IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.A.Nos.572, 573, 574, 575, 576 & 579 of 2023
AND
C.M.P.Nos.5715, 5719, 5718, 5721, 5726, 5730, 5728, 5733, 5729, 5734, 5746 & 5748 of 2023

W.A.No.572 of 2023

W.Rose Varuna .. Appellant

Vs.

1.The Registrar
Bharathiar University
Coimbatore 641 046

2.The Regional Joint Director
Local Audit Fund Department
Coimbatore 641 046

3.The Assistant Director
Local Fund Audit
Bharathiar University
Coimbatore 641 046

4.University Grant Commission (UGC)
Bahadur Shah Zafar Marg
New Delhi 110002 .. Respondents

Writ Appeal filed under Clause 15 of Letters Patent Act, against the order dated 12.10.2022 passed in W.P.No.17233 of 2022.

For Appellant : Mrs.Kavitha Nithyanandan
in all the writ appeals

For Respondents : Mr.K.Shakespeare
in all the writ appeals

COMMON JUDGMENT

(Judgment of the court was delivered by R. MAHADEVAN, J.)

The instant writ appeals are filed as against identical individual orders passed by the learned Judge dismissing the writ petitions filed by the appellants herein.

2. The issues involved in all these writ appeals are common and identical. The counsel for both sides have advanced similar arguments in all these appeals for consideration. Therefore, all these appeals are taken up for hearing together and disposed of by this common judgment.

3. According to the appellants, they were appointed as Assistant Professors in the first respondent University under the UGC XI Plan Project. As per the UGC XI Plan Guidelines, the UGC provided assistance for the

teaching staff posts created under the said plan for a period of 5 years upto 31.03.2012, irrespective of the date of appointment of the staff. The first respondent University has given an undertaking, while receiving grant from the UGC under the UGC XI Plan, to the effect that after the plan period ending on 31.03.2012, it is incumbent upon the first respondent Unviersity to maintain the posts created pursuant to the UGC XI Plan. Accordingly, after 31.03.2012, the University passed orders in respect of the appellants extending the services / tenure for a further period of 5 years i.e., upto 31.03.2017. Thereafter, the services of the appellants were regularised in the year 2015 and their probations was declared in the post of Assistant Professors in the year 2016. While so, the first respondent University issued a circular dated 09.07.2021 calling for applications from eligible faculty members for promotion under the UGC-CAS and the appellants made applications on 30.07.2021, for promotion from Assistant Professors Stage I to Stage II along with necessary documents within the time stipulated in the said circular. However, after a period of 8 months and one day, prior to the CAS interview scheduled on 23.06.2022, the first respondent sent a letter dated 21.06.2022 to the appellants enclosing the audit slip issued by the second respondent, wherein, it is stated as follows:

> i. *Since the files related to the appointment of the 23 faculty members appointed under XI Plan were not produced to audit. It is not known whether the 200 point community roster was followed or not;*

ii. *Since the guidelines stipulated by the UGC are not followed in the extension of service beyond the XI Plan period, the pay and allowance paid is not in order;*
iii. *The absence Government Nominee and the Chancellors Nominee during the Selection Committee Meeting held on 24.02.2011 raised doubts over the appointments made, the reason for their absence shall be explained to audit;*
iv. *The non-adherence of the conditions like getting the approval of Tamil Nadu Government and UGC shall be explained the audit;*
v. *Since the extension of service beyond the XI Plan period itself is not in order, the total pay and allowance paid to them beyond the XI plan period is held under audit objection.*

Challenging the aforesaid communication, the appellants preferred separate writ petitions, which were disposed of in the following terms, by the learned Judge, by the orders impugned herein:

> *"(a) The petitioner is permitted to send a reply to the impugned communication dated 21.06.2022 of the first respondent/University as well as the Audit objections enclosed along with the same, stating all the petitioner's contentions/objections within a period of two weeks from the date of receipt of a copy of this order;*
>
> *(b) On receipt of the said reply, the first respondent/University shall place the same before the Local Fund Audit, namely the second respondent herein, who will have to take an objective decision with regard to the reply sent by the petitioner and communicate the decision to the first respondent/ University and fourth respondent (University Grants Commission).*
>
> *(c) On receipt of the communication from the second respondent, the first respondent/University shall communicate its decision to the petitioner. If aggrieved by any adverse decision of the first respondent / University, the petitioner is granted liberty to challenge the same in the manner known to the petitioner under law."*

Aggrieved by aforesaid orders of the learned Judge dated 12.10.2022, the appellants are before this Court with the present writ appeals.

