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W.A.No.105



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.08.2023

Delivered on: 12.12.2023

CORAM:

**THE HON'BLE MR.JUSTICE R.SURESH KUMAR
and
THE HON'BLE MR.JUSTICE K.KUMARESH BABU**

**W.A.No.1056 of 2015
and M.P.No.1 of 2015**

1.University of Madras,
Represented by its Registrar,
University of Madras,
Chepauk, Chennai – 600 005.

2.The Director,
Institute of Distance Education (IDE),
University of Madras,
Chennai – 600 005.

...Appellants

VS.

1.Dr.U.T.Manisundar (Died)
(Previously known as T.Mani)
Principal System Analyst and Co-ordinator,
CRPS-I, Computer Centre, University of Madras,
Chennai – 600 005.

2.University of Grants Commission,
Represented by its Secretary,
New Delhi.

3.N.Sasikala

4.M.Sreeveena



(R1 – Died, impleaded the respondents 3 to 5
as LR of R1 vide order of Court dated 17.04.2023
made in C.M.P.No.26644 of 2019 in W.A.No.1056 of 2016) ...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 25.02.2015 made in W.P.No.35145 of 2007 on the file of this Court.

For Appellants : Ms.V.Sudha
Standing Counsel for Madras University

For Respondents : R1 – Died
Mr.P.R.Gopinathan for R2
Mr.T.Sundaravadanam for R3 to R5

J U D G M E N T

(Judgment of the Court was delivered by K.KUMARESH BABU. J)

This Intra-Court appeal has been preferred being aggrieved against the order made in W.P.No.35145 of 2007 dated 25.02.2015, passed by the learned Single Judge directing the first appellant University to promote the first respondent as Joint Director under the second appellant as per the recommendation of the Task Force of Distance Education Council dated 06.12.2000 with backwages and all other monetary benefits.

2.The brief facts of the case is that the first respondent was appointed as a System Analyst in the University of Madras on 21.10.1985, on a contractual basis for a period of one year and the scale of pay was Rs.1200-50-1300-60-



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and the first respondent continued in service and his service was regularized on 21.10.1987 and his scale of pay has been revised as Rs.1200-375-16500 w.e.f 01.01.1996 based on the VI Pay Commission, and he was drawing a basic pay of Rs.16,500/- w.e.f 10.10.2007. The grievance of the first respondent is that he has been denied promotion for two decades by the appellant University and thereby the first respondent has not been given an opportunity to advance in his career. Despite taking an active role in developing required software in computerizing the University Examination results and his services having been utilized for handling classes for PG students, Research Scholars of University Departments, BCA and MCA students of Institute of Distance Education (IDE).

3.It is the further case of the first respondent that he is the only System Analyst taking all the responsibilities at all times for both regular and IDE courses. Based on the representations made by the first respondent, the University has formed an IT Expert Committee comprising of three members, and they held that the first respondent has already enjoyed a jump and scale slide upwards during IV pay fixation and already enjoyed the benefits of cadre elevation and drawing equivalent of senior most analyst of any 27 Government Organization, there is no justification for any kind of grievance in this case. Further, his representation regarding the transfer from non-teaching line to teaching cadre at the highest level may adversely affect the morale of teaching



staffs at Readers/Lecturer levels with more research/teaching experience, and the Committee did not find him to be of exceptional research/academic experience to recommend for professor post. The Syndicate has considered the Report of the IT Expert Committee and resolved that the nomenclature of the post of "System Analyst" may be changed as 'Principal System Analyst' in the same scale of pay of Rs.12000-375-16500. Aggrieved by the same, the first respondent had filed a Writ Petition, wherein the learned Judge held that the first respondent should be given a promotion. Being aggrieved against order of the learned Single Judge, the University has preferred this appeal.

4.We have heard Ms.V.Sudha, learned Standing Counsel appearing for Madras University, Mr.P.R.Gopinathan learned counsel appearing for the second respondent and Mr.T.Sundaravadanam, learned counsel appearing for the respondents 3 to 5.

