



WEB COPY



W.P.No.2246 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.2246 of 2024

and

W.M.P.Nos.2448, 2450 & 2452 of 2024

Dr.G.Kumaresan

... Petitioner

-Vs-

1. The Registrar,
Bharathiar University,
Coimbatore – 641 046.
2. The Regional Joint Director,
O/o. The Regional Joint Director,
Local Fund Audit Department,
Coimbatore – 641 001.
3. The Assistant Director,
Local Fund Audit,
Bharathiar University,
Coimbatore – 641 046.
4. University Grant Commission (UGC),
Bahadur Shah Zafar Marg,
New Delhi – 110 002.

... Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus, to call for the records



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of the second respondent in his proceedings R.C.No.735/2021/D1 dated 18.10.2021 in Audit Para No.30-25 (Annexure Sl.No.15) Audit Report for the year 2019-2020 which was communicated by the first respondent in letter No.E7/Audit Report 2019-20/Objection/2022/ dated 02.02.2022 and consequential order of the first respondent proceedings No.E7/CAS Pro./2022/24107 dated 01.12.2022 to the extent that promotion is granted to the petitioner without considering the petitioner's past service and to quash the same as being illegal and unsustainable in law and for a consequential direction to the first respondent to revise the date of promotion from 25.07.2009 to 25.07.2008 and subsequent promotions with all attendant benefits.

For Petitioner : M/s.N.Kavitha Rameshwar

ORDER

This writ petition has been filed for the issuance of Writ of Certiorarified Mandamus, calling for the records of the second respondent in his proceedings R.C.No.735/2021/D1 dated 18.10.2021 in Audit Para No.30-25 (Annexure Sl.No.15) Audit Report for the year 2019-2020 which was communicated by the first respondent in letter No.E7/Audit Report 2019-20/Objection/2022/ dated 02.02.2022 and consequential order of the first respondent proceedings No.E7/CAS Pro./2022/24107 dated 01.12.2022 to the extent



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that promotion is granted to the petitioner without considering the petitioner's past service and to quash the same as being illegal and unsustainable in law and for a consequential direction to the first respondent to revise the date of promotion from 25.07.2009 to 25.07.2008 and subsequent promotions with all attendant benefits.

2. The petitioner has been appointed as Lecturer in the department of Physical Education in the first respondent University, through proceedings dated 18.07.2005. His probation was also declared on 25.04.2008 with effect from 24.07.2007. The respondent University had called for applications under the Career Advancement Scheme (hereinafter called as “CAS”) and the petitioner made application for promotion from Stage-I to Stage-II as an Assistant Professor. Accordingly, the first respondent promoted the petitioner from Assistant Professor Stage-I to Stage-II with effect from 25.07.2008 in the pay band of Rs.15600-39100 with AGP of Rs.7000/-.

3. As per the CAS norms, the petitioner is eligible for counting of past services as Guest Lecturer in Bharathiar University, Coimbatore from 22.08.2003 to 30.04.2005 and Director of Physical Education in



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K.S.G.College of Arts and Science, Coimbatore from 15.08.2001 to 30.08.2003. It is also to be counted for the purpose of promotion under CAS. He was given promotion with effect from 25.07.2013. He had also completed one orientation course and one refresher course as required under the norms. However, the counting of his past service has not been carried out and his promotion was not revised.

4. The petitioner is eligible for promotion from 25.07.2008 itself. Therefore, the petitioner raised objections and the same was considered. The respondent promoted the petitioner to the post of Assistant Professor Stage-II with retrospective effect from 25.07.2008 by considering his past services rendered as Guest Lecturer in Bharathiar University, Coimbatore from 22.08.2003 to 30.04.2005 and Director of Physical Education in K.S.G.College of Arts and Science, Coimbatore from 15.08.2001 to 30.08.2003. Thereafter, the petitioner was promoted to the post of Assistant Professor Stage III with effect from 25.07.2013 in the pay band of Rs.15600-39100 with AGP Rs.8000/- under CAS. After completion of five years in Stage II, the petitioner is eligible for promotion to the post of Assistant Professor Stage III. He had completed five years of service and therefore, the promotion should be with effect from



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25.07.2013. Though the petitioner submitted representation, it was rejected. The date of completion of orientation course and refresher course will no longer have a bearing on the date of promotion, as the UGC Regulations, 2018, as adopted by the Government of Tamil Nadu in G.O.Ms.No.5 (Higher Education) Department dated 11.01.2021, requires that for promotion due under the CAS, orientation and refresher course shall not be mandatory upto 31.12.2018.

