



*W.P.(MD)No.13322 of 2017*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.11.2022

CORAM

**THE HON'BLE MRS.JUSTICE S.SRIMATHY**

**W.P.(MD)No.13322 of 2017**

**and**

**W.M.P.(MD)Nos.10396 of 2017 & 18135 of 2021**

V.Babu

... Petitioner

Vs.

1. The Registrar,  
Bharathidasan University,  
Palkalaiperur,  
Tiruchirapalli – 620 024.

2. The Assistant Director,  
Internal Audit Department,  
Bharathidasan University,  
Palkaliperur,  
Tiruchirappalli – 620 024.

... Respondents

***(R2 is impleaded, vide Court order, dated 06.12.2021  
in W.M.P(MD)No.18133 of 2021 in W.P.(MD)No.13322 of 2017)***



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**PRAYER :** Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for records relating to the impugned proceedings of the second respondent in Na.Ka.No.164/A2/2014 dated 03.09.2014 and the impugned order in Na.Ka.No.B1/16561/2014 dated 03.11.2016 and the consequential impugned order in Na.Ka.No.B1/16561/2014 dated 26.12.2016 passed by the first respondent and quash the same as illegal and consequently, direct the first respondent to disburse a sum of Rs.3,15,612/- wrongfully deducted from the petitioners retirement benefits and to pay him the revised pension based on the salary last drawn by him along with interest within a period that may be stipulated by this Court.

*(Prayer amended, vide Court order, dated 06.12.2021 in  
W.M.P(MD)No.18132 of 2021 in W.P.(MD)No.13322 of 2017)*

For Petitioner : Mr.M.E.Ilango  
For R1 : Mr.VR.Shanmuganathan  
For R2 : Mr.D.Farjana Ghoushia  
Special Government Pleader





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4. The brief facts as stated in the affidavit is that the petitioner was initially appointed on daily wage basis on 04.11.1989, then was regularized in the post of Junior Assistant, then promoted as Assistant Section Officer, conferred Selection Grade Section Officer, thereafter, retired from service. The contention of the petitioner is that there was no charge or any disciplinary proceedings against the petitioner and the petitioner was allowed to retire on 27.08.2014. While receiving the terminal benefits, the petitioner has found that the retirement benefits was not correctly fixed. Therefore, the petitioner approached the respondent, where the respondent through communication, dated 28.02.2015 stated that the retirement benefits had been disbursed after withholding 25% of gratuity due to audit objection and it also decided to pay 100% provisional pension from 01.09.2014. In the proceedings, dated 28.02.2015, the respondent has withhold 25% of the gratuity without giving any opportunity to the petitioner. The respondents have cited two audit report submitted by the Assistant Director, Internal Audit Inspection Department, dated 03.09.2014 and 22.01.2015. Without



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serving these copies and without granting any opportunity to the petitioner, the respondents have deducted 25% of the petitioner's gratuity. Hence, the petitioner had filed a writ petition in W.P.(MD)No. 21416 of 2016 and this Court, vide order, dated 08.11.2016 directed the respondent to consider and pass orders. The respondent had considered the claim of the petitioner and the present impugned order, dated 03.11.2016 was passed, wherein it has been stated that as if the petitioner was junior to one P.Murugan and on that basis re-fixed the petitioner's scale of pay. On scrutiny, the said Murugan has not passed M.A., degree. The claim of the petitioner is that even though the said Murugan has not completed, as per the Rules he was paid excess amount. Therefore, the claim of the petitioner is that he has to be fixed as the said Murugan and the impugned order was passed by violating the principles of Natural Justice.

5. The respondents have not filed any counter affidavit but relied on the impugned order and submitted that the petitioner is not entitled to based on the audit objections. Therefore, the respondents



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prayed to dismiss the writ petition.

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6. Heard M.E.Ilango, learned Counsel appearing for the petitioner, Mr.VR.Shanmuganathan, learned Counsel appearing for the first respondent and Mrs.D.Farjana Ghoushia, learned Counsel appearing for the second respondent and perused the records.

7. The learned Counsel appearing for the petitioner submitted additional typed set of papers which was filed along with the amendment petition. In audit objection, it has been categorically stated that the petitioner joined as Record Clerk in the year 1986, then regularized in the post of Junior Assistant in the year 1987. Then the petitioner was promoted as Assistant in the year 1994, thereafter, granted as Extension Officer Special Grade. In the impugned order, it has been categorically stated that the said Murugan has acquired direct M.A and the Murugan's fixation of scale of pay was wrong. The claim of the petitioner is that even though the fixation is wrong, he has received excess amount. Since the said Murugan is junior to the petitioner, he is also entitled to the scale



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of pay that is fixed to the said Murugan. This Court is not able to accept the claim of the petitioner, since the audit objection clearly states that the fixation of the said Murugan is wrong. Hence it is a wrong fixation, the petitioner cannot claim to the same wrong fixation. This Court in several cases has held that a wrong cannot be continued. However, the petitioner submitted that he has not been granted sufficient opportunity. Moreover, the petitioner submitted that for the said Murugan, there was no recovery at all.

8. This Court is of the considered opinion that serious irregularity has been committed by the Bharathidasan University by granting wrong Special Grade and Selection Grade to several persons. Therefore, this Court deems it fit to remit back the case to the Assistant Director of Internal Audit Department. The said second respondent shall issue notice to the petitioner as well as the said Murugan. After receiving the notice, the petitioner shall submit his explanation. The second respondent shall provide all the particulars to the petitioner. After the submission of the explanation, the second respondent shall



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independently assess the entitlement of the petitioner and the said Murugan and pass appropriate orders. In case, if there is disbursement of any benefits to the petitioner as well as the said Murugan, the respondents are at liberty to recover from both the persons. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this order.

9. With the above said direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

**02.11.2022**

Index : Yes / No  
Internet : Yes / No  
jbr



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To

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Bharathidasan University,  
Palkalaiperur,  
Tiruchirapalli – 620 024.
2. The Assistant Director,  
Internal Audit Department,  
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**S.SRIMATHY, J**

jbr

Order made in  
W.P.(MD)No.13322 of 2017

**02.11.2022**