5.The learned Standing Counsel appearing for Madras University would submit that the first respondent filed a Writ Petition seeking promotion to the post of Joint Director in the Institute of Correspondence Education, which is a post were only a senior faculty member of the University in the cadre of Professor is eligible to be appointed and the first respondent seeking to promote him as teaching faculty, is not permissible under the laws of the University. The



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post of Joint Director in the Institute of Distance Education is not a sanctioned post in the appellant University. The said post is a temporary one, created to manage the additional workload as and when such workload arises, and the first respondent was only appointed on a contractual basis temporarily on 21.10.1985 as a System Analyst. The appointment order of the first respondent also states that his service conditions will be as laid down in Chapter XXIV Volume I of University Calendar stipulating the service conditions of non-teaching staff of the appellant University. Therefore, she would submit that a person appointed as a non-teaching staff cannot be promoted to hold a post of teaching staff.

6.The learned Standing Counsel would submit that even for temporary post of Joint Director, the Syndicate of the University had resolved to fill the same only by a teaching faculty in the cadre Professor. That being so, the first respondent being a non-teaching staff and the post of Professor is not a promotional post from the non-teaching post of System Analyst, he cannot seek such a relief. The learned counsel would further submit that in order to consider the representation of the first respondent, the appellant University had constituted a Special Expert Committee to consider the nature of promotion to be granted to the first respondent and to consider his request for appointment as teaching faculty in the University. The said Expert Committee after examining his qualifications stated that the first respondent can be re-designated as

Principal System Analyst on the same scale of pay, as the first respondent



already has a pay scale on par with a Deputy Registrar.

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7.The learned counsel would further submit that the documents produced by the first respondent would clearly show that he had acted only as a Resource person for the contact programmes of BCA and MCA courses conducted through correspondence education for the year 1998 and 1999. The learned Standing Counsel would submit that the appellant University vide Circular dated 25.11.1998 had directed all the Head of Departments of University not to allow non-teaching staff/technical personnel to take classes in the University. Therefore, the claim of the first respondent engagement of teaching cannot be equivalent to full time teaching and academic activity in the appellant University. In any event that cannot be a ground to grant promotion to a post to be held by a teaching faculty.

8.The learned Standing Counsel would submit that at the time of the appointment of the first respondent on a temporary basis in the year 1985, there was no established cadre in respect of the new post. Only on emergence of new post with subsequent development in the computerization of the University and on the permanency of the computers in the administration of the University, the University had regularized the appointment of the first respondent in the year 1996 retrospectively w.e.f. the date of his joining duty. All other posts were created under the first respondent such as Application Programmers, Supervisor,



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Assistant Technical Officers, so the first respondent was working in a managerial position with authority and thereby the University had granted the highest position among the computer personnel and has granted the pay scale equal to the post of an Assistant Professor. Learned Standing Counsel would further submit that the first respondent had superannuated from the service during the pendency of the Writ Petition and therefore the question of promotion does not arise after his superannuation.

9. Learned counsel for the second respondent would submit that for the post of System Analyst in which the first respondent was recruited as a non-teaching staff category. Therefore, the first respondent cannot seek any promotion as a professor in teaching staff category. The first respondent was given a revised pay of scale which was equivalent to the pay scale of a Deputy Registrar. He would further submit that the teaching faculty is governed by the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010 which superseded the University Grants Commission (Minimum Qualifications required for the Appointment and Career Advancement of Teachers in Universities and Institutions affiliated to it) Regulations, 2000. No person in a non-teaching category can seek promotion to a position as a teaching



category. He should have acquired such qualification as mandated in the regulations and apply through proper means and compete in the open selection process of the appellant University. The UGC Regulations does not provide for the promotion of non-teaching staff category to teaching staff category.

10.Countering her arguments, learned counsel appearing for the respondents 3 to 5 would submit that at the time of the first respondent's appointment, he was paid equivalent to the Pay Scale of Reader-teaching category. He would submit that while the first appellant gave promotion to other categories, no promotion was granted to the first respondent at any point of time. Only the annual increment was extended to him until the maximum basic pay of Rs.16,500/- as on 10.10.2007 and the Pay Scale was of Rs.12,000-375-16,500. Due to this, the first respondent was not given any yearly increment and the first respondent was informed of it by the Registrar in his Communication No. F1(B)/ESTT/ 2008/3867 dated 02.12.2008.

11.He would further submit that the VIth Pay Commission recommendations were implemented to all University employees w.e.f. 01.01.2006 and not to the first respondent alone it was a routine procedure followed by the University for every pay revision. Further, it was contended that there was no post of Principal System Analyst till 2007 in the University of



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Madras. The approval for the post of Principal Systems Analyst was given by the Syndicate on 08.06.2007, and the same did not furnish any such details with respect to scope of work, eligibility criteria and standard for the promotion to the post.

