



WP.(MD).Nos.7304 and 8521 of 2020 and 12687 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 29.09.2023

PRONOUNCED ON : 08.11.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)Nos.7304 and 8521 of 2020 & 12687 of 2023

and

W.M.P.(MD)Nos.6756 and 7899 of 2020 and 10704 & 10705 of 2023

W.P.(MD)No.7304 of 2020 :-

S.Murali

... Petitioner

Vs.

- 1.The Secretary,
University Grants Commission,
BhadhurSha Zafar Marg,
New Delhi 110002.
- 2.The Madurai Kamaraj University,
Represented by its Registrar,
Palkalai Nagar,
Madurai 625 021.
- 3.The Vice Chancellor,
Madurai Kamaraj University,
Palkalai Nagar,
Madurai 625 021.



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4. The Deputy Director,
Local Fund Audit,
Madurai Kamaraj University,
Madurai – 625021.

... Respondents

(R4 is suo moto impleaded vide
Court order dated 21.08.2023 in
W.P.(MD)No.7304 of 2020 by LVGJ)

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent in its proceedings No.ESTT-II/EMRC/SM/2019-2020 dated 16.03.2020 and quash the same and consequently direct the respondents to restore the benefits granted under Career Advancement Scheme and the revision of pay to the petitioner.

For Petitioner : Mr.V.Vijayshankar

For R1 : Mr.P.Karthick

For R2 & R3 : Mr.T.Cibi Chakraborty, Senior Counsel

For R4 : Mr.M.Prakash
Additional Government Pleader

W.P.(MD)No.8521 of 2020 :-

Dr.R.Sayeelakshmi

... Petitioner

Vs.

1. The Registrar,
Madurai Kamaraj University,
Madurai 625 021.

2. University Grants Commission,
Bhadhurshah Zafar Marg,



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New Delhi 110002.

(R2 is suo moto impleaded vide

Court Order dated 02.12.2022 in

W.P.(MD)No.10304 of 2019 and 8521 of 2020 by GRSJ)

3.The Deputy Director,

Local Fund Audit,

Madurai Kamaraj University,

Madurai – 625021.

... Respondents

(R3 is suo moto impleaded vide

Court order dated 21.08.2023 in

W.P.(MD)No.8521 of 2020 by LVGJ)

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the order passed by the respondent in his proceedings in Memo No.Esst-II/EMRC/R.S./2019-2020 dated 16.03.2020 and quash the same.

For Petitioner

: Mr.V.Panneer Selvam

For R1

: Mr.T.Cibi Chakraborty, Senior Counsel

For R2

: Mr.P.Karthick

For R3

: Mr.M.Prakash

Additional Government Pleader

W.P.(MD)No.12687 of 2023 :-

Dr.R.Sayeelakshmi

... Petitioner

Vs.

1.The Registrar,

Madurai Kamaraj University,

Madurai 625 021.

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3.The Deputy Director,
Local Fund Audit,
Madurai Kamaraj University,
Madurai – 625021.

3.The Director,
Educational Multimedia Research Centre (EMRC),
Madurai Kamaraj University,
Madurai – 625021.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the third respondent in his proceedings in Ref. No.EMRC/MKU/ADMN/2023-2024 dated 28.04.2023 and quash the same and direct the respondents to settle all the retirement benefits without any deduction with admissible interest.

For Petitioner	: Mr.V.Vijayshankar
For R1 & R3	: Mr.T.Cibi Chakraborty
For R2	: Mr.M.Prakash
	Additional Government Pleader

COMMON ORDER

The prayer in all the writ petitions reads as follows:-

“(i)W.P.(MD)No.7302 of 2020 has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order of the second respondent in its proceedings No.ESTT-II/EMRC/SM/2019-2020 dated 16.03.2020 and to direct the respondents to restore the benefits granted under Career



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Advancement Scheme and the revision of pay to the petitioner.

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(ii) W.P.(MD) No.8521 of 2020 has been filed for issuance of a Writ of Certiorari, to quash the impugned order passed by the respondent in his proceedings in Memo No.Esst-II/EMRC/R.S./2019-2020 dated 16.03.2020.

(iii) W.P.(MD) No.12687 of 2023 has been filed for issuance of a Writ of Certiorari and Mandamus, to quash the impugned order passed by the third respondent in his proceedings in Ref. No.EMRC/MKU/ADMN/2023-2024 dated 28.04.2023 and to direct the respondents to settle all the retirement benefits without any deduction with admissible interest.

2.The case of the petitioner in W.P.(MD) No.8521 of 2020 is as follows :-

2.1.The petitioner was appointed as Office Assistant in the Audio Visual Research Centre (AVRC) in the first respondent University on 07.06.1989. She was qualified in MA at the time of her appointment. The post of Office Assistant is equivalent to Assistant Section Officer post. While so, the petitioner passed M.Com, M.Phil, P.hd., M.C.A., M.Ed.,



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MLIS., and she has also cleared National Eligibility Test (NET) conducted by UGC directly in the year 1996 in Library and Information Science. While so, one post of Media Librarian became vacant in the Educational Multimedia Research Centre (EMRC). Being full qualified and eligible for the said post, the petitioner made a request to the second respondent Commission (UGC) as well as the first respondent University to elevate her to the post of Media Librarian.

2.2.The petitioner was selected by the first respondent University and was appointed as Media Librarian/Assistant Librarian in EMRC with effect from 26.06.2009. Later the said post was re-designated as Assistant Librarian as per UGC guidelines. On 10.09.1990, UGC had sent a letter to the first respondent University mentioning that the post of Media Librarian is an academic non vacation post. The same was approved by the Syndicate of the respondent University on 24.11.1990 treating the Media Librarian post as an academic non vacation post. The second respondent UGC had sent another letter on 03.04.1997 reiterating once again that the Assistant Librarian post is an academic non vacation post. Therefore, the post of Media Tape Librarian was re-designated as



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Assistant Librarian. Therefore, Media Librarian, Media Tape Librarian and Assistant Librarian are one and the same. Under such circumstances, UGC issued guidelines for staffing pattern and procedure for recruitment and assignment of the personnel of UGC Media Centres. In the said guidelines, it was clearly mentioned that the post of Assistant Librarian is an academic non vacation post. The Government also issued G.O.Ms.No.145 Higher Education Department (H1) dated 06.07.2018 mentioning that the post of Assistant Librarian is an academic post in furtherance to that the UGC also issued regularise in February 2018 mentioning that the post of Assistant Librarian is an academic post. Therefore, the post of Assistant Librarian is certainly an academic non vacation post. While the petitioner was continuing as Assistant Librarian in the academic non vacation post, the first respondent University issued a letter dated 22.04.2019 converting the petitioner's post of Assistant Librarian from academic to non academic.