4. When these writ appeals were listed for hearing on 13.03.2023, following the earlier order dated 13.02.2023 passed by the very same Division Bench in WA.No.224, 225 & 269 of 2023, an order of interim stay was granted in respect of the audit objections communicated to the appellants vide letter dated 21.06.2022 as well as the order dated 12.10.2022 passed by the learned judge in the writ petitions until further orders.

5. Subsequently, after hearing both sides and based on the records, this Division Bench by a detailed judgment dated 20.10.2013, has allowed the aforesaid writ appeals viz., WA No.224 of 2023 etc. batch. The relevant passage of the same is extracted below, for ready reference:

> *"12. Since all the appellants have been granted promotion under CAS pursuant to the interim orders passed by this Court, the issue as to whether audit objections can be a reason for not considering their promotion need not be gone into at this stage. The only issue that remains to be considered in the writ appeals is the validity or otherwise of the audit objections raised by the second respondent in respect of the appointments of the appellants in the initial post of Assistant Professors in the respondent University appointed under UGC XI Plan. The orders impugned in the writ petitions are the audit objections made by the second respondent and forwarded by the first respondent University to the appellants herein.*
>
> *13. Since the audit objections have emanated from the second respondent, which is a wing of the State government, the fundamental question to be decided is whether in the light of the nature of audit objections made by the second respondent, the second respondent is empowered under law to have raised those audit objections. In this regard, reference may be made to the provisions of the Tamil Nadu Local Fund Audit Act 2014 and the Rules made thereunder. The learned counsel for the second respondent would submit that*

they trace their power to Rule 7 (4) (d) of the Rules, which is extracted hereunder for easy reference:

> *"7. Preparation and submission of annual accounts for audit.-*
> *……….*
> *(4)The annual accounts presented for audit by the University shall include.-*
> *(a) demand collection balance statement of all receipts (including of tuition fee, entrance fee, examination fee and other fees) collected;*
> *(b) demand collection balance statement of university affiliation fee and sports affiliation fee (to be collected by the principles of affiliated colleges) remitted to University fund;*
> *(c) demand collection balance statement of fees and other diverse collected by the teaching department of the University including distance education;*
> *(d) the accounts and statements of expenditure relating to the grants sanction to the universities by the University Grants Commission or the state government or other funding agencies for specified schemes. In the case of continuing schemes, the accounts of such schemes shall be presented for audit as required by the funding agency;*
> *(e) in the case of grants sanction by other agencies (including the State committee of science and technology) the accounts relating to the research schemes projects or seminar shall be presented for audit as soon as a researcher, projects or seminars is finalised of the grant received is utilised as the case may be."*

14. A reading of the above Rules with specific reference to Rule (7)(4)(d) would make it clear that the annual accounts presented for audit by the University is in the nature of presenting accounts on an annual basis in relation to supervising the utilisation of the grants sanctioned by the UGC or the state government for the universities. By no stretch of imagination, can such power be exercised over and over again, year after year, for the very same objections when the same has been specifically answered and mentioned by the respondent University. More importantly, these audit objections have first emanated from the second respondent in the year 2011-12, even prior to the coming into force of the Tamil Nadu Local Fund Audit Act, 2014. Therefore, the reliance placed by the learned counsel for the second respondent on these provisions is only misplaced. In any event, even on a general view of the matter, audit objections can be raised with respect to annual accounts of the University on an annual basis only, and once the University specifically replies for an audit objections touching upon the financial health of the University, the same needs to be settled accordingly by the second respondent. In a case of this nature where the University has explained the circumstances in which the appellants came to be appointed, under the specific financial assistance of the UGC under the UGC XI Plan, which came with an undertaking that the University should maintain these posts after the Plan period, the second respondent raise the very same audit objections year after year under the omnibus clause under Rule 7(4)(d).

15. The learned counsel for the appellants also brought to the notice of this Court, the judgment of this Court in WP (MD) No. 6635 of 2019 dated 16.06.2023 wherein this Court had an occasion to deal with similar facts and circumstances. While dealing with Section 27 of the Manonmaniam Sundaranar University Act, 1990 which provided that the annual accounts of the University shall be submitted to such examination and audit as the government may direct, *this Court has adopted the view that such provision will not empower the government to issue a direction of this nature and that, any further roving enquiry made by the Local Fund Audit Department in this regard into the appointments and promotions made by the University, will amount to an interference with the internal administration of the University. Section 27 of the said Act stated supra is analogous to and is in pari materia with section 27 of the Bharathiar University Act. As such, we do not see why the observation made by this Court in the above stated case would not apply to the facts of the present case as well.*

