



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 23.01.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.7457 of 2021

and

WMP Nos.7973 and 7974 of 2021

G.Balasivasankar

Petitioner

VS.

1. The Secretary to Government
Higher Education Department
Fort.St.George
Chennai 600 009.
2. The Registrar
Annamalai University
Annamalai Nagar
Chidambaram - 608 002.
3. The Director of Technical Education
Guindy, Chennai.
4. University Grants Commission (UGC)
Bhaghadur Shah Marg
New Delhi-2.
5. All India Council for Technical Education(AICTE)
Delhi.

.... Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to quash the order of the 2nd respondent in C.No.3/21802/2014 dt.24.8.2017 and direct the 2nd respondent to promote the petitioner as Associate professor from the year 2016 by counting the petitioner as 3 ½ years Ph.D., study period as service period from the date 25.7.2009 to 31.12.2012 and to direct the respondents to permit the petitioner to study Ph.D., part time at Iit Delhi.

For Petitioner : Mr.R.Ravichandran

For Respondents : Mrs.M.Jayanthi
Additional Government Pleader
for R1, R3

Mr.N.Ramiah
for R2

Mrs.AL.Ganthimathi
Senior Counsel
for S.Meenakshi
for R5

ORDER

This writ petition has been challenging the order passed by the 2nd respondent dated 24.08.2017 and for a consequential direction to the 2nd respondent to promote the petitioner as an Associate Professor from the year 2017 by counting the period during which the petitioner had undergone Ph.D., Course from 25.07.2009 to 31.12.2012 and further direct the respondents to



permit the petitioner to study Ph.D., part time at IIT, Delhi.

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2.The short facts of the case are as under:

(a) The petitioner joined as a Lecturer in the 2nd respondent University on 30.11.2004. Thereafter, he was promoted as an Assistant Professor Stage-I in the year 2009. The next avenue of promotion to the petitioner was as Assistant Professor Stage-II. According to the petitioner, this promotion was due to the petitioner in the year 2014.

(b) In the meantime, the petitioner wanted to do research work and hence, he made a request to the 2nd respondent University to undergo Ph.D., for the period from 2009 to 2012. The request of the petitioner was considered by the 2nd respondent University and through letter dated 15.05.2008, the petitioner was permitted to do Ph.D., at IIT, New Delhi for the period from 2009 to 2012. When this permission was granted, the petitioner was informed through a Relieving Certificate dt.28.07.2009 that during the three years when he is undergoing Ph.D., he will be treated as if he is on deputation and he will be paid his salary along with admissible allowances in full.

(c) The petitioner was not able to complete the Ph.D., within three years



and hence, sought for extension of time and extension was granted from 21.07.2012 to 31.1.2022 and this period was treated as leave on loss of pay to complete the research work for Ph.D.

(d) The petitioner was not able to complete the Ph.D., even after the extension of time was granted and hence, the petitioner rejoined the 2nd respondent.

(e) The grievance of the petitioner is that the study leave period from 22.07.2009 to 20.07.2012, was excluded and he was not considered for promotion to the post of Professor and that apart, the salary that was paid to the petitioner was also recovered. That apart, the petitioner also made a representation to permit him to pursue Ph.D., in a part time mode and this request made by the petitioner was also rejected through order dt.24.08.2017. It is this order that has been put to challenge before this Court.

2.The 2nd respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

5. I submit with regard to the averments stated in para.5

to 16, I submit that all the allegation are false and the writ



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petitioner is not entitled to the relief sought for, I further submit that the University vide Notification No.AU/CAS/2018 dated 08-08-2018 has invited application from the eligible faculty members for higher movement / promotion under career advancement scheme. He applied for the movement of next higher AGP of Rs.8000/- (i.e. stage 2 to stage 3) and Associate Professor (i.e stage 3 to stage 4 - AGP Rs.8000/- to Rs.9000/-) in Civil and Structural Engineering under career advancement scheme. He was awarded the AGP of Rs.8000 with effect from 12-05-2018. But, he was not called for interview for the post of Associate Professor as he is not entitled for the same on the reason stated below:-

The writ petitioner went on study leave on pursue Ph.D. Under Quality Improvement Programme (QIP) at Indian Institute of Technology New Delhi from 22-07-2009 to 20-07-2012 with full pay and allowances. Further, he was sanctioned extension of study leave without pay period from 21-07-2012 to 31-12-2012 to complete his Ph.D. research work. As per the condition, he should submit the thesis on or 31-12-2013. But, he has not submitted his thesis. However registration of Ph.D.



