



W.A.(MD)No.1011 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.A.(MD)No.1011 of 2013

The Tamil Nadu Agricultural University,
Rep. by its Registrar,
Coimbatore – 641 003

... Appellant/2nd Respondent

Vs.

1.Karuppagnani
2.The Government of Tamil Nadu,
Rep. by its Secretary,
Agriculture Department,
Secretariat,
Chennai – 600 009.

... 1st Respondent/Petitioner

... 2nd Respondent/
1st Respondent

3.Santhi
4.Mankayarkarasi
5.Valli
6.Meenakshi
7.S.Revathi
8.Minor S.Sridhar
9.Minor S.Rajashri

... Respondents 3 to 9 /
Legal Heirs of 1st Respondent

(Respondents 8 & 9 minors represented by
their mother and guardian S.Revathi the
7th Respondent herein)



W.A.(MD)No.1011 of 2013

(Respondents 3 to 9 impleaded vide order of this Court dated 07.06.2023 made in C.M.P.(MD) No.6478 of 2023 in W.A. (MD) No.1011 of 2013)

PRAYER: Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 25.04.2013 made in W.P.(MD)No.6875 of 2010 on the file of this Court.

For Appellant : Mr.A.Thirumurthy
Standing Counsel

For Respondents 1, 3 to 9: R.Subramanian

For 2nd Respondent : Mr.A.K.Manikkam
Special Government Pleader

JUDGMENT

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

This Writ Appeal has been directed against the order of the Writ Court dated 25.04.2013 made in W.P.(MD) No.6875 of 2010.

2. The first respondent viz., Karuppagnani was appointed as Assistant Librarian with U.G. qualification i.e., B.Com., B.L.I.S., at a College in Coimbatore under the appellant University on 16.02.1974. He



W.A.(MD)No.1011 of 2013

had been working in that capacity for several years. In the year 1985, a Government Order was issued in G.O.No.392 Education Department, dated 16.04.1985, prescribing the Master Decree Qualification for the post of College Librarian and in the year 1986 by G.O.Ms.No.492 Agriculture (AU – 1) Department, dated 21.03.1986, P.G. qualification was prescribed for Assistant Librarian. On 25.09.1989, G.O.Ms.No.1352, Education Department, was issued for implementing the Career Advancement Scheme to the Librarians of the UGC.

3. Under the said G.O.Ms.No.1352, two years time was given to those who did not possess P.G. Qualification and on acquiring such qualification, the Career Advancement Scheme i.e., Financial Upgradation can be implemented against them.

4. However, in para 6 of the said G.O.Ms.No.1352, some exemptions have been provided, under which, those who have been brought under Career Advancement Scheme Financial Upgradation, without having the P.G. Qualification, can be continued.



W.A.(MD)No.1011 of 2013

5. In that circumstances, since the original Writ Petitioner i.e., the first respondent had already been brought under the Career Advancement Scheme, even though he has not acquired P.G. qualification or acquiring P.G. qualification, he was continued to get the enhanced pay by implementing the Career Advancement Scheme of the UGC.

6. While that being so, a local fund audit has been conducted, based on which, an objection has been raised by the said local fund audit as to the higher pay paid to the first respondent / writ petitioner stating that since he did not qualify with P.G. degree within the two years period as envisaged in G.O.Ms.No.1352, such a higher pay by implementing the Career Advancement Scheme of UGC ought not to have been made, therefore, excess pay to the extent of Rs.85,000/- paid to the first respondent shall be recovered from him. Following the said audit objection made in this regard, the appellant University has issued a communication initially to recover the said amount of Rs.85,000/-, which was allegedly paid as an excessive amount.



W.A.(MD)No.1011 of 2013

7. As against the said move on the part of the appellant University, already the first respondent filed a Writ Petition in the first round in W.P.No. 13537 of 1999, where a remand order has been passed by giving liberty to the first respondent / writ petitioner to make a representation by quoting the amendment given to G.O.Ms.No.1352 by the State Government in Government Letter dated 03.08.1990 and based on such order passed by the Writ Court in the first round, the first respondent / writ petitioner had given a representation, which was considered by the State Government through order dated 07.05.2010, under which, the plea of the first respondent / writ petitioner was rejected on the ground that the Government Letter referred to above i.e., 03.08.1990 giving amendment to G.O.Ms.No.1352 could not be made applicable to the Assistant Librarians in Agricultural Colleges and Agricultural Universities under the control of the Appellant University. In view of the stand taken by the University that import of G.O.Ms.1352 with amendment dated 03.08.1990 cannot be extended or implemented to the Librarians working in the Colleges or Universities coming under the appellant University.



W.A.(MD)No.1011 of 2013

8. This order made by the State Government to the Agricultural Department in G.O.Ms.No.101 dated 07.05.2010 was under challenge in the Writ Court in W.P.(MD) No.6875 of 2010 filed by the first respondent / writ petitioner Karuppagnani.

