



W.P(MD)No.10176 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.04.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.10176 of 2020

and

W.M.P.(MD)No.9057 of 2020

S.Ahila

... Petitioner

Vs.

1.The Government of Tamil Nadu
Represented by its Secretary,
Higher Education (K1) Department,
Fort St.George,
Chennai-600 009.

2.The Manomaniam Sundaranar University,
Abishekapatti,
Tirunelveli-627012,
Tirunelveli District,
Represented by its Registrar.

3.The Director of Local Fund,
Kuralagam,
Chennai-600 108.

4.The Assistant Director of Local Fund,
Tirunelveli,
Tirunelvlei District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent pertaining to its order in Ref.MSU/R/Estt/Admn/Det.Termnl/2019, dated 19.11.2019 on its file, quash the same directing the respondents to refix the petitioner's salary including all emoluments as per Seventh Central Pay Commission recommendations and G.O.Ms.NO.303, Finance (Pay Cell) Department, dated **11.10.2017, and G.O.MS NO. 313, Finance(Pay Cell) Department dated 25.10.2017** issued by the first respondent

<https://www.mhc.mil.nic.in>



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pay to the petitioner her pension and all other retirement benefits including arrears on the basis of the same, give to her pension Sanction Order, Pension Book, Gratuity Sanction Order and the 7th Pay Commission pay and pension orders within a time to be fixed by this Court and continue to pay the petitioner's pension on the above basis.

For Petitioner : Mr.K.N.Thampi

For Respondents : Mr.N.Satheeskumar
Additional Government Pleader for R1,
R3 & R4

: Ms.H.Jasima Yasmin
for M/s.Ajmal Associates for R2

ORDER

Heard the learned counsel on either side.

2. The writ petitioner joined Manonmaniam Sundararnar University and she was holding the post of Assistant Registrar. She was retired from service on 31.01.2016. Notice was issued to the petitioner calling upon her to give her willingness for refixation of her pay. Such notice came to be issued, since local fund audit department had refixed her pay and directed the university to recover what according to them was the excess pay from the petitioner. The petitioner gave her willingness for refixation. She sought to take back the said letter subsequently. In any event on 30.08.2016, the petitioner's pay was refixed. The said communication



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informed the petitioner that the excess pay paid from 01.01.2004 to 31.01.2016 shall be recovered and that her terminal benefits including pension shall be calculated only on the pay to be refixed. The petitioner was asked to give her reply on the refixation of pay. Pursuant to the said communication dated 30.08.2016, the petitioner called upon the management to sanction her monthly pension and other pensionary benefits as per the refixed pay. The petitioner wanted to take back this consent subsequently by giving a letter dated 06.10.2016. Be that as it may, the impugned communication dated 19.11.2019 came to be issued informing the petitioner about the refixation details. In the said communication, there is a reference to the order for recovery issued by the Assistant Director of Local Fund Audit. This communication is put to challenge in this writ petition.

3. After hearing the learned counsel on either side, I am more than satisfied that while the issue of refixation can be left open, recovery cannot be ordered for whatever reason. The Hon'ble Apex Court in the celebrated *White Washer case* had categorically held that recovery from the retired employees or recovery from the employees when excess payment has been made for the period in excess of five years before the order of recovery is issued cannot be made. This position has been duly implemented by the Government by issuing G.O.Ms.No.286, Finance (Pension)

Department, dated 28.08.2018. In this view of the matter, the respondents are



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restrained from recovering any amount towards excess pay from the petitioner's pension and other benefits.

4. It is pointed out by the learned standing counsel appearing for the University that since the employees were suffering from stagnation, One Man Commission was appointed and the said commission made such recommendations for revising the pay of the employees. Recommendations were duly accepted by the University and forwarded to the Government. The Government also accepted the same and issued G.O. But subsequently, the Audit Wing raised an objection that there will be additional expenditure. Clarification was sought for from the Government. The Government made it clear that they will not bear the additional expenditure and that the University has to bear the same. The University undertook to bear the expenditure. Subsequently, the Government withdrew the clarification issued by them vide letter (Ms) No.174 dated 25.09.2013. This withdrawal letter has been put to challenge in W.P.(MD)No.6635 of 2019. It is stated that this Court had heard the said writ petition and the order has been reserved. If the said writ petition is allowed, the petitioner will be entitled to the benefit of the same. Whether the said writ petition is allowed or not, corresponding revision and conferment of the benefit on account of 7th Pay Commission recommendation cannot be denied to the petitioner. The only question that is left open is regarding refixation of the



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petitioner's pay.

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5. With this observation and direction to the respondents not to recover any amount from the petitioner, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

06.04.2023

This Petition having been posted on Wednesday sixth day of March Two Thousand and Twenty four “for being mentioned” In pursuance to the order of this Court dated 06.04.2023 and made herein in the presence of the abovesaid Advocate, this Court made the following order:

W.P.(MD)No.10176 of 2020 was disposed of by me on 06.04.2023. The case is listed under the caption for “being mentioned” at the instance of the learned standing counsel for Manomaniam Sundaranar University. The learned standing counsel submitted that I had erroneously recorded that an undertaking was given to bear the additional expenditure. My attention was drawn to the relevant sentence found in Paragraph No.4. I had nowhere recorded that the learned standing counsel for the University made any such concession. I reiterate that the learned standing counsel did not give any undertaking. No consensus was made by the learned standing counsel. It was a finding given by me. The finding that the University



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undertook to bear the expenditure was based on the materials on record. Of course, at this point of time, I am not able to recollect based on which I rendered such a finding. It is not necessary to revise the order earlier passed by me.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

07/03/2024

Sub Assistant Registrar
(Liasoning)

Ias

To

(*) To be substituted to the order already despatched on 28/06/2023

1. The Secretary,
Higher Education (K1) Department,
Fort St. George, Chennai-600 009.

2. The Director of Local Fund,
Kuralagam, Chennai-600 108.

3. The Assistant Director of Local Fund,
Tirunelveli,
Tirunelveli District.

+1 CC to M/s.K.N.THAMPI, Advocate (SR-20044[F] dated 06/04/2023)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-20168[F] dated

+1CC to SPL GP(SR.No.20479)



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MGJ(07.06.2023) 7P 7C

RD(23.06.2023) 7P 7C

RD(07/03/2024) 7P / 7C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023.