IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.A.No.2369 of 2019

The Secretary to Government
Government of Tamil Nadu
Higher Education (K1) Department
Fort St.George, Chennai. ... Appellant

-Vs-

1.Dr.K.Murugan
Professor and Director
School of Humanities
Tamil Nadu Open University
Chennai-15.

2.The Registrar
Tamil Nadu Open University
No.577, Anna Salai, Saidapet
Chennai-15. ... Respondents

Prayer : Writ Appeal under Clause 15 of the Letters Patent against the order in W.P.No.1222 of 2016 dated 20.07.2018.

For Appellant : Mr.R.Kumaravel
Additional Government Pleader

For Respondents : Mr.V.Vijay Shankar - for R1
No appearance - for R2

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.)**

This appeal has been directed against the order passed by the writ Court dated 20.07.2018 in W.P.No.1222 of 2016.

2. The second respondent University called for applications from eligible candidates for appointment to the post of Professor in various disciplines including the discipline of School of Humanities. Since the first respondent was eligible to hold such post, he made an application for the post of Professor of School of Humanities at the second respondent University. In the application itself, in Column No.11, an option has been given to the candidates to seek for higher salary depending upon the rich experience they gained as well as the higher qualification they hold.

3. It is to be noted that the salary at that time for the post of Professor was fixed at Rs.16,400-19,000/-, whereas in Column No.11 of the application, option had been given, which was exercised by the first respondent, claiming the salary at entry level to the extent of Rs.20,900/-.

4. The Selection Committee, after completing the interview, selected the first respondent by accepting the option exercised by the first respondent to seek for a salary of Rs.20,900/- at the entry level. That decision taken by the Selection

Committee was accepted by the University Syndicate and he has been appointed as such in the year 2004 with a salary of Rs.20,900/- and accordingly he had been working till 2017. In the meanwhile, since some audit objection has been raised with regard to the fixation of higher salary to the first respondent, the University had made a recommendation to get a ratification from the the Government with regard to the fixation of the salary and this has been made at various point of time by the second respondent University ie, in the years 2008, 2012 and finally on 27.01.2014.

5. Considering all these requests that have been made by the University, the State Government, having considered the issue, have come forward to issue a Government Order in G.O.Ms.No.26, Higher Education Department dated 13.02.2015, where the following order has been passed:

> *" 3. After careful consideration of the request of the Registrar, Tamil Nadu Open University, the Government hereby ratify the decision of the Syndicate for the appointment of Dr.K.Murugan as Professor in the School of Humanities in Tamil Nadu Open University with consideration of the qualification and experience possessed by him, at the time of appointment and also direct to disallow the higher start of pay with 10 increments sanctioned to Dr.K.Murugan and also to recover the excess salary paid to him at the time of initial appointment."*

6. By thus, through G.O.Ms.No.26 dated 13.02.2015, the appointment that

has been made by the University against the first respondent appointing him as Professor in the School of Humanities was accepted and ratified. However, the fixation of higher salary and the corresponding increments ie., 10 increments that have been given based on such enhanced salary was not approved. With the result, the second respondent has been put under recovery by them, apart from the reduction of the hitherto salary he was receiving. Therefore, challenging G.O.Ms.No.26 dated 13.02.2015 so far it disallowed the higher salary as well as the increments based on the higher salary, the said writ petition was filed by the second respondent, which was considered and allowed by the learned Judge through the impugned order dated 20.07.2018.

7. Aggrieved over the said order, the present appeal has been directed by the Government. The learned Additional Government Pleader appearing for the appellant would contend that it is neither in the Statute or the Rules of the University nor any other Regulations or Government Order, such higher salary can be fixed by the University to any Lecturer or Professor like the first respondent. Therefore, since such higher salary was fixed to the extent of Rs.20,900/-, whereas the salary to that category of Professor at that time was only Rs.16,400-Rs.19,000/-, the fixation of higher salary was not accepted. Therefore, the decision of disallowing the subsequent ten increments that have been granted to the first respondent during the relevant period between 2004 to 2015 was taken and hence, there was every justification on the part of the Government to issue such

Government Order disallowing the higher salary.

8. However, Mr.V.Vijay Shankar learned counsel for the first respondent on instructions would submit that, insofar as the fixation of higher salary is concerned, it is only based on the option given to the applicant like the first respondent at the time of making the applications and a decision consciously taken by the Selection Committee, approved by the University Syndicate, which was implemented for more than ten years and based on the said agreement of such salary ie., fixation of higher salary only, the first respondent had been working as Professor for all these years. Therefore, suddenly because of the impugned Government Order, the salary already been fixed and was paid to the first respondent cannot be reduced or the alleged excess payment cannot be recovered.

9. We have considered the rival submissions made by the learned counsel on either side and have perused the materials placed on record.

10. It is further to be noted that the first respondent, after completing his service has attained superannuation and retired from service in the year 2017 and at the time of retirement, he was permitted to retire peacefully and his retiral benefits has also been settled by the University.

11. Insofar as disallowing the fixation of higher salary as has been made

through the Government Order in G.O.Ms.No.26 dated 13.02.2015 is concerned, it was an agreement between the University and the incumbent ie., the first respondent. Since option has been given, he exercised the option to seek for higher salary and only agreeing with the higher salary, appointment has been given. Therefore, it is strictly a contractual obligation beyond which the University cannot go back to reduce the salary during the tenure of the first respondent. Therefore, the question of reduction of such salary does not arise. As a sequel, there is no scope for recovery also. That apart in **"State of Punjab v. Rafiq Masih (White Washer) (2014 (8) S.C.C.833 ,** the Hon'ble Supreme Court has held as follows.

> *" 12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*
>
> *(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D'service).*
>
> *(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
>
> *(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of*

recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

12. Since the contractual pay has already been fixed and paid for the period of his working from 2004 till his superannuation, the said salary cannot unilaterally be reduced merely because of an order passed by the Government disallowing such higher pay through the impugned Government Order in G.O.Ms.No.26 dated 13.02.2015. Therefore, recovery also is not possible in view of the order that has been passed by the Hon'ble Supreme Court as cited supra.

13. Adopting the very same proposition, the said writ petition was allowed by the learned Judge through the impugned order. Therefore, we do not find any error in the said order passed by the learned Judge. This writ appeal deserves to be rejected. Accordingly, it is dismissed. No costs.

(R.S.K.,J..) (K.B.,J.)

18.08.2023

Index : Yes/No

Internet : Yes/No

KST

R.SURESH KUMAR, J.
and
K.KUMARESH BABU, J.

KST

To

The Registrar
Tamil Nadu Open University
No.577, Anna Salai, Saidapet,
Chennai-15.

W.A.No. 2369 of 2019

18.08.2023