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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.11.2023

PRONOUNCED ON : 28.11.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.6352 of 2021
& W.M.P.No.6969 of 2021

Dr.P.Gopinathan

...

Petitioner

versus

1.Tamil Nadu Physical Education and Sports University,
Rep. by its Registrar,
Chennai - 600 127.

2.The University Grants Commission,
Rep. by its Secretary,
Behadur Shah Zafar Marg,
New Delhi - 110 002.

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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 relating to the proceedings No.13930/TNPESU/Regr./Estb./R2/ /2020 dated 10.12.2020 issued by the first respondent and quash the same and for a consequential direction to the 1st respondent to count 13 years of past service of the petitioner for promotion under Career Advancement Scheme



with all monetary benefits, seniority, continuity of service, promotion and other attendant benefits.

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For Petitioner : M/s.L.Parvin Banu
For Respondent No.1 : Mrs.G.Thilagavathi
Senior Counsel
for Mr.R.Gophinath
For Respondent No.2 : Mr.S.Thiruvengadam

ORDER

The petitioner has filed this petition seeking a writ of Certiorarified Mandamus, calling for the records relating to the proceedings No.13930/TNPESU/Regr./Estb./R2/ /2020 dated 10.12.2020 issued by the 1st respondent and quash the same and a consequential direction to the 1st respondent to count 13 years of past services of the petitioner for promotion under Career Advancement Scheme with all monetary benefits, seniority, continuity of service, promotion and other attendant benefits.

2. Heard M/s.L.Parvin Banu, learned counsel for the petitioner; Mrs.G.Thilagavathi, learned Senior Counsel for Mr.R.Gophinath, learned counsel for the first respondent; Mr.S.Thiruvengadam, learned counsel for the second respondent and perused the materials available on record.



3. The petitioner got appointed as Associate Professor on 04.08.2008 through direct recruitment in the 1st respondent University. The 1st respondent University is governed by UGC Regulations, which came into force with effect from 30.06.2010. As per Clause 10 of the UGC Regulations, 2010, the petitioner is entitled to count his past services for promotion under the Career Advancement Scheme [in short CAS].

4. During the year 2014, the 1st respondent University issued a circular for CAS. The petitioner submitted a representation requesting to count his past services for CAS. Before getting appointed in the 1st respondent University, the petitioner got appointed as Physical Director in D.G.Vaishnav College from 12.02.1993 to 27.08.1993. Thereafter, he was appointed as Physical Director (Lecturer) on 25.05.1995 through a proper selection procedure in Asan Memorial College of Arts and Science.

5. On 11.12.1995, the University of Madras approved the petitioner's qualification for the post of Physical Director (Lecturer) and his services were regularised with effect from 09.06.1995 and thereafter, he was appointed as Assistant Professor on 04.08.2008 through direct recruitment



in the 1st respondent University. The petitioner was relieved from the earlier post on 28.08.2008 and joined in the 1st respondent University on 29.08.2008.

6. The only grievance of the petitioner is that his past services were not counted for the purpose of CAS and hence he can not avail the advantage of adding up his 13 years of previous services under the CAS.

7. M/s.L.Parvin Banu, learned counsel for the petitioner submitted that as per the Guidelines of the 1st respondent University, the petitioner was given with the Application Form for the purpose of CAS, which contained the date of eligibility for promotion as per the existing UGC Guidelines dated 11.07.2016. Later, another Application Form was given and in which the column seeking details of the past services under UGC Guidelines was removed; the Scrutiny Committee of the University has recommended the petitioner's past services from 09.06.1995 to 28.08.2008 to be included for the purpose of promotion under Career Advancement Scheme and pension benefits but the respondents had omitted to do so.



