



W.P.No.12239 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.04.2023

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

W.P.No.12239 of 2015

K.Rajambal

.... Petitioner

VS

1. Pondicherry Engineering College,
Rep by its Principal,
Pillaichavady,
Puducherry - 605 014.
2. Member Secretary,
Pondicherry Engineering College,
Pillaichavady,
Puducherry 605 014.
3. Secretary to Government (Education),
Government of Puducherry,
Pudhucherry 605 001.
4. The All India Council for Technical Education
Rep by its Member Secretary,
7th Floor, Chanderlok Building,
Janpath, New Delhi-110 001.
5. Dr.G.Ravi

.... Respondents

Writ Petition filed under Article 226 of the constitution of India to issue
a Writ of Certiorarified Mandamus to call for the concerned records from the 1st



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respondent, quash the order of the 1st respondent dated 13.01.2015 bearing No.PEC/ESTT.(T)/E1/SENIORITY LIST (PROF.)/2515/No.199 as illegal insofar as placing the petitioner at Serial No.52 and placing the 5th respondent at Serial No.48 as illegal, arbitrary and contrary to law and consequently, direct the 1st respondent to place the petitioner above the 5th respondent viz., between Serial Nos.47 and 48 and to step up the pay of the petitioner on par with the 5th respondent with effect from 09.12.2005.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.A.Tamilvanan
For R.1
R.2 - No appearance
Mr.Syed Mustafa
Government Pleader (Pondy)
For R.3
For R.4 and R.5 - No appearance

ORDER

This Writ Petition has been filed challenging the order passed by the 1st respondent dated 13.01.2015 insofar as placing the petitioner at Serial No.52 and placing the 5th respondent at Serial No.48 and consequently, direct the 1st respondent to place the petitioner above the 5th respondent viz., between Serial No.47 and 48 and to step up the pay of the petitioner on par with the 5th



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respondent with effect from 09.12.2005.

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2. The brief facts of the case of the petitioner are as follows:

i) The petitioner is a Post Graduate degree holder in M.E. Power Electronics and completed Ph.D., in Wind Energy. On 26.03.1996, she was appointed as a Lecturer in the Electrical and Electronics Engineering department of the 1st respondent College. Her service was confirmed with effect from 26.03.1998. The 1st respondent College issued the seniority list of Lecturer and in that, she was placed at Serial No.2 and the 5th respondent was placed at Serial No.4. Thereafter, the 1st respondent College, by order dated 21.08.2002, granted senior scale of pay to the petitioner and other lecturers in the Electrical and Electronics Engineering Department. She was granted senior scale of pay with effect from 26.03.2001 and the 5th respondent was granted with effect from 03.07.2001. The 1st respondent, once again, issued seniority list of Lecturer in the Electrical and Electronics Engineering Department and in that, the petitioner was placed at Serial No.2 and the 5th respondent was placed at Serial No.3.

ii) The first respondent college invited application by direct recruitment for the post of Assistant Professor in Electrical and Electronics Engineer. She applied for the said post and the 5th respondent also applied for the same. The



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Selection Committee selected the petitioner to the post of Assistant Professor after due selection process and she was appointed as an Assistant Professor by an order dated 19.01.2006 by the 1st respondent. After appointment as Assistant Professor under the Career Advancement Scheme, the 5th respondent was upgraded as Associate Professor with effect from 09.12.2005. Consequently, the 5th respondent was fixed in a higher pay than the petitioner though the petitioner is senior to him in the post of Lecturer and when she assumed the office of Assistant Professor by direct recruitment on 19.01.2006. Thus, petitioner's junior was drawing more pay than her. Thereafter, the 1st respondent upgraded the 5th respondent as Professor with effect from 10.12.2011 and the petitioner as Professor with effect from 19.01.2012. Therefore, the petitioner gave a representation dated 22.02.2013 but nothing was done to rectify the anomaly.

iii) The 1st respondent issued tentative seniority list of Professor dated 21.07.2014 in the 1st respondent College, against which, the petitioner gave her objection on 11.08.2014. But the 1st respondent has issued the seniority list dated 13.01.2015, in which, the petitioner was placed at Serial No.52 and the 5th respondent was placed at Serial No.48 and the petitioner's pay is fixed less than the 5th respondent. Hence, this writ petition has been filed.



