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W.P.Nos.3034 of 2023, etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2024

CORAM:

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

W.P.Nos.3034, 3042, 3044, 3045, 3049, 3052, 3041, 3043,
3048, 3050 & 3055 of 2023 and WMP.No.33581 of 2023

WP.No.3034 of 2023

S.Dhanasekaran

... Petitioner

Vs.

Annamalai University,
Rep. By its Registrar,
Annamalai Nagar,
Cuddalore District 608 002

... Respondent

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Declaration declaring that action of the Respondent and its officials and its resolutions for withholding of the petitioners arrears of salary payable for the period from 01.10.2017 to 31.03.2018 and not calculating the earned leave salary and unearned leave on private affairs based on the 7th Pay commission pay revision and withholding of 50 percentage of his terminal benefits, 50 % of the petitioner earned leave and unearned leave on private affairs, based on the audit objection of the Local Fund Audit as illegal arbitrary, unjust, unreasonable and unconstitutional and violative of the Judgment reported



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in 2012 (3) CTC 337 and consequently direct the Respondent to pay him the arrears of salary payable to the petitioner for the period from 01.10.2017 to 31.03.2018; to pay him the balance 50% earned leave salary and half pay salary and the difference in earned leave salary and half pay leave salary and to pay him the commuted value of pension as per the revised pay as on the date of the petitioner retirement, with interest at the rate of 12% per annum and to pay interest for the belated payment of 50% of Gratuity and the 50% of EL/UELOPA, within a specified time, as may be fixed by this Court, award costs.

For Petitioners
in all WP's : Mr.V.Ajay Khose

For Respondent
in all WP's : Mr.J.Ravindran,
Additional Advocate General
Assisted by
Mr.E.C.Ramesh,
Standing Counsel

COMMON ORDER

These Writ Petitions have been filed for declaration that the action of the Respondent and its officials and its resolutions for withholding of the petitioners arrears of salary and not calculating the earned leave salary and unearned leave on private affairs based on the



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7th Pay commission pay revision and withholding of 50 percentage of their terminal benefits, 50% of the petitioners earned leave and unearned leave on private affairs, based on the audit objection of the Local Fund Audit as illegal arbitrary, unjust, unreasonable and unconstitutional and violative of the Judgment reported in 2012 (3) CTC 337 and consequently direct the Respondent to pay them the arrears of salary payable to the petitioners; to pay them the balance 50% earned leave salary and half pay salary and the difference in earned leave salary and half pay leave salary and to pay them the commuted value of pension as per the revised pay as on the date of the petitioners retirement, with interest at the rate of 12% per annum and to pay interest for the belated payment of 50% of Gratuity and the 50% of EL/UELOPA.

2. Heard, the learned counsel appearing on either side.

3. The petitioners were retired from Annamalai University from their respective posts. However, they were not paid 50% of retirement benefits and arrears of salary. As per G.O.Ms.No.595, dated



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01.08.1992, which provided for ratio of 1 Assistant for every 2 Junior Assistants and 1 Superintendent for every 5 clerical staff in a section. On request made by the Employees' Association for its implementation, the Syndicate rejected the Government Order in Resolution dated 22.09.1993 and introduced a Career Progressive Scheme, once in seven years to all non-teaching categories by the Resolution dated 01.10.1994. The Local Fund Audit Department raised objections for the reason that it is against the Government norms of the award of Selection Grade, after 10 years and Special Grade after 20 years of service in the absence of promotions. However, the audit objections were ignored by the Administration as the Syndicate had acted within its powers. Accordingly, all the retirement benefits were settled in full for the person retired before March, 2012. From the year 2012-2013, the third respondent has been adding a remark in the Title of Pensionary Benefits Certificates of a employees on selective manner, i.e., “as the II/III/IV stage pay as recorded on the page of the Service Register was fixed based on Syndicate Resolution dated 01.10.1994, if the Syndicate passes a new resolution altering it, the pensionary benefits would then need to be revised”. Thus the fourth



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respondent preferred an audit objection restraining the settlement of the terminal benefits to the retirees.