2.3.Assailing the same, the petitioner filed a Writ Petition in W.P. (MD)No.10304 of 2019 and this Court was pleased to grant an interim order. Thereby, the impugned order was kept in abeyance as per this



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Court's order dated 26.04.2019. Thereafter, the first respondent University issued a Show Cause Notice on 14.05.2019, for which the petitioner had submitted detailed explanation by enclosing all the relevant materials on 26.08.2019. However, without considering anything properly, the respondents passed an order on 06.03.2020 cancelling the academic non vacation status to the post of the Assistant Librarian and passed the re-fixation order by cancelling the academic Grade Pay and academic non vacation service given to the petitioner. Challenging the same, W.P.(MD)No.8521 of 2020 came to be filed.

3.The case of the petitioner in W.P.(MD)No.12687 of 2023 is as follows :-

3.1.In the meanwhile, on 31.01.2023, the petitioner attained superannuation and she was relieved from service on 31.01.2023 on attaining her age of superannuation. The relieving order was enclosed with a letter dated 24.01.2023 sent by the Deputy Director, Local Fund Audit, Madurai Kamaraj University, Madurai dated 24.01.2023 to the first respondent. The said letter relates to the audit objection raised from 1995 – 1996 to 2022 – 2023 audit slips. Pursuant to the same, the



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petitioner's personal benefits were not disbursed by the respondents.

Despite the petitioners' remainders in this regard nothing fruitful happened. While so the third respondent sent a communication through email on 28.04.2023 in which it was stated that the terminal benefits like DCRG, commutation and encashment of EL has been withheld by the establishment section quoting the audit objection to recover the excess pay paid from 07.06.1989 to 31.01.2023 and that the petitioner has been sanctioned with a revised monthly pension reducing more than Rs. 20,000/- and the same came to be issued vide impugned proceedings dated 28.04.2023 on the petitioner. Challenging the same, the petitioner filed W.P.(MD)No.12687 of 2023.

4.The case of the petitioner in W.P.(MD)No.7304 of 2020 is as follows :-

4.1.The petitioner was initially appointed as Assistant Engineer in A V Research Centre in the second respondent University on 02.03.1988 purely on temporary basis. The said Centre is the fully funded project of the University Grant Commission first respondent and the second respondent University was selected as a Centre for carrying out the said



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project, pursuant to the Memorandum of Understanding signed by the UGC with the second respondent. At the first instance, the petitioner's pay was fixed in pay scale of Rs.700 – 1600/-. On 10.03.1989, his pay was revised from Rs.700 – 1600/- to Rs.2200 – 4000/- on par with the teaching staff of the University.

4.2.The first respondent UGC in his communication dated 10.09.1990 addressed to the second respondent University that certain posts in Audio Visual Research Centre should be treated as academic non vacation post and one such post so categorised by the UGC is the post of Assistant Engineer. Pursuant to the communication of UGC dated 10.09.1990, the Syndicate in its meeting held on 24.11.1990 accepted the categorization made by the UGC and treated the post of Assistant Engineer, in which the petitioner was serving as academic non vacation post. There are several communications thereafter between the 1st and 2nd respondents to the effect that the post of Assistant Engineer held by the petitioner was an academic non vocational post. At this point of time, the second respondent University vide proceedings dated 31.03.1992 had regularized the services of petitioner and other similarly placed persons



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with effect from the date of original appointment. The said regularisation order was passed by the University by considering the post held by the petitioner as an academic non vacation post. Further in the proceedings of the second respondent dated 15.03.1993, on the basis of Syndicate resolution dated 24.11.1990, it was held that the Media Centre is an academic Department without any vacation facilities among five posts mentioned in the said communication as academic post, Sl.No.3 pertains to posts of Assistant Engineer held by the petitioner.

4.3.The first respondent UGC in the year 1996 introduced a policy of staffing pattern by revising the qualification and pay scales for all future appointments. Clause A4 of the said policy specifically stated that any post which is not listed above but has already been filed on regular basis, would continue to exist as personal to the existing incumbent and will stand abolished on being vacated by the incumbent. As a result of which, the post of Assistant Engineer held by the petitioner from the year 1988, would be deemed to continue to exist as academic non vacation post till he attains the age of superannuation.



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4.4.Meanwhile, the petitioner submits that the Career Advancement Scheme (CAS) was made applicable to all Media Centres of UGC including the second respondent University. In consonance with the second respondent University at its Syndicate meeting held on 26.03.2009 and 17.04.2009 approved grant of Senior scale and Selection Grade to the petitioner. However the said exercise was done only pursuant to the order passed by this Court in W.P.No.4711 of 2009. Thereafter, the staffing pattern introduced by the UGC in the year 1996 classified the post of Producer and Assistant Engineer under Technical category. While so, the Local Fund Audit, Madurai Kamaraj University, Madurai raised objections for grant of senior scale and Selection Grade benefits under Career Advancement Scheme with respect to the petitioner and another person who held the post of Producer. After a series of communication, the second respondent University took up the case of the petitioner and another with the UGC seeking clarification with regard to the objections raised by its audit team.

4.5.While so, on the basis of the proceedings of UGC, the Syndicate in its meeting held on 05.02.2019 resolved to withdraw the



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Carrier Advancement Scheme promotion and academic Grade Pay was given to the petitioner. Acting on the resolution of the Syndicate, the second respondent University issued the proceedings dated 22.04.2019 stating that the petitioner is placed in non academic position with retrospective effect from 02.03.1988. Since the said proceedings has civil consequences, even the minimum requirement of issuing show cause notice to ascertain the views of the petitioner was not followed and straight away an order came to be passed having cascading effect on the post held by him and the pay and allowances received by him, the petitioner filed W.P.(MD)No.10989 of 2019 to quash the said order. The said writ petition was disposed of recording the submission made by the learned counsel for the respondents 2 and 3 to the effect that they will follow the procedures in the proper manner. Thereafter, a show cause notice came to be issued on 14.05.2019, for which the petitioner had sent a detailed explanation on 27.08.2019. However, the impugned order dated 16.03.2020 came to be passed cancelling the academic non vacation service status given to the petitioner and academic pay scale given to the petitioner and consequently promotions given under Career Advancement Scheme that is, senior and selection grade also stood



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cancelled. As the result of the same, the respondents wanted to recover everything which was granted to the petitioner from the date of his appointment. Hence, challenging the same, the writ petition came to be filed.