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Programme of Thiru G.Balasivasankar, got terminated within a period of 6 months, due to poor performance and progress, as per the letter No. IITD/A&E (PGS) /A2/2016/420 dated 19-08-2016 Deputy Registrar (PGS&R), Indian Institute of Technology, New Delhi. Therefore, the study leave salary paid for the period from 22-07.2009 to 20-07-2012 was recovered from his monthly salary. Since the salary has been recovered for the study leave period of 3 years, that period was not considered as duty period for the purpose of promotion.

In view of the above, after adjusting the study leave period, (i.e. Leave on loss of pay) he was placed in the next higher AGP of Rs.8000/- on 12.05.2018. As per AICTE norms, the eligibility for Associate Professor fall only after May 2021, i.e., on completion of 3 years of service from the date of award of AGP Rs.8000/- as per norms provided he fulfills the requirements i.e.API Score, Publications, etc.

6.I submit that the averments stated in para 17 & 18 are false and there is no discrimination as alleged by the writ petitioner. In the case of Thiru.P.Palson, it is submitted that Thiru.P.Palson went on leave on loss of pay for 5 years from 07.09.2006 to 04.09.2011. The Leave on loss of pay for 5 years has been excluded while reckoning the experience and accordingly he was awarded for AGP for Rs.8000/- from 04.06.2015 and after completion of 3 years in the AGP of



Rs.8000/- he was promoted as Associate Professor, as per eligibility and no favoritism has been shown in this case.

**Service Details of Thiru.P.Palson and
Thiru.G.Balasivasankar**

Name	Stage-I First appointment Date (i.e., Assistant Professor in AGP of <u>Rs.6,000</u>	Stage-II Assistant Professor AGP of <u>Rs.7,000</u>	Stage-III Assistant Professor AGP of <u>Rs.8,000</u>	Stage-IV Associate Professor AGP of <u>Rs.9,000</u>	Stage-V Professor AGP of <u>Rs.10,000</u>
Thiru P.Palson	<u>27-03-2000</u>	06-06-2005	04-06-2015	04-06-2018	-
Thiru G.Balasivasankar	<u>01-12-2004</u>	01-12-2009	12-05-2018	-	-

3. Heard Mr.R.Ravichandran, learned counsel for the petitioner, Mrs.M.Jayanthi, learned Additional Government Pleader for R1, R3, Mr.N.Ramiah, learned counsel for R2 and Mrs.AL.Ganthimathi, learned Senior Counsel for R5.

4.The learned counsel for the petitioner submitted that the exclusion of the service period from 25.07.2009 to 31.12.2012, is contrary to the available regulations issued by the University Grants Commission (UGC). The learned counsel submitted that the 2nd respondent is bound by the regulations of UGC and



they cannot *suo motu* exclude the period during which the petitioner was doing his Ph.D., from 25.07.2009 to 31.12.2012. The learned counsel further submitted that the petitioner is entitled for undergoing part time Ph.D., programme also. That apart, the learned counsel for the petitioner also questioned the recovery of the salary that was paid during the study leave period of three years.

