



W.P.No.5196 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:27.06.2023

Delivered on: 28.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.5196 of 2018

K.Krishnaveni

... Petitioner

Vs.

1.University of Madras
Rep through the Registrar
Chepauk, Chennai-600 005

2.Government of Tamil Nadu
rep by its Principal Secretary to the Government
Fincance (Pay Cell) Department
Fort St.George, Chennai-600 099
(R2 impleaded vide order
dated 18.04.2022 made in
W.M.P.No.8262 of 2022 in
W.P.No.5196 of 2018)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent/University made in item No.2(i) of the Syndicate Resolution/Approval made in Ref.NIL, dated 11.02.2011 and the



W.P.No.5196 of 2018

consequential proceedings made pursuant to the syndicate Resolution/approval dated 11.02.2011 along with 1st respondent proceedings made in No.Mu/fl(c)/Estt/WP 20386/2015/1836 dated 23.09.2012 and quash the same as null and void, illegal and invalid and consequently directing the 1st respondent to implement the Pay Anomalies Committee recommendations pursuant to proceedings dated 15.05.2010 as approved by the Syndicate in the Resolution dated 21.05.2010 to the petitioner providing with all service and monetary benefits.

(Prayer amended vide order dated 17.08.2022 made in W.M.P.No.18576/2022 in W.P.No.5196/2018)

For Petitioner : Mr.G.Sankaran, Senior Counsel
for
Mr.A.Ganapatheeswaran

For Respondents : Mr.A.S.Vijayaragavan for R1
Mr.T.Chezhian, AGP for R2

ORDER

The petitioner seeks issuance of a writ of certiorarified mandamus to quash the proceedings of the respondent University dated 23.09.2015, as one being invalid, illegal and null & void, along with Item-2(i) of the Syndicate dated 11.02.2011 and to consequently direct the respondents to give effect to the Pay Anomalies Committee's recommendations to the petitioner, providing



W.P.No.5196 of 2018

necessary service and monetary benefits.

WEB COPY

2. The case of the petitioner is that she was appointed as Senior Technical Assistant by way of direct recruitment in the Department of Organic Chemistry on 23.05.1988. The said post was re-designated as Assistant Technical Officer, on 30.06.1995. Though the petitioner held the said post of Assistant Technical Officer she was not conferred any monetary benefits. The petitioner was granted Selection Grade of pay on completion of 10 years and Special Grade of pay on completion of 20 years. It is case of the petitioner that the post, 'Assistant Technical Officer' does not carry any avenue of promotion. According to the petitioner one another post identical to petitioner's post namely 'Assistant Section Officer' carrying the same scale of pay at the entry level, provided for promotion opportunities and the person would reach upto the highest promotional cadre of 'Senior Deputy Registrar' in about a span of 3 decades and a little more. However as an Assistant Technical Officer, the petitioner is stagnant in the very same post without any promotional avenue. All aggrieved Assistant Technical Officers made a joint



W.P.No.5196 of 2018

WEB COPY

representation dated 06.11.2009 to the respondent University citing their grievances and seeking pay revision. The Pay Anomalies Committee's recommendations were placed before Syndicate of the respondent University and the University has also approved the said recommendations vide proceedings dated 15.05.2010. Despite the same, no action was taken to implement the decision of the Syndicate which necessitated yet another joint representation to be given on 29.07.2010 and an individual representation of the petitioner dated 23.09.2010. Some of the aggrieved persons filed writ petitions before this Court in W.P.Nos.23285 and 23286/2010 and in and by order dated 06.10.2010, this Court issued directions to the respondent to consider the petitioner's individual representation dated 23.09.2010 and take appropriate action within a period of eight weeks. Thereafter, the respondent formed a Technical Committee. Alleging disobedience order dated 06.10.2010, Contempt Petitions came to be filed in Contempt Petition Nos.1488 & 1489/2011. According to the petitioner, the respondent University has been delaying the implementation of the Pay Anomalies Committee recommendations which was also approved by the Syndicate.