9. The learned Judge of the Writ Court having considered these aspects has ultimately allowed the Writ Petition by order dated 25.04.2013, challenging the same, this Appeal has been directed at the instance of the appellant University.

10. Mr.A.Thirumurthy, learned Standing Counsel appearing for the appellant University has canvassed the point that, though initially the first respondent / writ petitioner was appointed as Assistant Librarian with only UG qualification, subsequently, by virtue of G.O.Ms.No.392 and G.O.Ms.No.492 referred to above, it become obligatory on the part of the first respondent / writ petitioner to qualify with the PG degree.

11. This position has been reiterated in the further Government Order i.e., G.O.Ms.No.1352 dated 25.09.1989, which infact was issued for implementation of the Career Advancement Scheme of UGC.



W.A.(MD)No.1011 of 2013

12. After the G.O.Ms.No.1352 was issued, amendment was made through the Government Letter dated 03.08.1990, where some exemptions have been given for those who have already brought under the UGC Scheme i.e., Career Advancement Scheme and started receiving the benefit may not be required to acquire the qualification.

13. However, the said G.O.Ms.No.1352 with amendment dated 03.08.1990 was issued mainly for the Assistant Librarians working in Government Arts and Science Colleges and not beyond that. Therefore, pursuant to the order by the Writ Court in the earlier round of litigation as stated supra in the Writ Petition filed by the first respondent / writ petitioner, the request made by him seeking exemption by virtue of G.O.Ms.No.1352 with 03.08.1990 amendment having been considered was rejected by the Government through the Government Order in G.O.Ms.No. 101 dated 07.05.2010.

14. Insofar as holding the post of Assistant Librarian is concerned, since the qualification has been prescribed as a PG qualification as an essential one and earlier with UG qualification if any has got appointed like



W.A.(MD)No.1011 of 2013

the first respondent / writ petitioner, they should qualify themselves with P.G. qualification, that is why two years period has been given. Consequently, in this regard, at least two Government Orders have been issued and the third Government Order i.e., G.O.Ms.No.1358 was in consonance with the Career Advancement Scheme of UGC. Even under the UGC Scheme, such a qualification of P.G. degree was mentioned and therefore, that should have been acquired by the first respondent / writ petitioner, which admittedly, he has failed to do so, therefore, he is not entitle to get any higher salary by way of Career Advancement Scheme of UGC.

15. However, without noticing all these aspects, since higher salary had already been paid to the first respondent / writ petitioner and this has been rightly pointed out by the local fund audit team, based on which, the recovery proceedings has been initiated and that has ended in the rejection order passed by the Government in G.O.Ms.No.101, refusing to extend the benefit of Government Letter dated 03.08.1990, i.e., exemption to the Librarians like the first respondent / writ petitioner, as he was out of the purview of the Government Arts and Science Colleges and therefore,



W.A.(MD)No.1011 of 2013

that decision taken by the Government cannot be found fault with, the learned Standing Counsel would contend.

16. He would also submit that even assuming without admitting that the reasons given by the learned Judge in allowing the Writ Petition is correct, the learned Judge not only has directed to repay the recovered amount of Rs.85,000/- to the first respondent / writ petitioner, but also further directed that, after re-credit the said amount in the pension account of the first respondent / writ petitioner, he shall be entitled to appropriate revision of pension in accordance with law, that means, based on the Career Advancement Scheme, without having the P.G. qualification, his pension should be revised and continuously paid till his entitlement. That kind of benefit that has been extended ultimately by the learned Judge through the impugned order is certainly beyond the scope of the very Scheme itself as well as the Government Order in this regard. Therefore, the learned Standing Counsel appearing for the appellant University has raised serious objection to that point in the impugned order.



W.A.(MD)No.1011 of 2013

17. On the other hand, Mr.P.Subramanian, learned counsel appearing for the respondents 1 and 3 to 9, would submit that, during the pendency of the Writ Appeal, the first respondent / writ petitioner has died, therefore, his legal heirs have been impleaded as party respondents in this Writ Appeal. On their behalf, he made submissions stating that since Career Advancement Scheme of the UGC has already been implemented insofar as the first respondent / writ petitioner and based on which the financial upgradation has also been given and such upgraded payment has been made to the first respondent / writ petitioner, the same cannot be recovered.

18. Moreover, the reasons stated by the Government in rejecting the plea of the first respondent / writ petitioner for giving such exemption stating that the G.Os. as well as the amendment could not be made applicable to the first respondent / writ petitioner as the said G.Os. were made applicable only in respect of the Assistant Librarians working in the Government Arts and Science Colleges has no legs to stand because it is a UGC Scheme which has been implemented in respect all such Librarians working in various Government Colleges and the College where the first respondent / writ petitioner was appointed is also a Government College, of



W.A.(MD)No.1011 of 2013

course, under the control of the appellant University, therefore, such reasons stated by the Government cannot be sustained and therefore, taking these aspects into account, the learned Judge allowed the Writ Petition.

