IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	27.03.2023
Pronounced on	28.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Rev.Aplc.(MD).No.170 of 2022
and
C.M.P.No.12854 of 2022

1.E.Roseline Lobo
2.S.Elango
3.R.Manoharan
4.S.Ramasamy
5.M.Paneerselvam ...Petitioners

Vs.

1.S.Maharaja
2.R.Alamelu
3.R.Naseema
4.C.Kaladevi
5.W.Christopher Suresh
6.S.Lakshmi
7.R.Chitra
8.A.Vasantha
9.V.Ragini Devi
10.M.Maragathamani
11.R.Jeyaseeli
12.R.Gowri
13.R.Krishnaveni
14.S.Shanmugam

15.T.Punniyamoorthi
16.P.Jayanthi
17.M.Pushpalatha
18.N.T.Ganesh Babu
19.V.Usharani

20.The Director,
Local Fund Audit Department,
Kuralagam, Chennai.

21.The Regional Joint Director,
Local Fund Audit Department,
Trichirappalli Corporation Water Tank Complex,
1st Floor, Dindigul Road,
Trichirappalli – 620 001.

22.The Assistant Director,
Local Fund Audit Department,
Bharathidasan University,
Palkalaiperur,
Tiruchirappalli – 620 024.

23.The Bharathidasan University,
Rep. by its Registrar,
Palkalaiperur,
Tiruchirappalli – 620 024

24.S.Maheswari
25.S.Shanthi
26.A.Faritha
27.S.Sathyavathy
28.M.Uma Rani
29.Gerrad C.V.Diamond
30.V.Kannan
31.S.Thirumalai
32.T.Oppayee
33.S.Manimekala
34.G.Kumaresan

35.S.Soundravalli
36.R.Sureshkumar
37.M.Nallathambi
38.S.Usha Rani
39.S.Uma Maheswari
40.D.Somasundaram
41.S.Ramkumar
42.A.Alagesan
43.S.Muruganandam
44.S.Sivandham
45.M.suthanthirachelvan
46.A.Govindaraju
47.T.Ravichandran
48.S.Balasubramanian
49.R.Sridevi
50.N.Sellam
51.S.Padmini
52.C.Muthulakshmi
53.A.Muthu
54.K.Gunavalagan
55.T.Thilagam
56.S.Sumathi
57.R.Sridhar
58.N.Amarjothi
59.G.Tharasing
60.K.Ramachandran
61.G.Rajakumari
62.N.Manimozhi
63.M.M.Kathamuthu
64.C.Kumar
65.N.Muralidharan
66.G.Kandasamy
67.M.Philip Kumar
68.P.R.Srinivasan
69.R.Thamayanthi ...Respondents

Prayer: Review Application filed under Order 47 Rule 1 and 2 read with Section 114 of Civil Procedure Code to review the judgment dated

17.11.2022 in W.A.(MD).No.684 of 2019.

For Petitioners	:	Mr.R.Venkataramani Senior Counsel for Mr.J.Anandkumar
For R20 to R22	:	Mr.Kannan Government Advocate
For R23	:	Mr.V.R.Shanmuganathan

ORDER

M.S.RAMESH, J.

The present Review Application is filed to review the judgement passed by this Court in W.A.(MD).No.684 of 2019.

2. In the order passed in W.A.(MD).No.684 of 2019, dated 17.11.2022, while setting aside the order of the learned Single Judge passed in W.P.(MD).No.8032 of 2015, dated 14.06.2019, we had quashed the order impugned therein, insofar as it orders for recovery of the excess payments made to the appellants. The present Review Application has been filed by 5 of the appellants therein, seeking for interference to the re-fixation of their pay scales, based on the audit objections.

3. When the Writ Appeal was taken up for final disposal, though the appellants had raised certain grounds challenging the re-fixation of their pay scales also, the learned counsel appeared on behalf of the appellants had not stressed on such grounds, but had placed arguments with regard to that portion of the order impugned in the Writ Petition, which seeks to recover the excess payments made, owing to the re-fixation of the pay scales. In this background, we had passed final orders in the Writ Appeal, quashing the impugned order with regard to the recovery of excess payments alone.

4. The learned Senior Counsel appearing for the review petitioners submitted that in view of the re-fixation of the pay scales of the appellants, they are put to serious prejudice and therefore, sought for interference to the rest of the portion of the order impugned in the Writ Petition, which recommends for re-fixation of the pay scales of the petitioners.