5.Submissions :-

5.1.The learned counsel Mr.V.Vijayashankar appearing for Thiru.S.Murali/petitioner, vehemently submitted that the impugned proceedings of the second respondent in straight away re-categorising the post held by the petitioner as non academic with retrospective effect from 02.03.1988 is highly illegal, arbitrary and discriminatory and the same affects the petitioner's constitutional rights guaranteed under Articles 14 and 16 of the Constitution of India. Though the petitioner was appointed in the year 1988 on temporary basis, the post held by him was categorized as academic non vacation post by no other than the first respondent UGC. It was only thereafter, in the year 1992, the petitioner was made regular with effect from 1988 following which, he was also granted with Senior Grade Pay and Selection Grade pay under the Career Advancement Scheme of the second respondent University. Thus having



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classified the post as the academic non vacation post as per UGC norms, which was also approved in the Syndicate resolution of University, there cannot be any stretch of imagination after 31 years of service re-classifying the post to the petitioner's disadvantage. That apart during this period, vested rights accrued to the petitioner in the form of Senior Scale and Selection Grade which cannot be reversed at this stage. Such reversion is highly unjustifiable and illegal and certainly require interference of this Court. The staffing pattern for Media Centres introduced by UGC in the year 1966 is a prospective one and the same is applicable only in respect of future appointments. However, UGC appears to have lost sight of the said policy of staffing pattern for Media Centres. In addition to that Clause A.4 of the said policy explicitly states that existing incumbents would retain the post as personal till the same is vacated by them. Ignoring their own norms and its prospective applicability, the UGC appears to have selectively targeted the staff of its Media Centre in a manner, which is detrimental to the petitioner's interest and right. The petitioner is an employee of the second respondent University, which is a statutory body governed by Madurai Kamaraj University and such a statutory body at the whims and fancies of UGC,



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functions to the detriment of this employees. In view of the same, the learned counsel for the petitioner pressed for allowing the W.P.(MD)No. 7304 of 2023.

5.2.The learned counsel appearing for the Tmt.Dr.R.Sayeelakshmi/petitioner Mr.V.Panner Selvam submitted that the post of Assistant Librarian is an academic non vacation post and it is only without assigning any valuable reason, the same has been converted from the category of academic to non academic and the same is liable to be set aside. As per the guidelines, the post of Assistant Librarian in EMRC is an academic non vacation post and the second respondent University has no power to violate the guidelines issued by the UGC. Therefore, the impugned order came to be passed converting the post of Assistant Librarian from academic to non academic without jurisdiction. The respondent University having passed resolution on 24.11.1990 treating itself Assistant Librarian post as an academic post shall not make an U turn terming the said post as non academic. A post of Assistant Librarian is still in force and hence, the conversion of the same from academic to non academic is *per se* illegal. In view of the same, the



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learned counsel for the petitioner called for allowing the writ petitions.

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5.3.All the respondents have filed their respective counters and the learned counsel appearing for the University, Mr.Cibi Chakraborty took me through the various contentions raised in this counter affidavit. The learned Government Advocate, Mr.Prakash took me through the various contentions of the counter affidavit filed by him and the learned counsel appearing for the UGC, Mr.Karthick took me through the various contentions of the counter filed by him and pressed for dismissal of the writ petition.

6.Analysis :-

6.1.The University Grants Commission took great initiative in utilising the satellite and emerging information and communication technologies for the purpose of enhancing the quality of higher education in the Country. The Consortium for Educational Communication popularly known as CEC is one of the Inter University Centres set up by the UGC of India. A significant attempt was made in the year 1984 to take education beyond classrooms through the UGC Countrywide



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Classroom (CWCR) by telecasting Educational Television programmes in Colleges and Universities.

6.2. For the production of such programmes, Audio Visual Research Centres (AVRC) were set up across various Universities in India and one of such Centre is in the second respondent Madurai Kamaraj University, at Madurai. Thus, Audio Visual Centre of UGC commenced at Madurai. Based on the performance, the Centre was upgraded to Educational Media Research Centre (EMRC) in the year 1991 by UGC. Later the Centre was re-designated as Educational Multimedia Research Centre (EMMRC) in the year 2005. The Centre has a professional TV studio, production control room, NLE edit suits, Multimedia lab, Virtual classroom-EDUSAT satellite interactive terminal with smart classroom facility and a Media Library. The EMMRC, Madurai has produced 3713 Educational Programmes so far which were telecasted through Doordarshan, Gyandarshan, Vyas (Higher Educational channel of UGC) and has hosted the Consortium for Educational Communication (CEC) website.



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6.3.The petitioners Thiru.S.Murali and Tmt.Dr.R.Sayeelakshmi were appointed in the service of AVRC and EMRC on 02.03.1998 and 23.09.2009 in the course of Assistant Engineer and Assistant Librarian respectively. AVRC which was later renamed as EMRC and subsequently as EMMRC is a fully funded project of UGC and the second respondent University was selected as a Centre for carrying out the project UGC for which, a Memorandum of Understanding was signed by the UGC with the second respondent University. At the time of appointment Thiru.S.Murali was fixed in the pay scale of Rs.750 – 1,600/-. Thereafter, for his post of Assistant Engineer on 10.03.1989, his pay scale was revised from Rs.700–1,600 to Rs.2,200–4,000/- on par with the teaching staffs of the University.

6.4.Further Tmt.Dr.R.Sayeelakshmi was appointed as Office Assistant in Audio Visual Research Centre on 07.06.1989. Thereafter, she passed various higher qualification including NET conducted by UGC and further she was appointed as Assistant Librarian with effect from 26.06.2009 in EMRC. Her scale of pay was revised from Rs.905 – 45 – 1175 – 50 – 15252 to Rs.1640 – 60 – 2600 – 75 - 2900 by following the



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UGC proceedings on 04.10.1990. Only thereafter when a post of Assistant Librarian in EMRC became vacant, she was elevated to the post of Assistant Librarian on 26.06.2009 and the said post of Assistant Librarian is an academic non vacation post. The post of Assistant Engineer and Assistant Librarian served by both the petitioners were categorised by the UGC vide order dated 10.09.1990 as an academic non vacation post. UGC vide its proceedings dated 10.09.1990 issued directions to the Registrar of the second respondent University to treat the following posts as academic non vocational post:-

(I) Director/Joint Director, Co-ordinator, Project Officer and Assistant Project Officer

(II) Professor/Reader/Lecturer

(III) Projection/Programme Engineers/Maintenance Engineer/Assistant Engineer.