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3. i) Learned counsel for the petitioner would submit that the seniority list of the 1st respondent is illegal. The 1st respondent invited application for the post of Assistant Professor by direct recruitment. The petitioner applied for the same and after due selection process, she was selected and an order of appointment was issued on 19.01.2006. The 5th respondent, though applied and competed with the petitioner, did not get selected. Thereafter, based on the Career Advancement Scheme, the 5th respondent was upgraded as Assistant Professor with effect from 09.12.2005. Thereafter, the 5th respondent was given the upgradation to the post of Professor with effect from 10.12.2011 and the petitioner was granted upgradation to the post of Professor with effect from 19.01.2012. Then the tentative seniority list of all Professors in the college was issued on 21.07.2014. The 5th respondent had been placed at Serial No.16 and the petitioner had been placed at Serial No.20. The petitioner objected the same and made representation to place her above the 5th respondent. Without considering the objection, final seniority list was issued placing her at serial No.52 and the 5th respondent at serial No.48. There is no justification in placing the 5th respondent above the petitioner. The petitioner, being senior to the 5th respondent, cannot be placed below the 5th respondent and further, the petitioner cannot be paid less salary than the 5th respondent.



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4. Learned Government Pleader (Pondy) would submit that the 5th respondent joined the Institute as Lecturer on 3.7.1996 in the department of Electrical and Electronics Engineering Department and was awarded Lecturer (senior scale) on 3.7.2001 and was subsequently, promoted to the post of Assistant Professor under CAS on 10.12.2005. The post of Assistant Professor was re-designated as Associate Professor on 10.12.2008. The petitioner was further promoted to the post of Professor with effect from 10.12.2011 under Career Advancement Scheme(CAS). The 5th respondent was awarded Assistant Professor under CAS with effect from 10.12.2005 in the CAS committee meeting held on 28.09.2006 and his pay was fixed in the pay scale of Rs.12000-420-18300. Whereas the petitioner was recruited to the post of Assistant Professor in open recruitment held on 13.01.2006. The petitioner might have been eligible for CAS, prior to 5th respondent, since the petitioner was recruited and was also awarded Lecturer (Senior Scale). The petitioner did not submit her application for considering her for promotion to the post of Assistant Professor under CAS since she was recruited as Assistant Professor by open recruitment wherein the CAS promotion was held later to open recruitment i.e., after 2006. The petitioner is holding the regular post of Associate Professor whereas the 5th respondent is promoted to the post of Associate Professor and still continues to hold the post of lecturer /Assistant



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Professor. As per the AICTE, "CAS promotion being a personal promotion to the incumbent teacher holding a substantive sanctioned post, on superannuation of the individual incumbent, the said post shall revert to the original post wherein the respondent was recruited". Hence, the incumbent recruited to higher post will stand senior.

5. This Court considered the submissions made on either side and perused the materials available on record.

6. The petitioner joined as a Lecturer on 26.03.1996 in the 1st respondent College and she is working in the Electrical and Electronics Engineering Department. The seniority list of Lecturer working in the Electrical and Electronics Department was issued on 26.12.2001 and the petitioner was placed at Serial No.2 and the 5th respondent at Serial No.4. The 1st respondent granted senior scale to the petitioner on 21.08.2022 w.e.f. 26.03.2001 and in the case of 5th respondent w.e.f. 3.7.2001. Once again, seniority of lecturer was issued in the Electrical and Electronics Engineering Department and in that, the petitioner was placed at Serial No.2 and the 5th respondent at Serial No.3. Thus, it is clear that the petitioner is senior to the 5th respondent.

