



W.P.(MD).No.25892 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.01.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.25892 of 2019

and

W.M.P(MD)No.22428 of 2019

P.S.Boopathy Manickam

... Petitioner

Vs.

1.The Thiagarajar College of Engineering,
Represented by its Principal,
Madurai – 625 015.

2.The Director,
Directorate of Technical Education,
Chennai – 25.

... 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 records in Communication No.B/2019/dated 04/10/2019 issued by the 1st respondent, quash the same and consequently direct the 1st respondent to pay the petitioner Rs.14,29,477/- (fourteen Lakhs Twenty Nine Thousand Four hundred and Seventy Seven Only) with interest at the rate of 12 % per annum.

For Petitioner : M/s.D.Geetha

For R1 : Mr.T.Sibi Chakraborty



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For R2 : Mr.D.Sadiq Raja
Additional Government Pleader

ORDER

This petition has been filed for Certiorarified Mandamus to quash the communication, dated 04.10.2019 with a consequential relief to direct the 1st respondent to pay Rs.14,29,477/- (Fourteen Lakhs Twenty Nine Thousand Four hundred and Seventy Seven Only) to the petitioner.

2. The petitioner has entered the service under the 1st respondent College as Lecturer on 04.02.1991. Thereafter, he was moved to Senior Grade Lecturer under Career Advancement by an order, dated 13.05.1999 with effect from 14.02.1998. He was further moved to Selection Grade Lecturer by an order, dated 26.07.2004 with effect from 14.02.2001. The petitioner has acquired Ph.D degree in the same discipline and was conferred with a degree on 29.07.2006. As per the prevailing rules and circulars, the petitioner was sanctioned with 3 advance increments vide order, dated 26.09.2006 and the petitioner's pay was refixed by accounting for the 2 advance increments with effect from 30.07.2006. On the date of granting of the said increments, the



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petitioner was serving in the designation of Senior Grade Lecturer. Later, the petitioner was re-designated as Assistant Professor with effect from 30.07.2006. The 1st respondent vide communication, dated 20.02.2019 stated that 3 advance increments granted for the reason of acquiring Ph.D. degree was fixed wrongly. Hence, the same should be recovered and the salary was re-fixed with effect from 11.02.2019. Further, the respondent directed the petitioner to explain why the said amount should not be recovered. Since the petitioner is on the verge of retirement, the petitioner was agitated and submitted an explanation to the show cause notice on 01.03.2019 stating the said show cause notice is not in accordance to G.O.Ms.No.286, dated 28.08.2018. Since the respondents deducted the said amount and paid it to the 2nd respondent, the present writ petition is filed.

3. The 1st respondent has filed the counter stating the petitioner is not entitled to as per the instructions of the 2nd respondent. The 1st respondent after receiving the explanation from the petitioner, submitted the entire records along with explanation to the 2nd respondent for further instructions. Since there are 7 other similarly placed persons like the petitioner, the 1st respondent sought clarification from the 2nd respondent on 25.07.2019 and also further sent a



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reminder to the 2nd respondent. Since the 2nd respondent has not clarified further, the 1st respondent deducted the entire amount. Since the petitioner was on the verge of retirement, the petitioner also gave consent to the 1st respondent to recover the said amount. Otherwise, the entire terminal benefits would have been withheld. Therefore, the petitioner has taken a decision to give a consent letter. After receiving consent letter from the petitioner, the 1st respondent has deducted the amount and deposited the same to the 2nd respondent. Hence the 1st respondent prayed to pass appropriate orders.

4. Heard M/s.D.Geetha, the Learned Counsel appearing for the petitioner, Mr.T.Sibi Chakraborty, the Learned Counsel appearing for the 1st respondent and Mr.D.Sadiq Raja, appearing for the 2nd respondent and perused the records.

5. The Learned Counsel appearing for the petitioner submitted that the issue has affected several persons, therefore, several representations were submitted to All India Council for Technical Education (AICTE). Hence, AICTE has clarified vide Notification dated 20.05.2020 in F.No.27-4/AICTE/RIFD/Pay Scale/2018-2019 by stating as under:



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II. General

AICTE had received several representations seeking clarifications on certain issues arising out of the implementation of AICTE Regulations No.37-3/Legal/ AICTE/ 2010 dated 5th March 2010 on revised Pay Scales, Service Conditions and Qualifications for the teachers and other Academic staff in Technical Institutions (Degree & Diploma) Regulations, 2010 and No.37-3/Legal/ AICTE/2012 dated 8th November 2012 on Career Advancement Scheme for the Teachers and other Academic staff in Technical Institutions (Degree & Diploma) Regulations, 2012. Clarifications on the relevant issues were notified vide Gazette Notification dated 4th January 2016 (Clarification) and 9th June 2016 (Clarification) which has further attracted the representations/references by the Council from the various stakeholders.

<i>Issue</i>	<i>Clarification</i>
<i>Whether three advance increments shall be applicable as an incentive for acquiring a Ph.D. degree during service?</i>	<i>In the clarification dated 4th January 2016 it has been clarified at Sr.No.25 that the advance increments for Ph.D. are not allowed for the incumbents who are in PB-4 (Rs.37,400-67,000). However, this clarification shall be applicable for those acquiring Ph.D. degree after the date of publication of AICTE clarification dated 4th January 2016.</i>

6. Based on the aforesaid clarification, now it is clear that the said Ph.D. degree is necessary for incentive increment only for the persons who have acquired the said degree after 04.01.2016. Since the petitioner has completed



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prior to the said date that is on 29.07.2006, the petitioner is entitled to the said increment for higher education. This clarification was not brought to the knowledge of the 2nd respondent. Pending writ petition, the AICTE has clarified this issue. Therefore the 2nd respondent is directed to consider the case of the petitioner in the light of the clarification issued by the All India Council for Technical Education (AICTE) in vide Notification dated 20.05.2020 in F.No. 27-4/AICTE/ RIFD/Pay Scale/2018-2019 and repay the deducted amount within a period of four weeks from the date of receipt of the copy of the order.

7. However, this issue has affected several persons and hence this Court is of the considered opinion that the government ought to issue government order, so that the issue is settled without any further litigations. Therefore this Court is directing the 2nd respondent to place the issue before the Secretary to the Government, Higher Education including Technical Education and in turn the Secretary to Government shall issue a government order in consonance with the clarification of AICTE issued in vide Notification dated 20.05.2020 in F.No.27-4/AICTE/ RIFD/Pay Scale/2018-2019 and the said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.



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8. With the above directions, this Writ Petition stands allowed. No costs.

Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No

Internet : Yes/ No

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To

The Director,
Directorate of Technical Education,
Chennai – 25.



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S.SRIMATHY, J.

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