(IV) Research Scientist/Research Officer

(V) Librarian

6.5. Accepting the said recommendation of the UGC, on 24.11.1990, the second respondent University resolved to treat the



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aforesaid posts as academic non vacation post, following which, by the order of second respondent University, Thiru.S.Murali was regularised in service on March 1988 ie., from the original date of appointment. In the meanwhile following UGC letter dated 25.07.1986, EMRC came to be treated as separate entity and the second respondent University vide memo dated 15.03.1993 informed that EMRC staffs would be treated on par with other regular University staffs and they are governed by University regulations. Thereby, permitting the privilege such as GPF, pension admissible to other regular staffs of the University applicable to the EMRC staffs also. On the basis of the Syndicate resolution dated 24.11.1990, the EMRC came to be treated as an academic department with no vacation facilities and posts of Co-ordinator, Producer, Assistant Engineer, Research Scientist 'A', Production Assistant were treated as academic posts. Under such circumstances, the petitioners made representations for grant of Senior Scale and Selection Grade to them. On the basis of which, Thiru.S.Murali was granted with Senior Scale and Selection Grade by the resolution of the second respondent University Syndicate dated 01.07.2009 and the order of the University fixing pay to him in Senior Scale and Selection Grade with effect from 02.03.1996



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came to be passed on 13.12.2009. In the meanwhile, on the basis of the various directions of the University Grant Commission, the Local Fund Audit, Madurai Kamaraj University raised certain audit objections with respect to the scale of pay of the petitioners. On the basis of which, the second respondent University passed the impugned orders as against the petitioners on 16.03.2020 cancelling their pay fixation with effect from 02.03.1988 and re-fixing the Senior Grade and Selection Grade benefits with directions for consequent recovery.

6.6. Another issue revolving around the facts and circumstances of this case is as to whether the service rendered by the petitioners are of academic nature or non academic nature. It is needless to state that the Audio Visual Research Centre which was established in the year 1988 later converted into Educational Media Research Centre in the year 1991 and was further re-designated as Education Multimedia Research Centre (EMMRC) in the year 2005 and a Centre is fully funded by UGC as functioning under the second respondent University since 1988. At the time of establishment of AVRC, in the second respondent University, 11 posts were sanctioned by the University namely, (i) Coordinator - 1,



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(ii) Producer - 1, (iii) Production Assistant - 1, (iv) Assistant Engineer - 1, (v) Technical Assistant - 1, (vi) Technicians - 1, (vii) Cameraman (Gr-I) - 1, (viii) Cameraman (Gr-II) - 1, (ix) Office Assistant - 1, (x) Typist - 1, (xi) Attendant - 2.

6.7. The Selection Committee consisting of Registrar, Special Officer at Planning & Development and the Honorary Director of the Centre selected and appointed the candidates in the said posts on 24.07.1987 and 05.02.1988. Thiru.S.Murali/petitioner was appointed as Assistant Engineer.

6.8. In the year 1996, the Consortium for Educational Communication of UGC issued staffing pattern for Media Centres and in the said staffing pattern, the post of Coordinator was changed as Joint Director and the staffing pattern did not have the post of Coordinator. It was also stated in the said staffing pattern under Clause A.4 that “ any existing post which is not listed in the staffing pattern, but has already been filled on regular basis, will continue to exist as personal to the present incumbent and will stand abolished on being vacated.” Further



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on re-designation of EMRC as EMMRC (Level 1), the posts of Director, Joint Director, Research Scientist and Assistant Librarian were classified as an academic non vacation post and post of Assistant Engineer was classified as Technical post. The said classification was effected for the reason that the staffs of EMMRC do not performance or discharge any duties and responsibilities attached to that of teaching staffs in a college or University. In continuation to the same, in the year 1997, the UGC framed promotional policy to the staffs in Media Centre. The UGC classified the staffs under 3 categories namely academic staffs, Media Technical staffs and Administrative Staffs. However the post of Assistant Engineer was not found in the said policy. But the post of Assistant Librarian was found under category of academic non vacation post. However, the policy permitted all the existing staffs to continue till their superannuation and it is pertinent to mention here that UGC did not issue any direction as to if academic non vacation staffs are equivalent to the teachers in the University in as much as no teaching activities are done in EMMRC. Thus the post of Assistant Engineer came to be treated as Technician post and the post of Assistant Librarian came to be treated as an academic non vacation post. Following which, the UGC directed the



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second respondent University to implement the said promotion policy strictly. While so, in view of the implementation of the Fifth Pay Commission, UGC vide letter dated 08.04.1998 and 10.04.1998 had withdrawn the promotion policy issued on 13.01.1997. Hence, the Consortium for Educational Qualification (CEC) vide proceedings dated 29.05.1998 confirmed the withdrawal of promotion policy of EMMRC.

6.9. When the promotion policy itself was withdrawn by UGC, the letter of the Consortium for Educational Communication (CEC) dated 30.04.1997 providing option to the existing staffs to exercise option either to continue as academic or non academic also stood cancelled automatically. It is ridiculous to understand by the way the second respondent University has concealed in it's paragraph No.23 of the counter affidavit that the said proceedings was not brought to the knowledge of the second respondent University.

6.10. In the meanwhile, the second respondent University requested the UGC to give concurrence for implementing higher pay on par with University teachers. However, the UGC declined to give higher pay to



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the staffs of EMMRC on par teachers of the University vide proceedings dated 09.08.2001. While so, the coordinator of EMMRC, one Dr.Govindatan attained the age of 58 years in the month of February 2006. He was the first person who reached the age of superannuation in the said Centre and the second respondent University relieved him vide proceedings dated 27.02.2006. Challenging the same, he filed W.P. (MD)No.2166 of 2006 before this Court on the ground that he ought to have been treated at par with the teachers of the University should be allowed to continue in service till the age of 60 years on par with other teachers of the University. This Court was pleased to allow the Writ Petition vide order dated 08.04.2011. As against the same, the second respondent University has preferred a Writ Appeal in W.A.(MD)No.201 of 2012 and the Hon'ble Division Bench of this Court has passed an order of interim stay on 17.12.2019 and the same is still pending.

6.11.During the pendency of the said writ petition, the Consortium for Educational Communication (CEC) vide proceedings dated 21.07.2008 clarified that the promotion policy treating them as academic was withdrawn and with regard to the retirement age of Media Centre



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staffs/EMMRC, the University was directed to approach the UGC. While so, few of the employees of EMMRC kept on insisting the second respondent University to give them Career Advancement Scheme promotion in compliance of the already cancelled promotion policy.