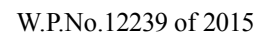


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7. Further, the application was invited by the first respondent for the post of Assistant Professor by direct recruitment and the petitioner applied for the same and after due selection, she was selected and the order of appointment was issued on 19.1.2006. The 5th respondent also applied and competed with the petitioner and did not get selected. Further, based on the Career Advancement Scheme, the 5th respondent was upgraded as Assistant Professor with effect from 09.12.2005. Thereafter, the 5th respondent was given the upgradation to the post of Professor with effect from 10.12.2011 and the petitioner was granted upgradation to the post of Professor with effect from 19.01.2012. Subsequently, the tentative seniority list of all Professors in the college was issued on 21.07.2014. The 5th respondent had been placed at Serial No.16 and the petitioner had been placed at Serial No.20. Aggrieved by the same, the petitioner objected the same and made representation to place her above the 5th respondent. Without considering the objection, final seniority list was issued, placing her at serial No.52 and the 5th respondent at serial No.48. The petitioner, being senior to the 5th respondent cannot be placed below the 5th respondent and further, she cannot be paid less salary than the 5th respondent.

8. Further, the petitioner, by competing and getting directly recruited to



9. Further, the 4th respondent had issued proceedings dated 19.09.2003 for clarification on the issues relating to the Career Advancement Scheme for Teachers of Degree Level Technical Institutions. In the said proceedings, the 4th respondent had decided to issue seniority of Career Advancement Scheme promotees vis-a-vis direct recruitees and it has decided that the direct recruitees will be considered senior to Career Advancement Scheme Promotees. Further, the 4th respondent framed All India Council for Technical Education (Career Advancement Scheme for the Teachers and other non-teaching staff in Technical Institutions)(Degree) Regulations, 2012, and Rule 10 of the said Regulations reads as follows:

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Therefore, going by the clarification issued by the 4th respondent and the aforesaid rules, the promotion obtained under Career Advancement Scheme cannot be taken into account while fixing seniority. The petitioner, having assumed the office by direct recruitment in the post of Assistant Professor, prior to the 5th respondent, cannot be placed below the 5th respondent. When there is a case of junior getting more salary, the salary of the senior has to be stepped up atleast to match the salary of the junior. But the 1st respondent had not done so. If the petitioner had not competed for the post of Assistant Professor by direct recruitment, she would have continued to remain senior to the 5th respondent and she would have also got the upgradation to the post of Assistant Professor under the career advancement Scheme much before the 5th respondent. Therefore, the petitioner cannot be put to worst position, for getting appointed to the post of Assistant Professor by direct recruitment on merits. Though the petitioner has given her objection on 11.08.2014 to the tentative seniority list issued on 21.07.2014, the 1st respondent, without considering the same, has issued the final seniority list dated 13.1.2015 placing the 5th respondent above the petitioner. Failure to step up the pay of the petitioner on par with the 5th respondent and not placing the petitioner above the 5th respondent in the seniority list of Professor, is illegal. If the anomaly will continue throughout the entire career, it will affect the petitioner's



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terminal benefits. Hence, her seniority has to be restored by placing the petitioner above the 5th respondent.

10. For the reasons stated above, this Court is of the opinion that the order dated 13.01.2015 passed by the 1st respondent insofar as placing the petitioner at Serial No.52 and placing the 5th respondent at serial No.48 is set aside. The 1st respondent is directed to place the petitioner above the 5th respondent viz., between serial Nos.47 and 48 and to step up the pay of the petitioner on par with the 5th respondent with effect from 09.12.2005. The said exercise shall be done by the 1st respondent within a period of twelve weeks from the date of receipt of a copy of this order. No costs.

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Index:Yes/No
Speaking/Non-speaking order
vsi



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To
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Rep by its Principal,
Pillaichavady,
Puducherry - 605 014.
2. Member Secretary,
Pondicherry Engineering College,
Pillaichavady,
Puducherry 605 014.
3. Secretary to Government (Education),
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4. The All India Council for Technical Education
Rep by its Member Secretary,
7th Floor, Chanderlok Building,
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J.NISHA BANU,J.

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