



W.P.No.6774 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.01.2023
Pronounced on	14.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.6774 of 2018
and
W.M.P.No.8396 of 2018

Dr.V.Chandrasekaran

... Petitioner

Vs.

1.The State of Tamil Nadu
rep. by its Principal Secretary,
Higher Education Department,
Fort St. George,
Chennai – 600 009.

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

3.University Grants Commission (UGC)
rep.by its Chairman,
Bahadur Shah Zafar Marg,
New Delhi – 110 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records of the second respondent and consequently, quash the impugned order, the order communicated by way of official communication



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No.D1(B)/TE/2018/1171 dated 23.02.2018 passed by the second respondent and consequently direct the second respondent to restore the pay protection originally granted to the petitioner as per the order dated 23.12.2015.

For Petitioner : M/s.Rajnish Pathiyil
For Respondent-1 : Mr.M.Shajahan, SGP
For Respondent-2 : Mr.A.S.Vijayaragavan
For Respondent-3 : Mr.P.R.Gopinath

O R D E R

Heard Mr. Rajnish Pathiyil, learned counsel for the petitioner and Mr. M. Shajahan, learned Special Government Pleader appearing on behalf of the first respondent, as well as Mr. A.S.Vijayaragavan & Mr.P.R.Gopinath, learned counsel for the respondents 2 & 3 respectively.

2. The brief facts of the case is as follows:-

2.1. The petitioner herein, who was a former Associate Professor in Education, Institute of Advanced Study in Education under the control of the Directorate of Collegiate Education, was appointed as a Professor in the Department of Education, University of Madras on



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27.10.2015. His emoluments was fixed at Rs.43,000/-, in the pay band of Rs.37,400-67,000 with AGP of Rs.10,000/-, as per G.O. (Ms) No. 350, Higher Education (H1) Department, dated 09.09.2009. The Government had also relieved the petitioner from his earlier post through G.O. (D) No.243, dated 16.10.2015 to enable him to join duty as professor in the University of Madras and further held that, he shall hold service rights in Tamil Nadu Collegiate Educational Service, for one year.

2.2. As per G.O. (Ms) No. 350 dated 09.09.2009, an employee may exercise to remain in the existing scale of pay, until the date on which he earns his next or any subsequent increments in the existing scale of pay or until he vacates his post or ceases to draw pay in that pay scale; provided that, if an employee does not exercise his option within the period specified, he shall be deemed to have opted for the revised pay of scale with effect from 01.01.2006. The petitioner joined the duty as Professor in the Department of Education in the University of Madras on 27.10.2015. Thereafter on 23.11.2011, he has requested that his salary may be protected in the basic pay of Rs.59,050/- + AGP of Rs.10,000/-, which was his last drawn pay in the Directorate of Collegiate Education. In accordance with his request, the University had



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passed orders on 23.12.2015, protecting his last drawn pay and fixed it at Rs.59,050/- + AGP of Rs.10,000/-, in the pay band of Rs.37,400-67000 + AGP of Rs.10,000/- with effect from 28.10.2015.

2.3. Citing the objections raised by the Internal Audit of the University, his pay was reverted through the University's communication dated 15.02.2018 and re-fixed at Rs.43,000/-, in the pay band of Rs.37,400 – 67,000 + AGP of Rs.10,000/-, from the date of his joining and further ordered for recovery of the excess salary paid from the month of February 2018 onwards. Consequently, the impugned order dated 23.02.2018 was passed, confirming the re-fixation of salary and for recovery of excess payment of Rs.11,27,505/- from his salary, from the month of February 2018 onwards. This order is put under challenge in the present Writ Petition.

3. The learned counsel for the petitioner submitted that in view of G.O. (Ms) No.350 dated 09.09.2009, his scale of pay requires to be protected and the arbitrary action on the part of the respondents in reverting his pay scale, is illegal.



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4. Per contra, the learned Standing counsel for the University submitted that G.O.(Ms) No.350, dated 09.09.2009, is not applicable to the University. He further submitted that as per the general instructions of the notification issued by the University on 01.06.2014, the candidates in service are informed that pay protection in any manner will not be guaranteed and since the petitioner has accepted the same, he was estopped from questioning the impugned order of reversion.

5. The submission of the learned Standing counsel for the respondent University that, G.O. (Ms) No. 350 dated 09.09.2009 is not applicable to the University, deserves to be out rightly rejected since the Government Order was issued to regulate the revision of scales of pay for the teachers in the Universities, as well as in the Government and Government Aided Colleges, as it is evident from the recitals of the Government Order itself. Even otherwise, the University in their counter affidavit have also stated that the pay band as prescribed in the notification was fixed at Rs.43,000/- in the pay band of Rs.37,400-67,000 with AGP of Rs.10,000/- as per G.O. (Ms) No.350, dated



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09.09.2009. Thus, the stand taken by the respondent University that the G.O. (Ms) No.350, dated 09.09.2009 is not applicable, is baseless.

6. Insofar as the reversion of the pay of the petitioner is concerned, the Government Order in G.O. (Ms) No.350, dated 09.09.2009 provides for such pay protection to an employee, who exercises his option in the existing scale of pay, until the date of his next or subsequent increments in the existing scale of pay. On appointment, when the petitioner had requested the University to protect his existing last drawn pay in the basic pay of Rs.59,050/- + AGP of Rs.10,000/-, through his letter dated 23.11.2015, the University also accepted the request of the petitioner and passed orders on 23.12.2015, protecting his last drawn pay at Rs.59,050/- + AGP of Rs.10,000/-.

7. In the subsequent order dated 15.02.2018 for reversion of his pay seems to be that, no other appointee in the University, during the same period, were given such pay protection and the reversion is made owing to the objections made by the internal audit of the University of Madras.



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8. In the consequential order of fixation of revised pay also, there is no reference to the condition in the notification that there will not be any guarantee of pay protection on selection to any of the posts concerned. The respondents seems to have, on an afterthought, brought in a new theory, which by itself is opposed to the pay protection guaranteed under the order in G.O.(Ms) No.350, dated 09.09.2009. Above all, when the University itself has accepted the petitioner's request and fixed his pay scale at Rs.59,050/- + AGP of Rs.10,000/-, by protecting his last drawn pay, they are now estopped from reverting the same on the ground that, no other appointees in the University were given the benefits of pay protection or in view of the objections raised in the internal audit.

9. Thus, the order of reversion of his pay from Rs.59,050/- +AGP of Rs.10,000/- to Rs.43,000/-, in the pay band of Rs. 37,400 - 67,000 + AGP of Rs.10,000/-, as well as the consequential recovery sought to be made through the impugned order, cannot be sustained.



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10. In the result, the impugned order of the second respondent vide Communication No. D1 (B)/TE/2018/1171 dated 23.02.2018, is quashed. The Writ Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.

14.02.2023

Internet : Yes
Order : Speaking
Neutral Citation : Yes

DP

To

- 1.The Principal Secretary,
State of Tamil Nadu,
Higher Education Department,
Fort St. George,
Chennai – 600 009.
- 2.The Registrar,
University of Madras,
Chepauk,
Chennai-600 005.
- 3.The Chairman,
University Grants Commission (UGC)
Bahadur Shah Zafar Marg,
New Delhi – 110 002.



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M.S.RAMESH,J.

DP

ORDER MADE IN

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and
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