6.12.It is contended by the second respondent University that since all the communications from UGC were directly addressed to the EMMRC Centre, the employees suppressed the subsequent communication with regard to the withdrawal of promotion policy and continued making representations to the second respondent University seeking promotion. Hence, the University Syndicate in its meeting dated 26.02.2009 resolved to give Career Advancement Scheme promotion to the employees of EMMRC and it is only at this point of time, Tmt.Dr.R.Sayeelakshmi/ petitioner was promoted as Assistant Librarian vide order dated 01.07.2009 and pay for post of Assistant Librarian under Fifth Pay Commission was sanctioned as Rs.8000–275–1350. By that point of time, the Government implemented the Sixth Pay Commission vide G.O.Ms.No.234 Finance (Pay Cell) Department dated 01.09.2009. As per Sixth Pay Commission, the Government ordered the scale of pay



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of Rs.8000-275-1350 to be revised as Rs.15600-39100+5400 (Grade Pay). However at the time of appointment of Tmt.Dr.R.Sayeelakshmi as Assistant Librarian, her pay was fixed as Rs.8000-275-1350 only. While it is being so, the salary of Thiru.S.Murali/petitioner was also upgraded as Assistant Engineer Senior Grade and Assistant Engineer Selection Grade and the same was intimated to him on 01.07.2009. However, the second respondent University contended that, the entire communication from UGC cancelling the promotion policy was suppressed by the employees and thereby, the University was kept in dark about the subsequent guidelines and directions of UGC and only as a result of the continuous misrepresentation of the employees, the University Syndicate was constrained to resolve in its meeting dated 26.02.2009 giving Career Advancement Scheme promotion to the employees of EMMRC.

6.13.But a careful perusal of the materials available on records would reveal that the communications of the University Grant Commission were made not only to the Director to EMMRC but also to the Registrar of the Madurai Kamaraj University directly. In view of the same, the arguments of the second respondent University that the



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University was kept in dark by the employees of EMMRC as to the various guidelines and directions regarding the cancellation of the promotion policy and the classification of the staffs of EMMRC into academic, Media, Technical and Administrative categories has to be held farce. It is only after the point of time, when the Director of Local Fund Audit, Chennai raised audit objections for awarding Career Advancement Scheme promotion to the staffs of EMMRC vide proceedings dated 23.03.2010, the second respondent University woke up. It is needless to say that once the Syndicate has resolved vide its meeting dated 26.02.2009 to give Career Advancement Scheme promotion to the staffs of EMMRC, automatically and obviously the second respondent University ought to have sought for ratification of the same by the UGC, since the EMMRC Centre is fully funded by UGC. However, such an exercise was not done and the same was rightly objected by the Director of Local Fund Audit, Chennai vide proceedings dated 23.03.2010. While so, UGC also communicated another proceedings dated 23.03.2010 stating that the various posts of EMMRC cannot be equivalent with that of the teachers for Career Advancement Scheme as the said posts did not fulfil the parameters set by the Ministry of Human Resource



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6.14. In view of the said audit objection, the University vide letter dated 15.07.2010, requested the UGC to approve the promotion given to the petitioners and others. However, there is no response from the UGC. Vide letter dated 30.05.2013, the UGC directed the University to submit explanation with regard to the promotions given to the staffs of EMMRC. Though the second respondent University with detailed explanation sought for approval of promotions of the staffs, UGC did not pass any orders on the same. Later UGC vide proceedings dated 24.11.2014 has intimated that the staffs of Media Centre are not academic staffs as there are no teaching activities in the said institutions and hence, they are not eligible for any benefits available to the teachers as per the UGC regulations and further directed the University to withdraw all such benefits if already allowed without the consent of the UGC immediately and the operative portion of the same is as follows:-

“Kindly refer to you letter No.EMMRC/MKU/R.S./2014 dated 22.09.2014 seeking concurrence for settlement of entitlement benefits for Mr.R.Seshadrirajan, Producer (Sr.Grs) (Retd.,). The Commission regrets its inability to accord



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concurrence on the ground that the staff of IUC/NFCs/MCs are not academic staff as there are no teaching activities in these institutions. Hence, they are not eligible for any benefits such as AGP or CAS etc as available to teachers as per UGC Regulations. In the past also, the UGC has not extended such benefits to the staffs of any of these institutions.

Accordingly, you are requested to withdraw all such benefits, if already allowed, without the consent of UGC immediately.”

6.15. That apart, the Local Fund Audit vide proceedings dated 18.05.2015 insisted the University to act upon the instruction of UGC for the wrong promotion given to the petitioners and others. Accordingly, the matter was placed before Syndicate of the second respondent University in its meeting held on 05.02.2019 and it was resolved to withdraw the Syndicate resolution dated 26.06.2009 giving promotion to the petitioners and others treating the respective posts as academic non vacation by following due procedure of law, after issuing prior show cause notice to the petitioners and others. However, before issuing any show cause notice as resolved by the Syndicate, the position of the petitioners were reverted as non academic with effect from original date



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of appointment vide proceedings dated 22.04.2019. Challenging the same, the petitioners filed Writ Petitions in W.P.(MD)No.10989 of 2019 and 10304 of 2019 before this Court and this Court was pleased to close the Writ Petitions on the submission of the second respondent University that the proceedings dated 22.04.2019 were wrongly issued and the University would recall the same. Only after that the University issued show case notice to the petitioners dated 14.05.2019 calling for their explanation as why the academic non vacation service status and consequent benefits given to them shall not be cancelled.

6.16.Having furnished the relevant documents to the petitioner, the petitioners submitted explanation to the second respondent University on the basis of which the impugned final order dated 16.03.2020 came to be passed and the relevant portion of impugned order with respect to Tmt.Dr.R.Sayeelakshmi is extracted is as follows:-

“Therefore, the following orders are issued as resolved in the Syndicate meeting held on 05.02.2019.

1.The Academic non vacation service status given to Dr.R.Sayeelakshmi, Assistant Librarian is cancelled.

2.The services of Dr.R.Sayeelakshmi, Assistant Librarian



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is regularised as non academic category.

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3.The Academic Grade Pay given to Dr.R.Sayeelakshmi, Assistant Librarian are cancelled.

4.The revised pay as per the G.O.Ms.No.350 and 145 Higher Education (H1) Department, dated 09.09.2009 and 06.07.2018 given to Dr.R.Sayeelakshmi, are cancelled.

5.The pay is fixed under non-academic service status with appropriate pay scale and subsequent increment thereon as mentioned below:

Assistant Librarian on 26.06.2009 (Rs.15600-39100+Rs. 5400/-G.P.)

