



W.P(MD)No.6635 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.06.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.6635 of 2019

and

W.M.P.(MD)Nos.5294, 5333, 5334 and 11538 of 2019

1.Manonmaniam Sundaranar University
All Administrative Staff Association,
Rep. by its General Secretary,
K.Rajasekaran.

2.R.Sundari

3.D.Anbal Meshak

... Petitioners

Vs.

1.The State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Higher Education Department,
Fort St.George, Chennai – 600 009.

2.The Registrar,
Manonmaniam Sundaranar University,
Abisekapatti, Tirunelveli – 627 012.

3.The Director,
Local Fund Audit,
Kuralagam,
Chennai – 600 108.

4.The Deputy Director,
Local Fund Audit,
Tirunelveli.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records in Letter (Ms) No.174, dated 25.09.2013 issued by the 1st respondent, quash the same and consequently direct the respondent to restore the service conditions of the 2nd petitioner and pay the terminal benefits to the 3rd petitioner including pension, Gratuity, earned leave with arrears and interest at the rate of 18% per annum.

For Petitioners : Ms.D.Geetha

For Respondents : Mr.N.Satheesh Kumar,
Addl. Govt. Pleader for R1, R3 & R4.
Mr.Mohamed Atiff for R2.

ORDER

Heard the learned counsel on either side.

2.The Government vide Letter (Ms) No.174, dated 25.09.2013 directed the Registrars of all Universities to take suitable action to re-fix pay / reverse wrong promotions / increments given which were pointed out in the report of the Director of Local Fund Audit. The Registrars were also called upon to recover the excess payment from the individual



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staff concerned. Challenging the same, the present writ petition came to be filed.

3.The learned counsel for the petitioners reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to quash the impugned communication and grant relief as prayed for.

4.The respondents 3 and 4 have filed counter affidavit and the learned counsel Additional Government Pleader took me through its contents. The primary argument of the Government is that Section 27 of the Manonmaniam Sundaranar University Act, 1990 clearly empowered the Government to issue such an instruction and the university is obliged to comply with the same. The learned Additional Government Pleader called upon this Court to dismiss the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. I need not go into the factual and legal aspects at length for the simple reason that a similar issue was raised in W.P.Nos.49



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of 2007 etc. The writ petitions were filed by the Madras University Staff Association, Manonmaniam Sundaranar University All Administrative Staff Association, Bharathidasan University Staff Welfare Association, Tamil Palkalai Kazaga Panialargal Sangam etc. A learned Judge of this Court vide order dated 04.04.2012 held as follows:-

“32. In view of my elaborate discussions in the foregoing paragraphs, I would sum up the conclusions in the following terms :

(i) As the law has been made by the State legislature conferring the power of regulation of service conditions of non-teaching staff of the universities on Syndicate, the executive is not empowered to pass the impugned order in regard to that matter in exercise of his executive power under Article 162 of the Constitution nor can he exercise such power with reference to that matter through the officers subordinate to him.

(ii) A law having occupied the field, it is not open for the State, in exercise of its executive power, to prescribe the same field, by an executive order.



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(iii) *Executive power of the State cannot be repugnant to the enactment of the legislature.*

(iv) *Executive order of the State can be issued only when the statutes or enactments are having gaps and do not cover the area by the existing rules.*

(v) *Mere funding of the State to the Universities does not confer any privilege on the State to issue executive orders, so as to interfere with the administration of the Universities.*

(vi) *Executive order i.e., the impugned order of the first respondent in G.O.Ms.No.402, Higher Education (H2) Department, dated 13.12.2006, is inoperative and it is, accordingly, declared ultra vires to the provisions of the Acts”*

6. My attention is also drawn to the decision of the Hon'ble Apex Court reported in **(2003) 10 SCC 253 (State of Punjab and Another vs. Sardari Lal and Others)**. In the said decision, it has been held as follows:-

“2. The State Government being the authority which funds the University for several purposes sought to rely upon the provisions of Sections 19, 23 and 25 of the Guru Nanak



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Dev University Amritsar Act, 1969 (for short "the Act") and it was contended that the provisions of the aforesaid sections if read together, it would appear that the State Government retains the power of control, particularly when it relates to the funds being spent by the University for various purposes including the grant of accelerated increment and allowance to its employees.