19. He would also submit that once the Writ Petition is allowed and the recovery already been made from the first respondent / writ petitioner was sought be re-credited, that means, the payment made to the first respondent / writ petitioner is to be the actual pay and based on which alone the pensionary benefits, if at all, to be calculated and therefore, the final part of the operative portion of the order impugned also is to be sustained, he contended.

20. However, Mr.A.K.Manikkam, learned Special Government Pleader, appearing for the second respondent would make submissions, supporting the stand taken by the University, especially, the arguments advanced by the learned Standing Counsel appearing for the University and he made attempts to sustain the order passed by the Government through the impugned G.O. before the Writ Court.



W.A.(MD)No.1011 of 2013

21. We have given our anxious consideration to the submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

22. We have perused the reasons given by the learned Judge in allowing the Writ Petition. As has been rightly pointed out by the learned Judge in the impugned order, insofar as the import of G.O.No.1352 Education Department dated 25.09.1989 is concerned, it was issued by the State Government and the Career Advancement Scheme was implemented by the UGC will uniformly be made applicable to all Colleges, including the College, where, the first respondent / writ petitioner has been appointed and been working.

23. Merely, because the College has been brought under the control of appellant University, it cannot be stated that it is beyond the purview of Career Advancement Scheme.

24. The Career Advancement Scheme, since has been implemented uniformly for all institutions including the College, where he



W.A.(MD)No.1011 of 2013

had been working, and accordingly, by virtue of exemption provided under the amendment, already enhanced pay had been paid to the 1st respondent / writ petitioner.

25. When that being so, the same was sought to be recovered only on the basis of the local fund audit and this has also been specifically contravened by the learned Single Judge in paragraph 14 of the order impugned.

26. Otherwise, either the appellant or the second respondent Government would not have come forward to make recovery of the said sum allegedly made as an excessive payment to the first respondent / writ petitioner.

27. Therefore, absolutely there has been no rhyme or reason to make a claim of recovery from the first respondent / writ petitioner as an excess amount of Rs.85,000/- paid towards him as part of the enhanced payment through the Career Advancement Scheme envisaged by the UGC.



W.A.(MD)No.1011 of 2013

28. Acquiring qualification of PG as per the UGC as well as G.O.Ms.No.1352 since has been given exemption for those whose pay has already been enhanced by bringing them under the UGC Scheme, the question of recovering the amount paid to them under the enhanced pay as an excess payment does not arise. Therefore, the consequential recovery, does have legal support.

29. Hence, there is every justification on the part of the learned Judge to allow the Writ Petition with a direction to re-credit the amount in the pension account of first respondent / writ petitioner.

30. However, insofar as the further direction given by the learned Judge that the first respondent / writ petitioner is entitled to appropriate revision of pension in accordance with law is concerned, it is not the actual pay fixed by any authority including the UGC for those who did not acquire the qualification.

31. If any excess payment has already been made by virtue of enhancement before the G.O.Ms.No.1352 was issued or before any cut of



W.A.(MD)No.1011 of 2013

date fixed in this regard, those cases need not be disturbed for making such payment, that means, those excess payment need not be recovered. To that extent, the recovery made by the University can be found fault with. Therefore, the first portion of the direction given by the learned Judge can be approved.

32. However, insofar as the further extension of the benefit of calculating the pension based on such enhanced pay under Career Advancement Scheme is concerned, it is not the actual pay meant for those who did have the PG qualification because the qualification has already been fixed by various Government Orders in 1982 and subsequently, under G.O.Ms.No.1352 dated 25.09.1989. Therefore, that portion of the order made by the learned Judge by calculating the pension as a revised pension on the basis of the Scheme enhanced to the first respondent / writ petitioner without deducting the amount from him may not be justifiable. Therefore, to that extent, we feel that the order impugned requires some modifications.

33. In that view of the matter, this Court is inclined to dispose of this Writ Petition with the following directions:-



W.A.(MD)No.1011 of 2013

(i) That the impugned order is sustained, therefore, the direction is given to re-credit the amount of Rs.85,000/- as recovered by the appellant University by way of excess amount in the account of the first respondent / writ petitioner or the other respondents herein, who become the legal heirs of the first respondent / writ petitioner within a period of six week from the date of receipt of a copy of this order.

(ii) However, insofar as the further direction given by the learned Judge in the impugned order that the first respondent / writ petitioner shall be entitled to revision of pension in accordance with law is concerned, that to be interfered with and therefore, that portion is set aside.

34. With this modification, the Writ Appeal is allowed in part. The remaining portion of the impugned order shall remain unchanged. However, there shall be no order as to costs.

(R.S.K., J.) & (K.K.R.K, J.)
07.06.2023

NCC : Yes
Index : Yes
Internet : Yes
SJ



W.A.(MD)No.1011 of 2013

To

The Secretary,
Agriculture Department,
Government of Tamil Nadu,
Secretariat,
Chennai – 600 009.

R.SURESH KUMAR, J.



WEB COPY



W.A.(MD)No.1011 of 2013

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W.A.(MD)No.1011 of 2013

07.06.2023