5. In the final orders passed in the Writ Appeal, we had indeed taken note of the factual aspects of the case leading to such re-fixation and had held that the rectification of the pay anomaly of the appellants on par with one

K.Gunalan, was properly made, in the following manner:-

> *"6.The learned Single Judge had held that the said Gunalan was senior to the appellants and that the discrepancy of promoting him without passing of the Accounts Test by granting exemption was removed. Such findings however seems to be contrary to the actual facts involved in the present case. Though Mr.Gunalan was senior in view of his initial entry into service, the appellants herein were promoted earlier to the Post of Assistant since they had qualified themselves in the Accounts Test. It is thereafter, Gunalan was exempted from the Accounts Test and was promoted to the Post of Assistant after the appellants herein and his seniority was also placed below that of the appellants herein. Likewise, the findings of the learned Single Judge that the discrepancy of granting exemption and promotions was later removed also appears to be factually incorrect. On the other hand, when audit objections were initially raised questioning the exemption granted Mr.Gunalan, an adhoc Committee was constituted which dealt with the sanctity of the exemption and promotions granted to Mr.Gunalan and held that there was no illegality in grant of these benefits. In the background of these factual misconstruction of facts, the resultant decision of the learned Single Judge to dismiss the writ petition may warrant interference, insofar as it relates to ordering for recovery of the excess payments made."*

However, by way of further clarification, we intend to place on record the following facts for a better determination.

6. One Thiru.K.Gunalan was appointed as a Junior Assistant on

01.01.1987. For the purpose of granting promotion to the post of Assistant, a Junior Assistant is required to pass the Accounts Test for Subordinate Officers Part-I. On 01.01.1994, K.Gunalan was promoted as Deemed Assistant with a condition that he could move to the regular cadre of Assistant, only after qualifying in the Accounts Test. In the meanwhile, the appellants in the Writ Appeal had passed their respective Accounts Tests and were all promoted as Assistants. Since K.Gunalan failed to pass in 5 attempts and was stagnating in the post, he along with 6 others were exempted from passing the Accounts Test for Subordinate Officers Part-I, as per the University Syndicate's Resolution No.2001.38 dated 08.06.2001, followed by the Registrar's proceedings in RC.No.B1/07377/01 dated 31.07.2001. Consequently, K.Gunalan was promoted as a regular Assistant, with effect from 08.06.2001 and by taking account of his past services rendered in the post of Deemed Assistant, he was also granted promotion as a Deemed Superintendent on 09.06.2001. Since K.Gunalan was promoted as a regular Assistant from the date of the Syndicate's Resolution, his seniority was placed below that of all the appellants, who were already promoted, owing to their qualification of passing the Accounts Test.

7. G.O.Ms.No.210, Personnel and Administrative Reforms (Pdr.S) Department, dated 11.03.1987, provides for grant of selection grade in the promoted category, by calculating the service in the feeder category. On the basis of this Government Order, the said Gunalan was granted selection grade in the promoted category of Deemed Superintendent, by taking into account his services in the post of Assistant.

8. G.O.Ms.No.68, Personnel and Administrative Reforms (Per.M) Department, dated 23.01.1986, provides that if a junior in service is granted selection grade, the seniors are also entitled to such grade, even though they do not possess the requisite length of service.

9. Claiming benefits under G.O.Ms.No.68, the appellants, by quoting the extension of such benefit to Gunalan, who was their junior, had claimed selection grade. Accordingly, the appellants were also granted selection grade in the cadre of Assistant/Assistant Section Officer, with effect from 09.06.2001.

10. The said Gunalan died on 13.07.2001 and all the death-cum-retirement gratuity benefits were released to his family. In this background, the Local Fund Audit Department had raised objections to the grant of selection grade to the appellants, by stating that the exemption granted to Gunalan was improper and therefore, the grant of selection grade to the appellants requires to be withdrawn and hence, their pay scales require re-fixation.

11. The learned Government Advocate appearing for the Local Fund Audit Department submitted that the grant of exemption to Gunalan from passing the Accounts Test and the consequential promotion itself is illegal. Hence, the appellants ought not to have compared themselves with the grant of selection grade pay scale to K.Gunalan and thereby claim for rectification of the pay anomaly. He would also submit that K.Gunalan was senior to that of the petitioners herein and hence, such comparison cannot be made.