8. Mrs.G.Thilagavathi, learned Senior Counsel for the first respondent submitted that the 1st respondent University has taken a policy decision to include only 2 years of past services of an incumbent for granting promotion under CAS; it was the decision of the syndicate and the same is approved by the Vice Chancellor of the University as well; even though the UGC Guidelines states about the inclusion of the past services under CAS, the University at its option can decide the limitations; most of the Universities have adopted only 2 years of past services taking into consideration of its size and other aspects; the University being an independent body having its syndicate as its apex body has taken a decision as similar as that of other statutory bodies.

9. The petitioner had attained the age of superannuation on 30.06.2019 and he has been relieved from service of University. Only after his retirement, he is seeking the present relief, which is not sustainable. While he was in service, he was agreed that his past service is not countable in the Rules and Regulations of the University and hence, the petition should be dismissed.



10. The petitioner already filed a Writ Petition in W.P.No.13930 of 2019 in which an order has been passed on 13.09.2019 to consider the representation of the petitioner dated 12.04.2019. The impugned order has been passed subsequent to the above direction but the past services of the petitioner has been considered only for inclusion of 2 years.

11. As per Clause 10 of the UGC Guidelines 2010, the past services should be counted for direct recruitment and promotion of a Teacher as Assistant Professor and Associate Professor etc. For the sake of clarity, the above Regulations is extracted as under:-

“10.0 COUNTING OF PAST SERVICES FOR DIRECT RECRUITMENT AND PROMOTION UNDER CAS

10.1. Previous regular service, whether national or international, as Assistant Professor, Associate Professor or Professor or equivalent in a University, College, National Laboratories or other scientific/professional Organizations such as the CSIR, ICAR, DRDO, UGC, ICSSR, ICHR, ICMR, DBT, etc., should be counted for direct recruitment and promotion under CAS of a teacher as Assistant Professor, Associate Professor, Professor or any other nomenclature these posts are described as per Appendix III - Table No. II provided that:

(a) The essential qualifications of the post held were not lower than the qualifications prescribed by the UGC for Assistant Professor, Associate Professor and Professor as the case may be.

(b) The post is/was in an equivalent grade or of the pre-revised



scale of pay as the post of Assistant Professor (Lecturer) Associate Professor (Reader) and Professor.

(c) The candidate for direct recruitment has applied through proper channel only.

(d) The concerned Assistant Professor, Associate Professor and Professor should possess the same minimum qualifications as prescribed by the UGC for appointment to the post of Assistant Professor, Associate Professor and Professor, as the case may be.

(e) The post was filled in accordance with the prescribed selection procedure as laid down in the Regulations of University/State Government/Central Government/Concerned Institutions, for such appointments.

(f) The previous appointment was not as guest lecturer for any duration, or an ad hoc or in a leave vacancy of less than one year duration. Ad hoc or temporary service of more than one year duration can be counted provided that:

(i) the period of service was of more than one year duration;

(ii) the incumbent was appointed on the recommendation of duly constituted Selection Committee; and

(iii) the incumbent was selected to the permanent post in continuation to the ad hoc or temporary service, without any break.

(g) No distinction should be made with reference to the nature of management of the institution where previous service was rendered (private/local body/Government), was considered for counting past services under this clause.”

12. So the 1st respondent cannot deny the existence of above UGC Regulations and also about the fact that the 1st respondent University has



also adopted the above UGC Regulations. The 1st respondent University did not deny the eligibility of the petitioner to claim CAS. But the contention of the respondents is that even while adopting the UGC Regulations, it is the autonomy of the University to decide about the limit within which the recommendations of the UGC Regulations can be adopted and implemented.

13. As stated already, the 1st respondent University has adopted the UGC Regulations on 08.01.2016 especially the guidelines for counting the past services for the purpose of CAS. However, in the said Guidelines of the 1st respondent University, nothing is stated about restricting the number of years of previous service. The Guidelines of the 1st respondent University is as similar as that of UGC Regulations, 2010. The petitioner has been making the representation from the year 2011 and his first representation is dated 16.12.2011. The 1st respondent University responded him by stating that the Scrunity Committee would scrunitse his representation and he had to appear before the Scrunity Committee.