16. The factual backdrop against which the appellants were appointed by the respondent University under the UGC XI Plan, has a direct bearing on the rights of the appellants. In this connection, it is relevant to refer to clause 4.4(iii) of the guidelines of the UGC XI Plan, which states as follows:

> *"(a) Teaching Staff:*
> *Under this item, sanction would be given for the creation of posts of Professors, Readers and Lecturers during the XI plan in various subject areas. However, during the plan period, if found essential, it is permissible for the University to you and seek the approval of the UGC for giving up any post in one subject area and creating post(s) within the allocation in another subject area. UGC assistance for the posts created under this item would be available only for the plan period of five years and not beyond 31/03/2012 i.e. the end of the plan period, irrespective of the date of appointment. Therefore in order to claim assistance from the UGC under staff salary item, the University should ensure that the minimum qualifications prescribed by the UGC for appointment of teachers are strictly followed and sanctioned posts are filled up within one year of approval of UGC. However it is a necessary condition for the release of UGC assistance against any post approved by UGC that a copy of the concurrence accorded by the State government/an undertaking by the concerned University, based on the resolution of the executive Council in respect of maintenance of the posts after the XI Plan period, is enclosed. ……."*

17. It is also seen that on the basis of the said guidelines, the respondent University has made an undertaking to the UGC to maintain the XI plan period posts in the subsequent plan period as well and the said undertaking is usefully reproduced below:

> *"The Bharathiar University hereby undertakes to maintain the XI plan period posts in the subsequent plan periods as well on behalf of the Syndicate of the Bharathiar University as the Vice Chancellor of this esteemed university assure that under no circumstances will the University allow the faculty recruited under the XI Plan to be affected by any constraint whatsoever".*

18. However, it is seen that immediately thereafter, the respondent University, for reasons best known to them, had reneged on their promise and attempted to terminate the services of the appellants who had then challenged the said orders of termination in WP Nos. 7994 to 8001 of 2013 in which there was initially an order of interim stay. After the timely intervention of the State Government themselves in this regard, the University had decided to continue and regularise the services of the appellants by their proceedings dated 13.04.2015 and thereafter the appellants had completed their probation and *have also been considered for promotion and have been working in the services of the respondent University till date. The writ petitions stated in WP Nos. 7994 to 8001 of 2013 also came to be withdrawn on the basis of the subsequent developments. These factual events are also of relevance in deciding the legal correctness of the orders impugned in the writ petitions, i.e. the audit objections raised by the second respondent, as these facts would point out that all these appointments have been made with the concurrence of the UGC and on the basis of the specific undertaking given by the University to the UGC that these posts will be maintained even after the initial period of five years for which the UGC had funded the University. In these circumstances, when the University has made a detailed reply with respect to every single query raised, the second respondent would not, under law, be justified in refusing to settle these objections or close them on the basis of the replies made by the University. More importantly, all the queries raised by the second respondent, which are mainly in the nature of- whether the 200 point community roster was followed while making these appointments, whether the guidelines stipulated by the UGC were followed in respect of the extension of service beyond the XI plan period, whether the absence of the government nominee and Chancellor's nominee during the selection committee meeting held on 24.02.2011, had cast any doubt on the appointments made, the non-adherence of the conditions like getting the approval of the Tamil Nadu government and the UGC, and extension of service beyond the UGC XI plan period and the circumstances in which it has been made etc., are all within the exclusive domain as well as knowledge of the University. The employees i.e the appellants cannot be made to either answer such queries or objections or be made to suffer for not being in a position to answer these queries or objections as every one of them relate only to internal administration of the University.*

19. In this regard, this court also raised a query with respect to the eligibility and qualifications of all the appellants in order to clarify whether there has ever been any doubt cast on the eligibility of the appellants to hold these posts. In reply to the same, the counsel for the University has admitted that every one of the appellants herein are fully eligible and qualified to hold the posts of Assistant and Associate professors, as the case may be, and has also filed documents to support his submission in this regard. Therefore, this court does not have any doubt that the appellants are eligible to hold these posts.