12. The submission of the learned Government Advocate seems to be on a misconception of facts. First of all, the petitioners herein, though had entered into service after K.Gunalan, had passed the Accounts Tests within

the stipulated time and were promoted to the post of regular Assistant before K.Gunalan. Thereafter, when the Syndicate of the University had exempted Gunalan from passing the Accounts Test, he was regularly promoted to the post of Assistant from 08.06.2001, i.e. from the date of Resolution of the Syndicate and his seniority was placed immediately below the appellants in the cadre of Assistant. Thus, the stand of the Local Fund Audit Department that Gunalan was senior to that of the appellants is factually incorrect.

13. This apart, when G.O.Ms.No.68, dated 23.01.1986, specifically provides that if a junior in the service is granted selection grade, the seniors would also be entitled for such grade, though they do not have the requisite services. It is on this basis, the appellants were granted selection grade in the cadre of Assistant, in the year 2001. Such an extension of the benefits is in conformity with the Government Order and no illegality can be attributed to it. If that be so, the very basis of the objection of the Local Fund Audit Department is baseless and hence, their recommendations for re-fixation of the pay scales of the appellants, does not require consideration.

14. There is yet another aspect of the matter. In our considered view,

the Local Fund Audit Department had exceeded their jurisdiction in raising such objections, which effectively questions the administrative decisions taken by the Syndicate of the University, which is very much within the powers and authority of the Syndicate.

15. The Local Fund Audit Department is governed by the provisions of the Tamil Nadu Local Fund Audit Act, 2014 [hereinafter referred to as 'the Act']. The Act provides for an effective and efficient audit system to all local authorities, including an University established by a State Legislature. Under the Act, the Executive Authority of the Local Fund Audit is liable to prepare and present Accounts for audit to the Director of Local Fund Audit [hereinafter referred to as 'the Director'], who in turn is vested with the powers to require production of Accounts from the Executive Authority. Failure to produce such Accounts insisted by the Director, a penalty is provided for under the Act. Thereafter, the Director is required to complete the audit Accounts within a period of 6 months, after verifying the correctness of the Accounts and certify the annual Accounts and send the same to the Executive Authority.

16. The authority of the Director to cause an audit and his jurisdiction and the extent to which the objections could be raised during the course of audit is stipulated under Section 12 of Act, read with Rule 12 of the Tamil Nadu Local Fund Audit Rules, 2016. For the sake of convenience, these provisions are extracted hereunder.

> "**Section 12** - The Director shall include in the audit report:-
> (a) any payment which appears to have been made contrary to any law or order of the Government;
> (b) the amount of any deficiency or loss which appears to have been caused by the negligence or misconduct of any person in the performance of his duties;
> (c) any case of misappropriation or improper utilisation of the fund;
> (d) the amount, if any, received which ought to have been brought into account but not
> brought into account; and
> (e) any other material impropriety or irregularity
> observed in the audit."
>
> "**Rule 12 - Contents of the Audit Report** — (1) Unless otherwise provided in these rules, the contents of the audit reports of the local authorities or local funds shall be in such manner as may be prescribed by the Director . The instructions issued by the Director from time to time with regard to the form of audit report , drafting of audit para, compilation of audit report, contents of the audit report, and the enclosures to the audit report shall be followed unless otherwise specified in the Act or in these rules.
> (2)There shall be seven separate parts in the audit reports,—
> Part-1: containing review of annual accounts,

financial statements, balance sheet and its Schedules, income and expenditure statement, receipts and charges and cash flow statements.

Part-2: containing the following details of objections in receipts or revenue items:-

(a) clear cases of loss of receipt shall be incorporated;

(b) cases in which the amount if any received which ought to have been brought into account but not brought into account by any person;

(c) cases of misappropriation of collections made; and

(d) cases of any deficiency or loss of money due to short realization or non-realization of dues which appears to have been caused by the negligence or misconduct of any person.

Part-3: containing the following details of objections in payment or
expenditure:-

(a) clear cases of excess payment shall be incorporated;

(b) cases of improper utilization of funds;

(c) cases of payments which appears to be contrary to the Act or rules;

(d) cases of any deficiency or loss of any property, stock and the similar items; and

(e) cases of avoidable expenditure.

