



W.P.No.25543 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 13.06.2023

Delivered on: 04.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.25543 of 2018

&

W.M.P.No.2971 of 2018

N.Mythili

... Petitioner

Vs.

1.The Vice-Chancellor
The Tamil Nadu Dr.M.G.R. Medical University
No.69, Mount Road, Guindy
Chennai-600 032

2.The Registrar
The Tamil Nadu Dr.M.G.R. Medical University
No.69, Mount Road, Guindy
Chennai-600 032

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for records relating to the proceedings of the respondent University in Proc.No.EI(3)/43763/2018 dated 23.08.2018 and quash the same and direct the respondent University to forthwith treat the service of the petitioner as



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Section Officer with effect from the original date of seniority/promotion on 19.03.2010.

For Petitioner : Mrs.AI.Gandhimathi, Senior Counsel
for
Mr.AR.Karthik Lakshmanan

For Respondents : M/s. Ramalingam & Associates
for R1 and 2

ORDER

The petitioner seeks to quash the proceedings of the respondent University dated 23.08.2018 and to consequently direct the respondent University to treat the service of the petitioner as Section Officer, with effect from the original date of seniority/promotion on 19.03.2010.

2. The case of the Writ Petitioner is that she was called for an interview for the post of typist in the respondent University in the year 1992 through the employment exchange. The petitioner joined the respondent University on 05.06.1992 and was also regularised in the post of Typist. Thereafter, she completed her probation on 04.06.1994 and probation was declared on 13.03.1995. The petitioner was thereafter promoted as Assistant



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(now Assistant Section Officer) on 29.07.1999 and she was given Selection Grade Assistant after completion of 10 years in 2009. Though the petitioner was eligible to be appointed as Section Officer even in the year 2006, she was given promotion only in March 2010, after having completed 11 years of experience in the post of Selection Grade Assistant (Assistant Section Officer). The petitioner was issued a Show Cause Notice on 13.12.2010, referring to G.O.Ms.No.107 dated 18.08.2009 in and whereby individuals who had not acquired PUC, +2 would be excluded from further promotion and the petitioner was called upon to explain why she should not be reverted back to the post of Assistant Section Officer. The petitioner gave her explanation on 20.12.2010. However, by proceedings dated 24.02.2011, the respondent, finding that the petitioner had not qualified herself to be appointed in terms of G.O.Ms.No.107, reverted the petitioner to the post of Assistant Section Officer with effect from 24.02.2011.

3. It is the specific stand of the petitioner that she completed her Higher Secondary Course in April 2011 and September 2011 and thereafter



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she had given a representation to the respondent University on 05.11.2011 stating that she had completed Higher Secondary course and also had an experience of 19 years and that she being the only person reverted back as Assistant Section Officer, among 14 individuals who did not possess PUC/+12 qualification, the petitioner requested the respondent to consider her case as an exception and reinstate her as Section Officer considering that she had completed her Higher Secondary Examination in the month of September 2011. Thereafter, even according to the petitioner, by proceedings dated 17.07.2012, the respondent reinstated the petitioner as Section Officer. However, the monetary benefits were ordered to be given only from the date of her joining as Section Officer on 17.07.2012. Subsequently, the respondent University issued a memorandum dated 20.12.2017 in G.O.Ms.No.242, Higher Education Department dated 18.12.2012, treating degrees obtained from Open Universities all through distance education as equivalent to degrees obtained after SSLC and +2 for the purposes of appointment and promotion in Government services. Citing the said G.O, the petitioner was called upon to submit her statement, which was also given by



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the petitioner. However, the 1st respondent without placing the matter before the Governing Council which had the power of relaxing and interpreting the service statutes proceeded to pass the impugned order cancelling the promotions already given to the petitioner and refusing her pay.

4. The respondents have filed a counter admitting the factual aspects which have been mentioned by the Writ Petitioner in the affidavit in support of the Writ Petition. However, it is stated that the Local Fund Audit vide their letter dated 22.03.2018 had stated that the Governing Council did not have the power to relax or interpret G.O's and it was only the decision of the Local Fund Audit to treat the petitioner's promotion to take effect from 01.06.2015 and not the decision of the University and prayed for dismissal of the Writ Petition.

5. Heard Mrs.AL.Gandhimathi, learned Senior counsel for Mr.Ar.Karthik Lakshmanan for the petitioner and M/s. Ramalilngam & Associates for the respondents University. This Court also perused the



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records.