W.P.No.5196 of 2018

WEB COPY

Unfortunately, the Technical Committee sought to give different recommendations, behind the back of the petitioner. The Technical Committee's recommendations were placed before the Syndicate on 11.02.2011. However the Syndicate decided to refer the issue to the Pay Cell of the Government and sought for clarification. According to the petitioner, the Syndicate is the Supreme Body and the Pay Cell is not vested with any powers in relation to the subject matter. The petitioner filed W.P.No.20386 of 2014, seeking issuance of directions to the respondent University to consider the representation dated 29.05.2014, on merits and in the light of recommendations made by the Pay Anomalies Committee, which had been duly approved by the Syndicate. This Court directed the respondent to pass orders on the said representation of the petitioner, on merits. The petitioner filed Contempt Petition No.1935/2015, since the order of this Court dated 22.01.2015 in W.P.No.20386/2014 was not complied with. Pending the contempt proceedings, the respondent passed the impugned proceedings on 23.09.2015 holding that the Syndicate meeting minutes dated 11.02.2011 had superseded the minutes of the Syndicate on 21.05.2010 and that adopting



W.P.No.5196 of 2018

WEB COPY

G.O.Nos.581 & 582 dated 12.12.2007, the petitioner was already awarded pay due to her on par with Administrative Staff in the University. The petitioner challenges the said impugned proceedings on the ground that the respondent cannot approbate and reprobate at the same time, that to on the same cause and that the very appointment of a Technical Committee after the decision of the Syndicate was made on 21.05.2010 was itself unethical and that the proceedings of the respondent University had resulted in, the petitioner languishing in the very same post since entry without any advancement in her career. It was also contended that the Technical Committee exceeded its very object of looking into the implementation of the decision of the Syndicate's decision dated 21.05.2010 and virtually reopened the entire matter, that to behind the back of the petitioner.

3. The respondent University has filed a counter stating that the Finance Committee in its meeting dated 02.02.2009, had decided that the Technical Staff cannot be equated to Section Officers as the nature of the job and the responsibilities were completely different and therefore G.O.Ms.No



W.P.No.5196 of 2018

WEB COPY

581 & 582 dated 12.12.2007 cannot be made applicable to petitioner. Even the Technical Committee had endorsed the said opinion of the Finance Committee. The respondent University also revised the petitioner's pay notionally subject to audit verification only and so far as it is also stated in the counter affidavit that the Principal Secretary to the Government, Finance was requested to clarify the position with regard to awarding Personal Oriented Promotion and Revision of Pay scale and to Technical Staff of the University on par with the Administrative Staffs and that the Government is yet to give a reply. It is stated that the Syndicate has the power to supersede its earlier minutes and therefore there is no irregularity warranting interference from this court. Further it is also contended that the petitioner ought to have challenged the decision of the University to constitute the Technical Committee in the first place and without doing so, the petitioner is estopped from indirectly challenging the same by way of the present writ petition. It is also stated that the petitioner cannot compel the University to adopt a particular approach.



W.P.No.5196 of 2018

WEB COPY

4. Pending the Writ Petition, an additional counter was also filed, since the petitioner had amended the prayer in the writ petition where the respondent University has stated that it has got power to rectify and correct the mistakes and anomalies at the time of implementation. According to the 1st respondent, the 2nd respondent was impleaded during the pendency of the writ petition and also stated the G.O.Ms.Nos.581 & 582 dated 12.12.2007, would not be applicable to Technical Staffs of the University and therefore the writ petition is liable to fail. The 2nd respondent, Government of Tamilnadu has filed a report where it is mentioned that the Syndicate has all the powers under Section 19G of Madras University Act,1923 and it is for the Syndicate to fix any pay disparity between the Technical and Administrative Staff and that the rules framed by the Government would not apply as the University is a separate legal entity. However the report further states that on 02.06.2022 the 2nd respondent had issued necessary clarification to the 1st respondent stating that the Revision of Scale of Pay ordered to Administrative Staff vide G.O.Ms.Nos.581 & 582 dated 12.12.2007 cannot be made applicable to Technical Staff.