5. Once again, without considering the same, the petitioner was given promotion to the post of Professor with effect from 25.07.2021 instead of 25.07.2019. The respondent issued a circular dated 09.07.2021, thereby calling for applications from the eligible faculty members for promotion under the UGC-CAS for promotion to the post of Professor. In the meanwhile, there was an audit objection dated 18.10.2021. In view of the said audit objection, by its communication dated 04.02.2022, the respondent directed the petitioner to express his willingness to revise the date of promotion already awarded under CAS, annexing the revised order stating that in pursuant to the audit objection in audit report dated 18.10.2021 his date of promotion from Assistant Professor Stage I to Stage II is revised with effect from 25.07.2008 by



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deleting his past service. It is pertinent to note that the requirement for orientation and refresher course for promotion due under the CAS shall not be mandatory after 31.12.2018. Therefore, the said audit objection was challenged before this Court in W.P.No.15617 of 2022 and this Court, by an order dated 09.01.2024, set aside the audit objection. Without considering the same, the respondent granted promotion to the petitioner to the post of Professor with effect from 25.07.2021 instead of 25.07.2019.

6. Heard the learned counsel appearing for the petitioner and perused the materials placed before this Court.

7. The learned counsel appearing for the petitioner relied upon the order passed this Court in ***W.P.No.20558 of 2018*** dated 15.06.2022 in the case of ***Dr.A.Balamurugan Vs. The Barathiar University***, which reads as follows:-

“15. Now the controversy is in a very narrow compass, and the issue to be decided is as to whether the petitioner is entitled to get promotion to the post of Assistant Professor Stage-II with effect from 07.03.2013 or from 14.06.2014.



16. *The only hurdle for the petitioner to get such promotion from 07.03.2013 instead of 14.06.2014 is that, the petitioner completed the refresher course only on 13.06.2016, which was one of the essential qualification as per the 2010 Regulations.*

17. *However, the 2018 UGC Regulations made it clear that till 31.12.2018 the requirement of orientation and refresher course shall not be treated as mandatory one, and thereby that can be dispensed with. Therefore, based on the requirement of refresher course or orientation course the promotion need not be delayed to any incumbent like the petitioner in view of the 2018 UGC Regulations, which has in fact been adopted by the State Government in G.O.Ms.No.5 dated 11.01.2021. Therefore, the benefit of the UGC Regulations 2018 followed by the Rule of the State Government, which adopted the 2018 Regulations can very well be extended to the petitioner. If that being so, the petitioner would be entitled to hold the post of Assistant Professor Stage II with effect from 07.03.2013 instead of 14.06.2014. Therefore, this Court feels that the impugned order can be interfered with to that extent.*

18. *In the result, the following orders are passed in this writ petition.*

** That the impugned order giving promotion to the*



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petitioner to the post of Assistant Professor Stage II to the extent 'with effect from 14.06.2014' is hereby set aside.

** As a sequel, there shall be a direction to the respondent University to confer such promotion to the petitioner ie., Assistant Professor Stage II with effect from 07.03.2013 and accordingly the consequential service benefits also can be conferred on the petitioner.*

** The needful as indicated above shall be undertaken by the respondent University within a period of eight weeks from the date of receipt of a copy of this order.”*

Thus, it is clear that till 31.12.2018, the requirement of orientation and refresher course shall not be treated as mandatory one and it can be dispensed with.

8. Further the Hon'ble Division Bench of this Court in the judgment dated **20.10.2023** passed in **W.A.No.224 of 2023 etc.**, batch in the case of **Dr.R.Prabhakaran Vs. The Registrar, Bharathiar University and ors.**, held that even if the State government is a body that funds the University, the State Government cannot, under the guise of auditing the accounts of the University, interfere with the internal administration of the University and the power of the University includes



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the power to make appointments as well as further promotions.

Therefore, the third respondent completely ignored the factual background as well as the circumstances in which the petitioner claims to be appointed as Assistant Professors in the respondent University under the UGC plan and more importantly, that it was beyond their power as well as jurisdiction under the Tamil Nadu Local Fund Audit Act, 2014 as well as under the Bharathiar University Act, 1981, to have raised objections with regard to the validity of the appointments made under the UGC XI Plan. Further the UGC regulations of the year 2018 have also been adopted by the Government in G.O.Ms.No.5 Higher Education Department, dated 11.01.2021, wherein it has been reiterated that the requirement of orientation and refresher course for promotion due under the CAS shall not be mandatory upto 31.12.2018. Hence, the impugned proceedings cannot not be sustained and are liable to be quashed.

9. Accordingly, the proceedings in R.C.No.735/2021/D1 passed by the second respondent dated 18.10.2021, Letter No.E7/Audit Report 2019-20/Objection/2022 passed by the first respondent dated 02.02.2022 and the proceedings No.E7/CAS Pro./2022/24107 passed by the first respondent dated 01.12.2022 are hereby quashed. The first



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respondent is directed to revise the date of promotion from 25.07.2009 to 25.07.2008 to the post of Assistant Professor Stage II and subsequent promotions with all attendant benefits, within a period of twelve weeks from the date of receipt of a copy of this order.

10. In view of the above, this writ petition is allowed. Consequently, connected Miscellaneous petitions are closed. There shall be no order as to costs.

02.02.2024
(6/6)

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
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