	<i>Pay fixed at (BP +GP) Notional effect</i>	<i>Pay fixed at (BP+GP) Monitory effect</i>
<i>26.06.2009</i>	<i>Rs.22330+5400 G.P.</i>	<i>Rs.21560+5400 G.P.</i>
<i>01.04.2010</i>	<i>Rs.23170+5400 G.P.</i>	<i>Rs.22370+5400 G.P.</i>
<i>01.04.2011</i>	<i>Rs.24030+5400 G.P.</i>	<i>Rs.23210+5400 G.P.</i>
<i>01.04.2012</i>	<i>Rs.24920+5400 G.P.</i>	<i>Rs.24070+5400 G.P.</i>
<i>01.04.2013</i>	<i>Rs.25830+5400 G.P.</i>	<i>Rs.25830+5400 G.P.</i>
<i>01.04.2014</i>		<i>Rs.26770+5400 G.P.</i>
<i>01.04.2015</i>		<i>Rs.27740+5400 G.P.</i>

Pay fixation in the scale of pay of Rs.15600-39100+Rs. 5400/-G.P. as per G.O.Ms.No.303, Finance (Pay Cell) Department, dated 11.10.2017

<i>01.01.2016</i>	<i>Rs.87400</i>
<i>01.04.2016</i>	<i>Rs.90000</i>



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01.04.2017	Rs.92700
01.04.2018	Rs.95500
01.04.2019	Rs.98400
26.06.2019 (two increments for SI. Gr. Promotion)	Rs.104400

6.The excess salary received by her will be recovered from her monthly salary.

7.The excess pension contribution remitted in EMRC pension account on her time scale will be transferred to EMRC Non-Plan Account.

8.The pay fixation ordered above are subject to approval of Local Fund Audit, Madurai Kamaraj University and excess amount, if any, will be summarily recovered from her.

9.The individual is directed to acknowledge the receipt of this order in the duplicate copy and return the same to the undersigned.”

6.17.For better understanding, the relevant portion of the impugned order with respect to Thiru.S.Murali is extracted as follows:-

“Therefore, the following orders are issued as resolved in the Syndicate meeting held on 05.02.2019.

1.The Academic non vacation service status given to



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Mr.S.Murali, Assistant Engineer (Sl. Gr.) are cancelled.

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2.The promotion given to Mr.S.Murali, Assistant Engineer under CAS as Assistant Engineer (Senior Scale) and Assistant Engineer (Selection Grade) as decided in the Syndicate meeting held on 22.04.2009, 7th BOM of EMRC held on 23.06.2009 and Syndicate at its meeting held on 26.06.2009 are cancelled.

3.The Academic Grade Pay given to Assistant Engineer (Sl. Gr.) are cancelled.

4.Mr.S.Murali Assistant Engineer, EMRC will be considered as non academic category.

5.The revised pay as per the G.O.Ms.No.112, 350, 145 Higher Education (H1) Department, dated 24.03.1999, 09.09.2009 and 06.07.2018 given to Mr.S.Murali, Assistant Engineer (Sl. Gr.) are cancelled.

6.The pay is fixed under non-academic service status with appropriate pay scale and subsequent increment thereon as mentioned below:

02.03.1998 – Rs.700-40-1100-50-1600

Pay fixation in the scale of pay of Rs.2200-75-2800-14000

01.01.1988 - Rs.2200/-

01.01.1989 - Rs.2275/-

01.01.1990 - Rs.2350/-



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01.01.1991 -	Rs.2425/-
01.01.1992 -	Rs.2500/-
01.01.1993 -	Rs.2575/-
01.01.1994 -	Rs.2650/-
01.01.1995 -	Rs.2725/-
01.01.1996 -	Rs.2800/-

Pay fixation in the scale of pay of Rs.8000-275-13500 as per G.O.Ms.No.162, Finance (Pay Cell) Department dated 13.04.1999 w.e.f. 01.01.1996

01.01.1996 -	Rs.8550/-
01.01.1997 -	Rs.8825/-
01.01.1998 -	Rs.9100/-

7.He will be promoted as Assistant Engineer (Selection Grade) on completion of 10 years of service on 02.03.1998 in the time scale of (Rs.9100-275-14050) and subsequent increment thereon as mentioned below:

Selection Grade Assistant Engineer on 02.03.1998 (Rs. 9100-275-14050)

02.03.1998 -	Rs.9375/-
01.01.1999 -	Rs.9650/-



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01.01.2000 -	Rs.9925/-
01.01.2001 -	Rs.10200/-
01.01.2002 -	Rs.10750/-
01.01.2003 -	Rs.10750/-
01.01.2004 -	Rs.11025/-
01.01.2005 -	Rs.11300/-
01.01.2006 -	Rs.11575/-

8.He will sanctioned Pay revision in the scale of pay of Rs. 15600-39100+5700 G.P. And subsequent increment thereon as per G.O.Ms.No.234, Finance (Pay Cell) Department, dated 30.06.2009 as mentioned below:

01.01.2006 -	Rs.21530+5700 G.P.
01.01.2007 -	Rs.22350+5700 G.P.
01.01.2008 -	Rs.23200+5700 G.P.

9.He will be promoted as Assistant Engineer (Special Grade) on completion of 20 years of service on 02.03.2008 in the time scale of Rs.15600-39100+5700 G.P., and to sanction one additional increment for the promotion of Assistant Engineer (Special Grade) with notional benefit w.e.f.02.03.2008 and monitory benefit w.e.f.01.04.2013 under non-teaching category as per Tamil Nadu Government Order No.237 dated 22.07.2013



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and subsequent increment thereon as mentioned below:

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Spl. Gr.Assistant Engineer on 02.03.2008 (Rs. 15600-39100+5700 G.P.)

02.03.2008	Rs.24940+5700 G.P. (3%+3%) For the award of Special Grade and one Additional increment	Rs.24940+5700 G.P. 3% (Rs.23200+5700 GP)
01.01.2009	Rs.25860+5700 G.P.	Rs.24970+5700 G.P.
01.01.2010	Rs.26810+5700 G.P.	Rs.25890+5700 G.P.
01.01.2011	Rs.27790+5700 G.P.	Rs.26840+5700 G.P.
01.01.2012	Rs.28800+5700 G.P.	Rs.27820+5700 G.P.
01.01.2013	Rs.29840+5700 G.P.	Rs.28830+5700 G.P.
01.04.2013		Rs.29840+5700 G.P.
01.01.2014		Rs.30910+5700 G.P.
01.01.2015		Rs.32010+5700 G.P.
		Rs.33150+5700 G.P.

10. Pay fixation in the scale of pay of Rs.15600-39100+Rs. 5700/-G.P. as per G.O.Ms.No.303, Finance (Pay Cell) Department, dated 11.10.2017

01.01.2016	Rs.101800
01.01.2017	Rs.105900
01.01.2018	Rs.109100



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11. Pay fixation in the scale of pay of Rs.15600-39100+Rs.

5700/-G.P. as per G.O.Ms.No.303, Finance (Pay Cell) -

Department, dated 11.10.2017

02.03.2018 (For bonus increment)	Rs.112400
01.01.2019	Rs.115800
01.01.2020	Rs.119300

The excess salary received by him may be recovered from his monthly salary. The excess pension contribution remitted in EMRC pension account on his time scale of pay may be transferred to EMRC Non-Plan Account.