12.He would submit that the first appellant University has a "*Madras University Calendar*" in which Chapter XXIV stipulates the service conditions of non-teaching staffs in the University. But the post of System Analyst was not incorporated, even though the post was created as early as in the year 1983. He would further submit that the first respondent was also engaged in academic works and duties with the permission of the Superior Officers of the University. He would further submit that the first respondent retired from the service on 30.06.2013, his Pay Scale of was Rs.15,600-39,100 whereas, the Pay Scale for Professor/Director-IDE/Reader was of Rs.37,400-67,000. The appellant University has also not given any kind of promotion to the first respondent even though he had an unblemished service record from 1985 to 2013 for 28 years.

13.He would further submit that the information furnished by the University of Madras under the RTI on 05.06.2018, based on the letter given by the first respondent was not addressed completely and many details are suppressed and wrong information's were given regarding the Pay Scale. Further,



he would submit that the first respondent has joined in the new post of Principal Systems Analyst as on 11.10.2007. Therefore, he would contend that there is no infirmity in the order passed by the learned Single Judge and this writ appeal deserves to be dismissed.

14.We have heard the rival submissions on both the sides and have perused the materials available on record.

15.The first respondent had filed a Writ Petition being aggrieved against a resolution passed by the Syndicate in which it had recommended the change in nomenclature of the post that was held by the first respondent from System Analyst to Principal System Analyst and for a consequential direction to promote him as a Joint Director of the Institute of Distance Education of University of Madras based on the recommendation of a Task Force of Distance Education Council dated 06.12.2000 and his representation dated 23.10.2007 with back wages and all other monetary benefits.

16.Admittedly, the first respondent was initially appointed as a System Analyst on a time scale of pay by the appellant University as early as in the year 1985. Thereafter, due to technological advancement, the appellant University had itself entered into the computer era for which it had required the services of



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Computer Experts and had created a Department for it. On such transformation, the services of the first respondent had been regularized and under him various persons were appointed. He had been continuing to work as a System Analyst and his pay scale had been revised periodically and at one point of time his pay scale was that of equivalent to a Deputy Registrar and also to an Assistant Professor in the teaching faculty. He had made a tall claim to promote him as a Professor and also sought himself to be promoted as a Joint Director of Distance Education. He had moved this Court by way of a Writ Petition in W.P.No.13863 of 2007 seeking for a mandamus to direct the first appellant herein to promote the first respondent as a Joint Director in the Institute of Distance Education as per the recommendation of a Task Force of Distance Education Council dated 06.12.2000.

17.This Court by order dated 04.12.2007 had directed the appellants to consider the claim made by the first respondent. Pursuant to the said direction, an Expert Committee was formed to consider the case of the first respondent and to submit a Report. The said Expert committee had submitted a Report indicating that a person holding a non-teaching post could not be promoted as a teaching faculty and therefore, he could not be promoted as a Professor who was only eligible to be appointed as a Joint Director to the Institute of Distance Education.

On consideration of the said Report, the Syndicate had resolved to redefine the



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nomenclature of the post that has been held by the first respondent and had recommended the nomenclature of the post System Analyst held by the first respondent to be renamed as Principal System Analyst with the same scale of pay. This had been challenged by the first respondent in the Writ Petition, out of which, this Intra Court Appeal had arisen.

18.Challenging the aforesaid resolution, the first respondent had inter alia prayed for an innocuous direction to promote him as a Joint Director of Institute of Distance Education based on a Task Force recommendation. From the narration of the facts supra, it is evident that the first respondent had been originally appointed on a temporary basis and thereafter, due to the technological advancement in the appellant University, his services had been regularized.

19.It is to be noted that the appellant University does not have any regulations/statutes governing the service conditions of its employees. All the decisions are taken by resolutions of the Syndicate without any parameters which is shocking our conscience.

