointed out in Syed Abdul Qadir case and in Col.B.J.Akkara case, the excess payment made due to wrong/irregular pay fixation can always be recovered.

12. The only difference between the order passed in W.P.(MD).No.8032 of 2016 and the present case is in the earlier case it deals with non teaching staff and was granted exemption from departmental test. In the present case it is teaching staff and deviated from granting selection grade pay before completion of 10 years of service. But the ratio decidendi in both the case is one and the same.

13. Therefore, this Court following the judgment stated supra is of the considered opinion the impugned orders are legally valid and recovery order is also legally valid. Hence this Court is not inclined to set aside the impugned orders and this Writ Petition is dismissed.

14. Accordingly, this Writ Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (A.D.II)

// 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 Principal Secretary to Government,
The State of Tamil Nadu,
Higher Education Department,
Chennai.

2.The Director of Local Fund Audit Department,
Kuralagam,
Chennai – 600 108.

3.The Regional Joint Director,
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Trichirappalli Corporation Water Tank Complex,
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4.The Assistant Director,
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Bharathidasan University,
Palkalai Perur,
Tiruchirappalli.

5.The Registrar,
The Bharathidasan University,
Palkalaiperur,
Tiruchirappalli – 620 024.

+1 CC to M/s.AJMAL ASSOCIATES,Advocate(SR-12054[F] dated 15/03/2022

+1 CC to M/s.SPL GP (SR-12273[F] dated 15/03/2022)

Pre-Delivery Order made in
W.P.(MD)No.8706 of 2016
11.03.2022

PKP/22.03.2022/8P/8C