3. Under the University Statute, Statute 41 deals with the grant of accelerated increment and allowance and power is conferred upon the Syndicate or the Vice Chancellor or the Registrar. The power of the State Government under Section 25 of the Act to get the accounts of the University audited will not include within its sweep any power to nullify a decision of the appropriate authority of the University in the matter of grant of accelerated increment or allowance which has been specifically conferred upon the authorities of the University. The power of the State Government under Section 23 of the Act is to the effect that the State Government may provide such amounts by way of grants for meeting the capital recurring or other expenditure of University as it may deem fit. Merely because the State Government has been conferred power to provide amounts by way of grant for meeting the expenditure of the University will not clothe the State Government any further control in the matter of expenditure or the service condition of the employees which is specifically provided for in the Statute itself and the Statute



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confers powers on the Vice Chancellor, the Syndicate or the Registrar and not on the State Government. The University is an autonomous body and, therefore, the State Government will not be entitled to interfere with the internal administration of the University notwithstanding the fact that the State Government is the funding body until and unless the University Statutes provides for the same or there is any Act of Legislation conferring that power on the State Government. In course of arguments, the learned Counsel appearing for the State Government brought to our notice the provisions of Section 10 of the Haryana and [Punjab Agricultural Universities Act](#) in support of the contention that since the Vice Chancellor has certain power of control and that power must be held to be with the State Government as the Vice Chancellor exercises that power in aid and advice of the State Government. This provision is not there either in the Statute of the Guru Nanak Dev University or Punjab University. But even for the Haryana and Punjab Agricultural University also the aforesaid power on a plain reading cannot be held to be conferring power on the State Government to take any decision in the internal administration of the University which the Statute itself does not provide. The impugned judgment in C.A. No. 5088/96 clearly indicates that no provision has been pointed out which may show that the Government is entitled to interfere with the internal administration of the University or the grant of benefit to the employees.



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4. *Having considered the different provisions of the Act and the Statute which had been placed before us, we are unable to accept the contention raised by the learned Counsel appearing for the State Government that the provisions of Sections 23 and 25 of the Act could be construed to have conferred the power on the State Government in the garb of controlling the funds which the State Government grants for the running of the University, to have a control over the internal administration of the University. In the aforesaid circumstances, we see no infirmity with the impugned judgments of the High Court to be interfered with by this Court. These appeals accordingly fail and are dismissed”*

7.I could have disposed of this writ petition in the light of the aforesaid two decision. However, it is my duty to deal with the contentions advanced by the learned Additional Government Pleader anchored on Section 27 of the Manonmaniam Sundaranar University Act, 1990. This said provision is as follows:-

“27. (1) The annual accounts of the University shall be submitted to such examination and audit as the Government may



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direct and a copy of the annual accounts and audit report shall be submitted to the Government.

(2) The University shall settle objections raised in such audit and carry out such instructions as may be issued by the Government on the audit report.

(3) The accounts, when audited shall be published by the Syndicate in such manner as may be prescribed by the ordinances and copies thereof shall be submitted to the Senate at its next meeting and to the Government within three months of such publication.”

8. Section 27 of the Act will not empower the Government to issue a direction of this nature. The Director of Local Fund Audit had gone to the extent of stating that the university has been giving wrong promotions / increments. The job of the Local Fund Audit is to see if the expenditure incurred by the university is in consonance with the policy of the university. As per Section 27 of the Act, the Syndicate has the power to appoint the University Lectures, University staff and fix their emoluments. It is not for the Local Fund Audit to go into the justification of the promotions given by the university. The Government has gone



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entirely by the report of the Local Fund Audit. It clearly amounts to interference with the internal administration of the university. Section 27 of the Act has been misconstrued by the Government. The impugned communication is without jurisdiction. It is quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

16.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

- 1.The Principal Secretary to Government,
Higher Education Department,
Fort St.George, Chennai – 600 009.
- 2.The Director,
Local Fund Audit,
Kuralagam,
Chennai – 600 108.
- 3.The Deputy Director,
Local Fund Audit,
Tirunelveli.



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G.R.SWAMINATHAN, J.

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**Pre-Delivery Order in
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