12.The above pay fixation will be modified after approval of the (Promotional Policy) financial estimate by CEC, BOM and Syndicate of M.K. University.

13.The pay fixation ordered above are subject to approval of Local Fund Audit, Madurai Kamaraj University and excess amount, if any, will be summarily recovered from him. ”

6.18.The second respondent University has passed detailed impugned orders cancelling the academic non vacation service status given to the petitioners and cancelling the Career Advancement Scheme



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promotion and revision of pay and other benefits extended to them and that apart has directed to recover the excess salary paid to them.

6.19. In the meanwhile Tmt.Dr.R.Sayeelakshmi on attaining age of superannuation was relieved from the service with effect from afternoon of 31.01.2023. The other petitioner Thiru.S.Murali is in verge of retirement. All the benefits granted to the petitioners treating the post of Assistant Engineer and Assistant Librarian under academic non vacation category came to be withdrawn over night by treating the said post as non academic category. The said exercise has had a cascading effect of stopping the entire retirement benefit of Tmt.Dr.R.Sayeelakshmi and the respondents have not released even a single paise from her hard earned money and she was relieved from service with empty hands. Can the impugned order of recovery after retirement and after 34 years of service be sustainable ? In the case of Tmt.Dr.R.Sayeelakshmi, the impugned order of recovery has been passed after retirement after discharge of 34 years of service and in the case of Thiru.S.Murali while he is in verge of retirement after a service of more than 31 years, the impugned order of recovery has been passed by the second respondent University.



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6.20. Under the facts and circumstances of the instant case, now it is necessary to test the impugned orders with the touchstone of the various UGC guidelines and directions, which has been issued from time to time since 1998 keeping in mind, that EMMRC is a Centre of the University Grants Commission functioning under the second respondent University as fully funded by the UGC. Hence, any significant decision with respect to the service and administration of EMMRC ought to have been resolved by the Syndicate of the second respondent University only with the concurrence and ratification of UGC. Considering the nature of service which is rendered by the staffs of EMMRC, it is crystal clear that the duties carried out by the various staffs in EMMRC cannot be fully negated as a non academic. That apart various projects which are done by EMMRC, Madurai Campus right from the year 1998 till now includes:-

- (i) Enrichment Programs
- (ii) EDUSAT
- (iii) E-content (Media Library)
- (iv) Massive Open Online Courses (MOOCs)



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6.21. In an era of Multimedia and Satellite interactions, the programmes conceived by the staffs of EMMRC are definitely unique Education Programmes imparting Multi disciplinary educational information to all sections of Society. After the launch of EDUSAT during the year 2005 – 2014, an exclusive educational satellite by the Indian Space Organisation, a new scenario is propelled in the Education system in India. Thereby, the satellite EDUSAT which was used by Consortium for Educational Communication to deliver live lectures on various topics for the students of higher education through its Media Centres, later expanded its network through academic staff colleges, Universities and Colleges of potential excellence. In short the EMMRC's Satellite Interactive Terminal facility became the teaching and classroom end for the EDUSAT programme.

6.22. That apart e-contents introduced by the Ministry of Human Resource Development during the year 2008 – 2016 brought in a big leap to the National Mission on Education through Information Communication Technology resulting in development of e-contents for



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undergraduate courses in several subjects for e-learning. E-contents are self-learning materials packed in an electronic format in a well-designed template exclusively made for the National Mission on Education through Information Communication Technology project of Ministry of Human Resource Development. The contents are integrated in multimedia format with Video, Audio, Text, Graphics and Animation with components like Objectives, Summary, Academic, Script, Glossary, Quiz, Reference, Assignments, Tutorials and Case studies, which are downloadable. The e-contents ensure and enhance learning at anytime, anywhere, any place without any cost improving self-learning. The cumulative understanding of the nature of the functions of EMMRC would portrait the same as discharge meticulous service in the field of education academically in this era of technical and technological excellence. Hence, the duty of the petitioners cannot be negated as non academic outrightly. However, UGC while responding to the communication of the second respondent University on revision of pay scale of employees of EMMRC has time and again clarified that the benefit of teaching category of Universities and Colleges are not applicable to the staffs of EMMRC in view of the nature of the work



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undertaken by the staffs of EMMRC specifically the nature of work do not involve direct teaching activity. That apart the UGC had already examined the request of the second respondent for grant of higher pay scale in detail and had clarified that conversion of EMMRC course into academic stream is not permissible.

6.23. Inadvertence on the part of the second respondent University has resulted in the commotion of grant of academic Grade Pay vide Career Advancement Scheme promotions to the petitioners and others of EMMRC at Madurai. Since UGC had started up 17 Media Centres in the year 1984 onwards across India in various Universities and since all the staffs of the various EMMRC are considered as non academic, at this point of time, if the petitioners and others working in EMMRC, Madurai are directed by this Court to be considered as academic staffs of UGC that will have wide repercussion across India causing unforeseen difficulty to UGC, which has promptly issued guidelines and directions from time to time on the administration of EMMRC at various levels.

6.24. In view of the same, I am not inclined to interfere with the



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decision of UGC negating the second respondent University's request to convert EMMRC post to academic stream.

6.25.As far as the order of recovery is concerned, it is no more *res integra*. This Court has time and again dealt with various cases of recovery and has passed favourable orders to the petitioners. The Hon'ble Apex Court in **2015 4 Supreme Court Cases 334** in the case of ***State of Punjab and Others v. Rafiq Masih (White Washer) and others***, while dealt with the case of recovery has passed the following order:-

“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.*



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(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.”*

6.26.The Hon'ble Division Bench of this Court in a case of ***P.Arumugan v. Registrar, Tamil University, Thanjavur*** reported in ***(2006) 3 MLJ 1025***, while dealing with the case of recovery has held as follows:-

“11.5.In the above stated circumstances, the question that remains to be considered is as to whether the respondent can be permitted to re-work the fixation of pay and the excess payment, if any, paid to the appellant based on wrong fixation of pay right from 01.02.1984 and seek for recovery of a huge sum of Rs.3,95,093/- from the terminal benefits payable to the appellant. It is relevant to state that between 01.02.1984 i.e.