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6. It is not in dispute that the petitioner joined the University as a Typist on 05.06.1992 and thereafter she was promoted as Assistant in the year 1999 and subsequently promoted as Selection Grade Assistant in 2009. She was given a further promotion in the year 2010 when she was promoted as Section Officer. The petitioner, in and by a letter dated 20.12.2010, informed the respondent University that she intends to complete her 12th standard and reappear for her Under Graduate degree course, without in any manner affecting her official duties. She also stated that she was singled out for being reverted. She requested her case to be considered on humanitarian grounds. It is also further seen that in and by an order dated 24.02.2011, the petitioner was also permitted to study and complete the HSC and UG degree course within a period of six years. However, she was reverted back to the post of Assistant Section Officer with effect from 24.02.2011. It is also further seen that in and by G.O.Ms.No.107 dated 18.08.2009, degrees obtained through Open University after passing Higher Secondary School



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Education (+2) was also recognised for the purpose of appointment and promotion in public services. Placing reliance on the said G.O, learned Senior counsel would contend that prior to March 1995, there is no such recognition to correspondence courses or distance education programmes. However, the degree conferred by the University of Madras in the year 1990 ought to have been recognized and the petitioner's case be considered favorably. Subsequently, the respondent University in and by an order dated 17.07.2012 resolved that the petitioner having obtained B.A.History degree from University of Madras, which is not an Open University, was eligible for promotion and that the said resolution was not implemented because of interim order granted by this Court in Writ Petitions filed by some Assistant Section Officers in W.P.Nos. 10050 and 10051 of 2012. It is also seen that on 27.06.2012, the Governing Council had issued an erratum to reinstate the petitioner as Section Officer and to give her all monetary benefits from the date of her joining as Section Officer.

7. The petitioner has been serving the respondent University right from



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1992 when she joined originally as a Typist and she has served the respondent University for more than 25 years. Admittedly, there were no adverse remarks against the petitioner. It is not the case of the University also that the petitioner's conduct is one that is undeserving of conferring promotion and other benefits. The petitioner's grievance that she was placed below 13 of her juniors despite being reinstated as Section Officer was an unfair treatment meted out to her. Even in the memorandum dated 20.12.2017, the University has only referred to Audit objection that the petitioner did not possess the necessary qualifications at the time of her promotion on 19.03.2010 and on 18.07.2012 respectively. Subsequently, in and by an order dated 23.08.2018, the respondent University has referred to the Audit report of the Local Fund Audit and considering their objection found that the petitioner did not possess U.G degree in the month of May 2015 as prescribed in G.O.Ms.No.107 dated 18.08.2009 and therefore she was qualified for further promotion only with effect from 01.06.2015. The impugned order of the respondent University is clearly violative of their own proceedings. Having chosen to give effect to the promotion as Section



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Officer, also conscious of the fact that G.O.Ms.No. 242 dated 18.12.2012 enured to the benefit of the petitioner, merely because the audit objections were raised, the Governing Council's decision has been given a go by and the promotions already given to the petitioner were recalled. The Governing Council is the proper and competent body to decide the case of the promotion of the petitioner and not the Local Audit Fund. No doubt the Local Audit Fund may have raised a query or an objection with regard to the qualification of the petitioner and her entitlement to promotion. However, as already seen the Governing Council has taken a conscious decision to promote the petitioner and citing Audit objections it would not be open to the respondent University to arbitrarily cancel the promotions vide the impugned proceedings. More so, when the Governing Council had resolved specifically in the case of the petitioner to promote her along with the increase in pay as well as allowances, it would have only been just and proper for the respondent University to have placed the Audit objection before the Governing Council instead of merely and mechanically accepting the objections of Local Fund Audit and proceeding to pass the impugned orders.



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8. It is already seen that the petitioner was appointed as Section Officer even in March 2010 and a proper, valid and legal resolution was passed by the Governing Council in its meeting on 10.03.2010 in that regard. Even subsequently, the Governing Council in its meetings dated 25.04.2012 and 27.06.2012 only directed that the petitioner be reinstated to the post of Section Officer. Moreover, the petitioner acquired her Under Graduate degree from University of Madras and subsequently after getting permission from University she obtained a degree and also completed her +2 in compliance of the mandate of G.O.Ms.No.242 dated 18.12.2012. It is arbitrary on the part of the 1st respondent to seek recovery of the alleged excess amounts paid towards pay and allowances from the Writ Petitioner.

For all the above reasons, the petitioner is entitled for issuance of a Writ and the impugned proceedings viz., Proc.No.EI(3)/43763/2018 dated 23.08.2018 stands quashed and consequently the respondent University shall treat the service of the petitioner as Section Officer with effect from 19.03.2010 and consequently pay all attendant benefits due and payable to



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the petitioner. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order. No costs.

Consequently, connected miscellaneous petitions are closed.

04.08.2023.

Internet:Yes
Index:Yes/No
Neutral Citation:Yes/No
Speaking/Non-speaking order
kpr

To
1.The Vice-Chancellor
The Tamil Nadu Dr.M.G.R. Medical University
No.69, Mount Road, Guindy
Chennai-600 032

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P.B.BALAJI, J.,
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Pre-delivery order in
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