20. The learned counsel for the appellants also placed reliance on the judgement of the Hon'ble Supreme Court in State of Punjab and Ors. v. Sardari Lal and Ors., [(2003)10 SCC 253] wherein the Hon'ble Supreme Court stated as follows:

> *"3. Under the University statute, Statute 41 deals with the grant of accelerated increment and allowance and powers conferred upon the syndicate or the Vice Chancellor or the registrar. The power of the state government under section 25 of the Act to get the accounts of the University audited will not include within its sweep any power to nullify a decision of the appropriate authority of the University in the matter of grant of accelerated increment or allowance which has been specifically conferred upon the authorities of the University. The power of the state government under section 23 of*

the Act is to the effect that the State government may provide such amounts by way of grants for meeting the capital recurring or other expenditure of University as it may deem fit. Merely because the state government has been conferred power to provide amounts by way of grant for meeting the expenditure of the University will not clothe the State government with any further control in the matter of expenditure or the service condition of the employees which are specifically provided for in the statute itself and the statute confers powers on the Vice Chancellor, the syndicate or the register and not on the State government. The University is an autonomous body and therefore, the state government will not be entitled to interfere with the internal administration of the University notwithstanding the fact that the state government is funding body until and unless the university statutes provide for the same or there is any Act of legislation conferring the power of the state government. In course of arguments the learned counsel appearing for the state government brought to notice the provisions of section 10 of the Haryana and Punjab Agricultural Universities Act in support of the contention that since the Vice Chancellor has certain power of control and that power must be held to be with the state government as the Vice Chancellor exercises that power in aid and advice of the state government. This provision is not there either in the statute of the Guru Nanak Dev University or Punjab University. But even for the Haryana and Punjab agricultural University also the aforesaid power on a plain reading cannot be held to be conferring power of the state government to take any decision in the internal administration of the University which the statute itself does not provide. The impugned judgement in CA number 5088/96 clearly indicates that no provision has been pointed out which may show that the government is entitled to interfere with the internal administration of the University or the grant of benefit to the employees."

21. The decision referred to above makes it clear as daylight that even if the state government is a body that funds the University, the state government cannot under the guise of auditing the accounts of the University, interfere with the internal administration of the University, which power of the University includes the power to make appointments as well as promotions. The other decision relied upon by the learned counsel for the appellants is Sushil Kumar Tripathi v. Jagadguru Ram Bhadracharya Handicapped University and Ors., [AIR 2021 SC 5702], wherein, in similar circumstances, under the UGC Plan, assurance was obtained from the University to maintain and take over the liability of these posts after the plan period of the UGC. The Hon'ble Supreme Court held that the termination of the services of the appellant therein was incorrect and therefore, his services were to be continued as per the UGC plan. Further, in identical circumstances, in R. Soranam v. Manonmaniam Sundaranar University, in WP (MD) No. 3935 of 2012 decided on 20.09.2012 in respect of the very same UGC XI plan, this Court taking into consideration the guidelines of the UGC, which had stipulated that in order to get grant from the UGC, it is for the University to file an undertaking with respect to maintenance of the posts after the UGC XI Plan period, held that the University cannot after having benefited under the UGC plan and utilising the funds and grants made by the UGC, wriggle out of such an undertaking as was required under the guidelines of the UGC.

22. The above judgements would make it clear that the second respondent had ignored this factual background as well as the circumstances in which the appellants claim to be appointed as Assistant Professors in the *respondent University under the UGC plan, and more importantly, that it was beyond their power as well as jurisdiction under the Tamil Nadu Local Fund Audit Act, 2014 as well as under the Bharathiar University Act, 1981 to have raised objections with regard to the validity of the appointments made under the UGC XI Plan. This Court deprecates the practice of the second respondent of not accepting or settling the objections even after a period of 13 years, especially, when it is the annual accounts of the University which is to be looked into by the second respondent and to the extent as provided for, without causing any undue interference into the internal administration and management of the University. It is unfortunate that even after 13 years of service in the respondent University and after having completed probation as well as being promoted, the appellants are made to face such audit objections with respect to their initial appointments itself, which hang like the sword of Damocles, on their careers. The audit objections therefore deserve to be quashed and the respondent University is directed to pay the appellants within four (4) weeks, the arrears of pay that they are entitled to on the basis of the CAS promotion orders, and the consequent pay fixation orders passed during the pendency of these appeals.*

23. In the light of the above discussion, this Court has no hesitation to quash the audit objections of the 2nd respondent / orders impugned in the writ petitions. Accordingly, the orders impugned in these appeals as well as in the writ petitions are set aside and the writ appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed."

6. Considering the fact that the issues involved in the present appeals as well as in the aforesaid appeals are one and the same; and as agreed by the learned counsel appearing for both sides, we are inclined to allow the present writ appeals also, in the same lines. Accordingly, all these writ appeals are allowed by setting aside the orders impugned herein as well as in the writ petitions. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D,J.] [M.S.Q, J.]

08.11.2023

Neutral Citation : Yes
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To

1.The Registrar
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