4. In this regard, Dr.S.Muthukumaran Committee was constituted, in order to formulate guidelines to bring about uniformity of service conditions among the non-teaching employees of all the universities on par with Government employees. In the year 2006, the Government issued G.O.Ms.No.402, Higher Education (H2 Department, dated 13.12.2006, based on the recommendations of the Government order that:

(a) the scales of pay of all the non-teaching staff of all the universities should be on par with the employees in the same category in the various Departments of the Government of Tamil Nadu.

(b) The existing posts such as Senior/Deemed Superintendent, Senior Assistants shall not be filled up in future. These posts shall be converted as Selection Grade for those who have put in 10 years of service in the same post and Special Grade for those who have put in 20 years of service in the same post. It may be note that the L.F.A's objections and the orders of the Government in



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the G.O. are the same.

5. The said Government Order was challenged before this Court in W.P.No.49 of 2007 etc., batch and this Court held that the G.O.Ms.No.402, Higher Education (H2) Department dated 13.12.2006, as in operative and *ultra vires* of the provisions of the respective University Acts. The relevant portions of the order is extracted hereunder:-

“18. The legislature has enacted the Statutes, namely, the Acts of Universities But it is to be borne in mind that the legislature, while enacting the Acts, has delegated all powers on the Syndicate with regard to whole affairs of the Universities. In other words, the Universities, being body corporate having perpetual succession, have got a separate legal entity and, as such, the rules framed by the Government shall not be applicable, unless specifically adopted by the Universities in accordance with the provisions of the Acts by which the Universities are constituted. If the State makes rules or issues any executive instructions by way of regularization of services of the staff of Universities, it would be in violation of the provisions contained in Article 309 of the Constitution of India and



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opposed to the Constitutional scheme of equality clauses contained in Articles 14 and 16.”

“32(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 the Syndicate, the Executive is not empowered to pass the impugned order in regard to that matter in exercise of his executive powers under Article 162 of the Constitution, nor can he exercise such power with reference to that matter through the officers subordinate to him”.

“(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, ie., 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. Therefore, the Syndicate has been conferred the authority through the University Act, to regulate the service conditions of the employees of the University and to fix their scale of pay. Even then, the



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Syndicate had passed Resolution No.41, dated 08.02.2017 ordering reduction of scales of pay of the non-teaching staff and pension of retirees. It was also challenged before this Court in W.P.No.10818 of 2017. However, subsequently, it was withdrawn with liberty to challenge as and when any adverse order was passed

7. Now, the second respondent passed Resolution No.9, dated 24.12.2020 and accordingly, the Finance Committee resolved that the pay and allowances for the serving employees and retired employees for stage movement of 7, 14 and 21 years against Government norms of completing 10 years and 20 years for Special Grade and additional increments for 30 years of service shall be worked out from 1994 and placed before the Finance Committee. After the decision of the Finance committee necessary action including serving notices for refixing the pay for serving employees and pension for pensioners was done. However, no order has been passed by the Finance Committee so far. That apart, the petitioners were retired from their services even before one year. However, they have not been paid terminal benefits and arrears of salary.



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Therefore, the petitioners submitted their respective representations.

8. In view of the above discussion, the respondent is directed to consider the representations submitted by the petitioners and pass orders in merits and in accordance with law, in view of the order passed by this Court in W.P.No.49 of 2007 etc., batch of writ petitions, challenging the Government order in G.O.Ms.No.402, Higher Education (H2) Department, dated 13.12.2006 within a period of twelve weeks from the date of receipt of a copy of this order.

9. With the above direction, all the writ petitions are disposed of. Consequently, connected miscellaneous petition is closed. No costs.

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Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To
Registrar,
Annamalai University,
Annamalai Nagar,
Cuddalore District 608 002

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3052, 3041, 3043, 3048, 3050 & 3055 of 2023

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