5. Per contra, the learned counsel appearing on behalf of the 2nd respondent submitted that the petitioner was given study leave with full pay and allowance from 22.07.2009 to 20.07.2012. Thereafter, the extension was given from 21.07.2012 to 31.12.2012, with a clear stipulation that the petitioner must complete his Ph.D., research work and he must complete the thesis on or before 31.12.2012. Since the petitioner did not complete the research work and submit the thesis, the entire study leave salary paid for the period from 22.07.2009 to 20.07.2012 has been recovered. The learned counsel submitted that this action taken by the 2nd respondent has not been put to challenge by the petitioner. In view of the same, the learned counsel submitted that the petitioner cannot question the period between 25.07.2009 to 31.12.2012 being excluded. On exclusion of this period, the petitioner was placed in the next higher AGP on 12.05.2018 and that the eligibility of the petitioner to be considered for



promotion to Associate Professor will fall only on completion of three years of service from the date of award of AGP Rs.8000/- i.e., during May 2021. The learned counsel further submitted that the petitioner did not complete the course within the time stipulated and therefore there is no question of once again considering and sending the petitioner for part time Ph.D., and that is the reason why the request made by the petitioner was rejected.

6.This Court has carefully considered the submissions made on either side and the materials available on record.

7.The cause of action for filing a writ petition must be assigned the same meaning as is envisaged under Section 20(c) of CPC., and the law on this issue has been settled by the Apex Court in ***Eastern Foafields Ltd. and Others .v. Kalyan Banerjee*** reported in (2008) 2 CTC 699.

8.In the present case, the petitioner has sought to combine different causes of action and club them into one and as a result, the actual grievance of the petitioner becomes unclear. The rejection of the promotion for the petitioner to undergo Ph.D., part time at IIT, Delhi, is an individual cause of action. Hence, the same should be challenged by an independent writ petition. Insofar as not



including the study leave period of the petitioner from 25.07.2009 to 31.12.2012, that is yet another cause of action which has nothing to do with the rejection of permission for the petitioner to undergo the Ph.D., part time course. Similarly, the recovery of salary by the 2nd respondent University which was paid during the study leave period, is yet another cause of action which requires to be independently challenged. A consequential relief that is sought for in a writ petition must be in line with the main relief in the writ petition and it cannot be a separate cause of action which has nothing to do with the main relief sought for in the writ petition.

9. The learned counsel for the petitioner was mainly focusing his arguments on the exclusion of the period from 25.07.2009 to 31.12.2012 and thereby, dis-entitling the petitioner from being considered for promotion to the post of Associate Professor. This submission made by the learned counsel for the petitioner did not have any link whatsoever with the impugned order that has been put to challenge in this writ petition, which pertains to not granting permission to the petitioner to undergo Ph.D., part time course. The petitioner has not even challenged the recovery of salary that was made during the study leave period. In the absence of such a challenge, it is not known as to how this Court can get into that issue in the present writ petition.



10. In the light of the above discussion, this Court is not inclined to go into the issue of exclusion of the study leave period from 25.07.2009 to 31.12.2012 and also the recovery of the salary of the petitioner since that is not the cause of action for which the present writ petition has been filed. In any case, the petitioner has come into the zone of consideration on the completion of three years from May 2021 onwards and hence, it will be left open to the 2nd respondent University to consider the promotion of the petitioner as Associate Professor, if the petitioner satisfies all the other requirements.

11. The fulcrum of the present writ petition pertains to the rejection of permission by the 2nd respondent University to permit the petitioner to undergo part time Ph.D., course at IIT, New Delhi. This Court does not find any ground to interfere with the impugned proceedings dt.24.08.2017 since the petitioner has been given sufficient time by the 2nd respondent University and extension of time was also given to him and in spite of the same, the petitioner was not able to complete the research work and submit the thesis. Hence, there were strong reasons for the 2nd respondent University to deny the permission sought for by the petitioner and this Court does not find any ground to interfere with the same.

12. In the result, this writ petition stands dismissed. No costs.



Consequently, connected miscellaneous petitions are closed.

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23.01.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case: Yes/No
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To

1. The Secretary to Government
Higher Education Department
Fort.St.George
Chennai 600 009.
2. The Registrar
Annamalai University
Annamalai Nagar
Chidambaram - 608 002.



3. The Director of Technical Education
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N. ANAND VENKATESH, J.

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