W.P.No.5196 of 2018

WEB COPY

5. Heard Mr.G.Sankaran,Senior Counsel, for the counsel for petitioner, Mr.A.S.Veeraraghavan for 1st respondent University, and Mr.T.Chezhiyan, AGP for the State/ 2nd respondent. This court has also perused the documents filed in support of the writ petition as well as the report filed by the 2nd respondent.

6. The thrust of the arguments of the Learned Senior Counsel for the petitioner is that once the Syndicate, the Apex body of the University has accepted the recommendations of the Pay Anomalies Committee, the same became final and binding on the University. Subsequently, it was not open to the Syndicate to pass another resolution in the nature of superseding the earlier decision of the Syndicate. He would also contended that the petitioner has been in the same post for over 30 years and she had not been conferred with any promotion and consequential monetary benefits. He would also rely on the following judgments;

(i)Food Corporation of India &Ors Vs. Parashotam Das Bansal &Ors reported in ***(2008) 5 SCC 100;***



W.P.No.5196 of 2018

WEB COPY

(ii) *A Sathyanarayanan & Ors Vs. S.Purushotam& Ors* reported in
(2008) 5 SCC 416;

(iii) *State of Bihar & Ors Vs. Shyama Nandan Mishra* reported in
(2022 SCC Online SC 554)

7. In the first case(cited supra) the Hon'ble Supreme Court has held that where there was a non-existence of promotional avenue resulting in stagnation for a long time, the Courts have jurisdiction to direct framing of schemes. However the Supreme Court held that the modality should be decided only by the authorities concerned. It is laid down in the said judgment that though the employee cannot claim promotion as a Fundamental Right, yet promotion being a normal incidence of service, the Court has power to direct creation of avenues for promotion. In the said case also the employee therein was languishing in the very same post for 30 years, similar to petitioner herein.

8. In *Sathyanaraya's* case(cited supra)the Hon'ble Supreme Court held



W.P.No.5196 of 2018

that promotion chances of the employee cannot be foreclosed forever and any policy decision to the contrary would only be ultra-vires to the Constitution of India. The Apex Court took note of the fact that in many cases it had emphasized the necessity for providing promotional avenues to the employees and that a policy whereby an employee could have no promotional avenues for all times to come would be hit by Article 16 of Constitution of India.

9. In *State of Bihar*'s case (cited supra), the Hon'ble Supreme Court held that

“Substantive Legitimate Expectation is not ultra-vires the powers of the authorities and the Courts are empowered to protect it and prevent the State from changing course and belie the legitimate expectation of the employees”.

The Hon'ble Supreme Court referred to a passage from *R vs Inland Revenue Commissioners* reported in (1990) 1 WLR 1545.

“If a public authority so conducts itself as to create a legitimate expectation that a certain



WEB COPY



W.P.No.5196 of 2018

course will be followed it would often be unfair if the authority were permitted to follow different course to the detriment of one who entertained the expectation, particularly if she acted on it...The doctrine of legitimate expectation is rooted in fairness.”

10. Per contra the counsel for respondent University would state that the Syndicate admittedly being the Supreme Body had power to vary and modify its decisions and therefore no fault can be found with in the subsequent resolution passed, superseding the earlier resolution. The counsel for the 2nd respondent would state that the issue to be sorted out only by the University and the State had no role to play.