Part-4: containing the details of objections relating to grants, loans and the similar items; utilized for execution of works or schemes.

Part-5: containing the details of observations and objections relating to deposits and advances.

Part-6: containing the details of observations and objections relating to Provident fund, contributory pension scheme and other miscellaneous funds.

Part-7: containing computation of audit fees due, result of audit and details of pending objections and any other facts noticed during the course of audit which adversely affect the finances of the institution.

(3) The Director shall issue orders modifying the contents of audit report as and when found necessary.

(4) The Director or issuing authority shall be liable to issue the audit report within three months after completion of audit."

17. As per the aforesaid provisions, the Director will be well within his power to conduct an audit and raise objections with regard to any illegal payments, any deficiency or loss caused by negligence or misconduct of any person, misappropriation or improper utilisation of the funds, omission of amounts in the Accounts and other material impropriety or irregular observation. Neither the Act nor the Rules authorize the Director to question any administrative decision taken by the Executive Authority, which is in accordance with law. If such powers to question the administrative decisions are exercised by the Director, it would amount to excessive exercise of powers, which is not provided for, under the Act. The Director is not an appellate body of the Executive Authority, but is required to act within the powers vested with him under the Act or the Rules.

18. In this background, it is seen that in the present case, the Director had chosen to question the resolution passed by the Syndicate of the

University, granting exemption to K.Gunalan from passing the Accounts Test. The Syndicate is a statutory body constituted under Section 24 of the Bharathidasan University Act, 1981, and the powers of the Syndicate are provided under Section 25. Among the various powers granted to the Syndicate, it is also empowered to regulate and determine all matters concerning the University, in accordance with the Bharathidasan University Act, statutes, ordinances and the regulations. This is also deemed to be inclusive of the powers of the Syndicate to consider exemption to pass the Accounts Test for Subordinate Officers. In exercise of such powers, the Syndicate had granted exemption to Gunalan from passing the Accounts Test, which is well within their powers under the Bharathidasan University Act.

19. Likewise, G.O.Ms.No.210, dated 11.03.1987, provides that, if an employee receives the same scale as that of the promoted category in the feeder category, he is entitled for calculation of the services in the feeder category for grant of selection grade in the promoted category. In accordance with this Government Order, Gunalan was granted selection grade in the promoted category. By virtue of G.O.Ms.No.68, dated 23.01.1986, the appellants were granted selection grade, in view of their entitlement on the

basis that their junior Gunalan was granted selection grade. Thus, the award of selection grade to Gunalan, as well as the appellants herein, are in accordance with the aforesaid two Government Orders and hence, there is no illegality.

20. Through the impugned order, the Director had questioned the authority of the Syndicate in having taken an administrative decision for granting exemption to Gunalan from passing the Accounts Test and consequently had questioned the selection grade granted to the appellants. When the Syndicate was well within its powers to grant exemption and the award of the selection grade to the appellants were in accordance with the Government Orders, the Director has exceeded his jurisdiction by acting as an Appellate Authority and questioning the administrative decision of the Syndicate. In the absence of any powers under the Act, such objections are without authority and hence illegal. On this ground also, the objections cannot be legally sustainable and thus, the impugned order is liable to be quashed.

21. For all the foregoing reasons, the impugned order in Na.Ka.No.

543/A2/2015 dated March 2015, is quashed. The Review Application stands allowed. The present order passed in the Review Application, shall stand as a part and parcel of the earlier order passed by this Court in W.A.No.684 of 2019, dated 17.11.2022. No costs. Consequently, connected miscellaneous petition is closed.

[M.S.R.,J.] [N.A.V.,J.]
28.04.2023

Index:Yes
Neutral Citation:Yes
Speaking order/
hvk

To

1.The Director,
Local Fund Audit Department,
Kuralagam, Chennai.

2.The Regional Joint Director,
Local Fund Audit Department,
Trichirappalli Corporation Water Tank Complex,
1st Floor, Dindigul Road,
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<u>M.S.RAMESH,J.</u>
<u>AND</u>
<u>N.ANAND VENKATESH</u>

hvk

PRE-DELIVERY ORDER MADE IN

<u>Rev.Aplc(MD).No.170 of 2022</u>

28.04.2023