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the date of appointment of the appellant as Superintendent in the respondent University, till he was allowed to retire from service on 31.12.2001, the respondent did not raise its little finger as regards the alleged excess payment paid to the appellant. On the other hand, knowing fully well about the previous employment of the appellant, the respondent University in its offer of appointment, dated 13.06.1983 as well as the order of appointment dated 21.0.1983, specifically mentioned that the pay of the appellant was being fixed in a particular scale ensuring the pay last drawn by the appellant in his previous employment. That apart, it is not known why inspite of the Audit Objections raised as early as in the year 1984-85, the respondent did not intimate the same to the appellant nor taken any proceedings for suitably re-fixing the pay fixed at the time of issuance of the order of appointment in accordance with Rule 44(4)(i) of the Tamil Nadu Pension Rules. The respondent thus, with its eyes wide open, fixed the pay of the appellant in a particular scale of pay applicable to him and also allowed him to draw that pay throughout his service in the respondent university till the date of his retirement. Therefore, while the respondent was squarely responsible for the wrong fixation of pay, if any, of the appellant, the appellant was never to be blamed as regards his pay fixation. Neither in the offer of appointment nor in the appointment order, the appellant was ever reminded about any



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intimation required as regards the receipt of pension in the erstwhile service rendered by him in the State Government.

11.6. Having regard to all the above factors, we are of the considered opinion that the respondent are now estopped from attempting to reverse the whole process of pay fixation made and the payment of salary made to the appellant right from the date of his appointment till the date of his superannuation. For whatever excess payment made to the appellant, even if the same was due to wrong fixation of pay contrary to the provisions contained in Rule 44(4)(i) of the Tamil Nadu Pension Rules, the whole liability will have to be borne by the respondent or if need be, the said liability to be recovered from the concerned authorities who was/were responsible for the commission of such lapses which resulted in any excess payment of salary. Certainly, in our considered view, the appellant cannot be made to bear such a huge liability and recovery of the same to be permitted, that too from the terminal benefits payable to the appellant. Such a course, as rightly held by the Single Judge, would be highly inequitable and will be totally unjustified.”

6.27. The Apex Court in the case of ***J.S. Yadav v. State of U.P. And another*** reported in ***(2011) 6 MLJ 998 (SC)***, has dealt with the case of recovery has held as follows:-



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“20. *“The word 'vested' is defined in Black's Law Dictionary (6th Edition) at page 1563, as vested; fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent.' Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or 15 persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In Webster's Comprehensive Dictionary (International Edition) at page 1397, 'vested' is defined as (law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest.” (See: Mosammat Bibi Sayeeda & Ors. etc. v. State of Bihar & Ors. etc., AIR 1996 SC 1936).*

21. *The word “vest” is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word “vest” has also acquired a meaning as “an absolute or indefeasible right”. It had a “legitimate” or “settled expectation” to obtain right to enjoy the property etc. Such “settled expectation” can be rendered impossible of fulfilment due to change in law by the Legislature. Besides this, such a “settled expectation” or the so-called “vested right” cannot be*



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countenanced against public interest and convenience which are sought to be served by amendment of the law. (Vide: Howrah Municipal Corpn. & Ors. v. Ganges Rope Co. Ltd. & Ors., (2004) 1 SCC 663).

22. Thus, “vested right” is a right independent of any contingency. 16 Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away only if the law specifically or by necessary implication provide for such a course.

23. The appellant had been appointed under the provisions of the Act 1993 which did not require seven years’ experience as a District Judge. In the instant case, the Amendment Act 2006 came into force on 23.11.2006. The State of U.P. did not take any step for discontinuation of the appellant upto May 2008 on the ground that he did not possess the eligibility as per the Amendment Act 2006.

24. The Legislature is competent to unilaterally alter the service conditions of the employee and that can be done with retrospective effect also, but the intention of the Legislature to apply the amended provisions with retrospective effect must be evident from the Amendment Act itself expressly or by necessary implication. The aforesaid power of the Legislature is qualified further that such a unilateral alteration of service conditions should be in conformity with legal and constitutional provisions. (Vide: Roshan Lal Tandon v. Union



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of India & Ors., AIR 1967 SC 1889; State of Mysore v. Krishna Murthy & Ors., AIR 1973 SC 1146; Raj Kumar v. Union of India & Ors., AIR 1975 SC 1116; Ex-Capt. K.C. Arora & Anr. 17 v. State of Haryana & Ors., (1984) 3 SCC 281; and State of Gujarat & Anr. v. Raman Lal Keshav Lal Soni & Ors., AIR 1984 SC 161).

25. In Union of India & Ors. V. Tushar Ranjan Mohanty & Ors., (1994) 5 SCC 450, this Court declared the amendment with retrospective operation as ultra vires as it takes away the vested rights of the petitioners therein and thus, was unreasonable, arbitrary and violative of Articles 14 and 16 of the Constitution. While deciding the said case, this Court placed very heavy reliance on the judgment in P.D. Aggarwal & Ors. v. State of U.P. & Ors., AIR 1987 SC 1676, wherein this Court has held as under: “...the Government has power to make retrospective amendments to the Rules but if the Rules purport to take away the vested rights and are arbitrary and not reasonable then such retrospective amendments are subject to judicial scrutiny if they have infringed Articles 14 and 16 of the Constitution.”

6.28.As far as the instant cases are concerned, the impugned proceedings of the second respondent has put the petitioners into severe hardship both financial and mental. Though the UGC has introduced the



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policy called staffing pattern for Media Centres, thereby concluding that the EMMRC posts are non academic. The said pattern could be only prospective and the same is applicable only in respect of further appointments. That apart Clause A.4 of staffing pattern of UGC explicitly states that the existing incumbents will retain the posts as personal till the same is vacated by them.

6.29. In view of the said Clause A.4 and the directions of the Hon'ble Apex Court in *White Washer's* case, curbing recovery from employees when the excess payment was made for a period of five years before the order of recovery is issued, this Court is inclined to quash the impugned orders with respect to the recovery portion alone. The excess salary whatever has been received by the petitioners shall not be recovered from both the petitioners in view of the mandates of *White Washer's* case and Clause A.4 of the Staffing pattern for EMMRC as issued by the UGC. Since the post of Assistant Engineer is no more available in the staffing pattern for EMMRC, the post of Thiru.R.Murali would lapse on his retirement. Placing that the post of Assistant Librarian is included in the staffing pattern of EMMRC as provided by UGC, this



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Court is inclined to validate the resolution of the second respondent University Syndicate withdrawing its resolution dated 20.06.2019 and its meeting held on 05.02.2009. The respondents are directed to settle the retirement benefits of the petitioner in W.P.(MD)No.12687 of 2023, in terms of this order, within a period of 16 weeks from the date of receipt of copy of this order.

6.30.Accordingly, all the Writ Petitions are partly allowed. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

1.The Deputy Director,
Local Fund Audit,
Madurai Kamaraj University,
Madurai – 625021.



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WP.(MD).Nos.7304 and 8521 of 2020 and 12687 of 2023

L.VICTORIA GOWRI, J.

Mrn

W.P.(MD)Nos.7304 and 8521 of 2020 & 12687 of 2023

08.11.2023