11. This Court has perused the minutes of the Pay Anomalies Committee dated 15.05.2010, making recommendations to the 1st respondent. On 21.05.2010, the said recommendations were placed before the Syndicate of the respondent University and the recommendations were also approved. Infact, one of the decisions of the Syndicate was that “in future



W.P.No.5196 of 2018

WEB COPY

whenever pay revision takes place, the recommended pay scale would form the basic”. It was also decided that the even Technical Category employees would have separate promotional avenues. The 1st respondent also approved the minutes of the Syndicate dated 15.05.2010. However, for the reasons best known to the University, it appears to have carried away by a new set of recommendations issued by the Technical Committee, in order to deny the benefits that had accrued to the petitioner under the first resolution dated 21.05.2010. The scope of the Technical Committee's was work only to implement the approved decisions of the respondent University. Unfortunately, the Technical Committee has overstepped its role by virtually reopening the entire issue and coming up with totally new and contrary set of recommendations. Thereafter, the 1st respondent has sought to seek clarification from the Pay Cell of the Government namely the 2nd respondent and even according to the 1st respondent, they are still awaiting a reply from the Court.

12. It is also seen from the office communication dated 15.02.2014, that subsequent to all the above chain of events, the petitioner's pay scale



W.P.No.5196 of 2018

WEB COPY

was revised and refixed with effect from 12.12.2007 and that the same was stated to be subject to audit verification. In the said office communication, it has been categorically mentioned that the scale of pay of the Technical Staff should be on par with the Administrative Staff. Despite such conscious decisions, the 1st respondent university has taken a U-turn and denied the benefits to the petitioner. Moreover, this Court also finds that having approved the recommendations of the Pay Anomalies Committee way back in May, 2010, there was totally inaction on the part of the respondent and the impugned proceedings came to be passed only in 2011. In all fairness, when the resolution dated 21.05.2010 had conferred benefits on certain employees including the petitioner, even assuming the Syndicate had a right to recall or review such decision, the affected employees ought to have been heard or put on notice. The petitioner and similarly placed employees have been raising this issue for several years and the earliest representation given by them was way back on 06.11.2009. It was only their untiring efforts that had borne fruit in 2010. Therefore to lightly brush aside the claims of the petitioner, by citing that the Syndicate has absolute power to supersede its earlier decisions,



W.P.No.5196 of 2018

cannot be countenanced. Moreover, there appears to be no logical or justifiable reason for the 21.05.2010 approval accorded by the Syndicate to be once again reviewed or reopened. The Technical Committee was appointed only to implement the approval of the Syndicate dated 21.05.2010 and not to create further complication. Unfortunately, the recommendations of the Technical Committee are clearly overstepping its very constitution.

13. Moreover, the Hon'ble Supreme Court has time and again emphasized on the concept of fairness and also the right of an employee to be entitled to promotion, without being stagnated in a particular position, without any promotional avenues. In this case, also the petitioner, despite being appointed way back in May 1988, has been forced to continue in the very same post except for a superficial change in designation without any monetary benefits whatsoever. This Court finds that the decision of the Syndicate to supersede its earlier final decision dated 21.05.2010 by subsequent resolution dated 11.02.2011, is clearly violative of the Principles of Natural Justice and Fairplay. With regard to the contentions of the



W.P.No.5196 of 2018

respondents that G.O.Ms.No.581 & 582 dated 12.12.2007, would not apply to the petitioner the same cannot be pressed into service after the first respondent accepted the recommendations of the Pay Anomalies Committee and resolved to implement the same which too came to be approved by the 1st respondent University as already discussed above.

14. For all the above reasons the petitioner is entitled to succeed and the writ petition is allowed as prayed for. The 1st respondent shall implement the recommendation of the Pay Anomalies Committee dated 15.05.2010 and approved by the Syndicate on 21.05.2010 and confer all the consequent benefits on the petitioner, within a period of eight weeks from the date of receipt of a copy of this order. No costs.

28.07.2023.

Internet:Yes
Index:Yes/No
Speaking/Non-speaking order
kpr



W.P.No.5196 of 2018

To
WEB COPY

1.The Registrar
University of Madras
Chepauk, Chennai-600 005

2.The Principal Secretary to the Government
Government of Tamil Nadu
Fincance (Pay Cell) Department
Fort St.George, Chennai-600 099

P.B.BALAJI, J.,
kpr

17/18



WEB COPY



W.P.No.5196 of 2018

Pre-delivery order in
W.P.No.5196 of 2018

28.07.2023