14. Accordingly, the petitioner appeared before the Scrunity Committee. The Scrunity Committee report obtained by the petitioner through R.T.I. shows that the Scrunity Committee has recommended to include his past services. On 03.03.2016, the 1st respondent University has issued the proceedings to promote the petitioner from stage 1 to stage 2 in the cadre of Assistant Professor under CAS. In the said proceedings, it has not limited the number of years of his past services to be included under CAS.

15. The petitioner has been making every attempt and addressing the 1st respondent University including the Appellate Authority in the University for counting his past services. He has received a letter from the Appellate Authority on 15.11.2018. The petitioner was informed that the decision would be made after taking inputs from the other Universities in this regard. Thereafter, the apex body the University (syndicate) had taken a decision to include only 2 years of past services of the petitioner for the purpose of CAS. Even though the above decision is contradictory to the UGC Regulations, the 1st respondent University appears to have made an



eyewash that the 1st respondent University is following the UGC Regulations.

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16. It is claimed by the 1st respondent University that the petitioner had willingly acquiesced to the University's decision of including only 2 years of his past services and now he has changed the colours and the order. It is not the case of the 1st respondent University that the petitioner's past services are ineligible to be counted as per the Regulations. After having adopted the UGC Regulations, now the 1st respondent University cannot turn around and say that the syndicate has taken a different decision and hence it is not bound by the UGC Regulations in all its strict terms. The entitlement of the petitioner was denied by the University by taking an arbitrary decision, contrary to the recommendations of the Scrunity Committee and the UGC Regulations.

17. Having sent communications to the petitioner like others to appear before the Scrunity Committee for the purpose of CAS and having got the Scrunity Committee's recommendation, the 1st respondent University should not turn back and state that it is at their discretion to decide about the



quantum of the past services that can be included for C.A.S. The attitude of the 1st respondent University is nothing but showing reluctance to abide by the Rules and Regulations under which it has chosen to function.

18. M/s.L.Parvin Banu, learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court held in *The Mahatma Gandhi University Vs. Rincymol Mathew [Civil Appeal No.8031 of 2022 dated 10.11.2022]* in support of her claim made in the Writ Petition wherein it has held as under:-

“7. In view of the above and for the reasons stated above, no error has been committed by the learned Single Judge and/or the Division Bench of the High Court in allowing the writ petition / writ appeal and directing the University to grant the benefit of CAS after counting her earlier service rendered from 03.10.1998. We are in complete agreement with the view taken by the High Court. No interference of this Court is called for.”

19. In the above said case, the University has challenged the order of the High Court which allowed the Writ Petition of the petitioner and directed the University to grant of benefit of CAS after counting her earlier services rendered from 03.10.1998.



20. Though the above decision is applicable to the case of the petitioner, the case in hand is placed in a better footing in view of the fact that the University did not dispute about the eligibility of the petitioner's past services but only restricted the services to 2 years. Since the impugned order passed by the first respondent is unfair and not legal and hence liable to be set aside.

21. In the result, this Writ Petition is allowed and the order passed by the first respondent in No.13930/TNPESU/Regr./Estb./R2/ /2020 dated 10.12.2020, is set aside and consequently, the first respondent is directed to include the past services of the petitioner from 09.06.1995 to 28.08.2008, as per the recommendations of the Scrutiny Committee of the University for the purpose of promotion under Career Advancement Scheme and pension benefits within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

28.11.2023

Speaking order

Index : Yes

Neutral Citation : Yes

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To
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- 1.The Registrar,
Tamil Nadu Physical Education and Sports University,
Chennai - 600 127.
- 2.The Secretary,
University Grants Commission,
Behadur Shah Zafar Marg,
New Delhi - 110 002.



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W.P.No.6352 of 2021



R.N.MANJULA, J.

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Pre-Delivery Order made in
W.P.No.6352 of 2021

28.11.2023