20.Be that as it may, the University in its administration, employs non-teaching and teaching staff. The non-teaching staff comprises the administrative wing and computer wing for which, no statutes had been framed by the



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University. However, the teaching faculties are governed by the University Grants Commission norms which includes their initial appointment and further advancement in the career. The non-teaching staff and the teaching staff are two different wings of the University. A non-teaching staff cannot be at any stretch of imagination without applying the University Grants Commission norms could be brought under the teaching wing. In fact, the University Grants Commission by its Communication dated 03.02.2012 to the Registrar of the Madras University, the first appellant herein on a request by the University for re-designation of Technical Officers as Lecturers had replied as follows:

With reference to your letter No.D.1.(C)/TE/2008/6214 dated 13-10-2008 on the above cited subject, I am directed to inform that there is no policy in the UGC office regarding re-designation the Technical Officers as Lecturer. The post of Technical Officer is a technical post and the post of Lecturer is a teaching post. The post of Technical Officer cannot be re-designated as Lecturer. The Technical Officer may be considered for Lecturership within the provision of open selection, if he/she fulfills all required qualifications in accordance with UGC Regulations on minimum qualifications for appointment of teachers.

A reading of the said letter would clearly indicate that a person working on the technical side such as the first respondent herein could be considered for



lecturership (teaching staff) only in an open selection, if he had fulfilled all the required qualifications in accordance with the University Grants Commissions regulations on minimum qualifications for appointment of teachers.

21.The first respondent at no point of time had participated or even applied for himself to be appointed as a teaching staff of the University based upon his qualification. He had been working as a System Analyst which has been renamed as Principal System Analyst.

22.When that be so, he cannot seek to promote himself as a teaching staff who would be only eligible to hold the post as a Joint Director in the Institute of Distance Education. Therefore, at the outset, the claim made by the first respondent itself is wholly misplaced and contrary to the University Grants Commission's regulations on appointment as teaching staff. Therefore, there was no error on the part of the Syndicate in not considering his request and we feel that the Syndicate had been magnanimous enough to re-designate the post held by the first respondent that too without any parameters. On that ground itself, the Writ Petition filed by the first respondent would have to fail. These aspects had been clearly overlooked by the learned Single Judge in passing the impugned order. The learned Single Judge had not appraised himself of the University Grants Commission regulations or even the statutes of the University



much less, he had not seen distinction between the non-teaching and teaching staff in an Educational Institution such as an University.

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23.Further, the direction issued by the learned Single Judge to follow the recommendation of a Task Force which did not culminate into any regulation/order by the Distance Education Council which had formulated a Task Force and the said recommendation only stood in a paper. Even if such a recommendation had been accepted by the Distance Education Council, it could only apply to an **open University** and not a Distance Education as the Task Force has been constituted only to consider and recommend broad personal policy for academic staff in the Distance Education to serve as guiding principle for all **Open Universities** in the country.

24.Therefore, the said Report relied upon by the learned Single Judge is nothing but a recommendation which has not been accepted by the Statutory Body and placing reliance on such recommendation is wholly erroneous.

25.In view of the reasonings and findings given above, we are of the view that the order passed by the learned Single Judge is without appreciation of materials available on record and contrary to the provisions of the regulations of



the University Grants Commission and hence is liable to be set aside.

26. In fine, the Writ Appeal is allowed and the order passed in the Writ Petition is set aside. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

27. We during the course of arguments had sought for certain clarifications in relation to the statutes governing the service conditions of the employees of the Universities. It was informed that there are no statutes governing the service condition of the employees of the Universities and the service conditions are based upon the Syndicate resolution passed then and there. We are pained to note that the first appellant University with such a stature & standing having been established a century ago does not have any statutes governing the service conditions of its employees. When such is the position, we are afraid that there would be no transparency in the appointment and promotion of a University staff.

28. In such circumstances, we are constrained to direct the first appellant University to frame statutes to govern the service conditions of its employees. We would also request the State Government to look into the matter. If there is a failure on the part of the University to frame such service statutes within a period of six months from the date of receipt of a copy of this judgment, we would embark to request the Government of Tamil Nadu to frame regulations to govern



the service conditions of the employees of the Madras University. Such regulations would not govern the teaching faculty as they would be governed by the University Grants Commission regulations.

29.Registry is directed to mark a copy of this judgment to the Chief Secretary, Government of Tamil Nadu and the Secretary to Government, Higher Education Department, Government of Tamil Nadu.

(R.S.K.,J.) (K.B.,J.)
12.12.2023

Index: yes/no
Speaking order:yes/no
Neutral Citation:yes/no
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To
The Secretary,
University of Grants Commission,
New Delhi.



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R.SURESH KUMAR, J.
and
K.KUMARESH BABU, J.

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**Pre-delivery judgment in
W.A.No.1056 of 2015**

12.12.2023