



W.P.Nos.8850 & 8853 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2024

CORAM:

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

W.P.Nos.8850 & 8853 of 2024

and

W.M.P.Nos.9848, 9849, 9852 & 9853 of 2024

R.Sugumar

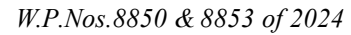
...Petitioner in W.P  
No.8850 of 2024

N.Sigaravel

...Petitioner in W.P  
No.8853 of 2024

-Vs -

1. The State of Tamil Nadu,  
Rep by Secretary to Government,  
Higher Education Department,  
Fort St. George,  
Chennai – 9.
2. The Syndicate of Annamalai University,  
Rep. by its Secretary,  
Annamalai University,  
Annamalai Nagar,  
Chidambaram.
3. The Registrar,  
Annamalai University,  
Annamalai Nagar,  
Chidambaram.



5. The Finance Committee of  
Annamalai University,  
Rep. by its Secretary,  
Annamalai University,  
Annamalai Nagar,  
Chidambaram.

**Common Prayer:** Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in Resolution No.9, dated 24.12.2020 and quash the same as ultra-virus of the Annamalai University Act, illegal, incompetent, without jurisdiction and further direct the respondents to release the pensionary benefits of the petitioners including, gratuity, surrendered earned leave salary, commutation with interest of 12% per annum, form the date of their retirement till the date of realization within a time stipulated by this Court.

For R2 to R5 : Mr.E.C.Ramesh



W.P.Nos.8850 & 8853 of 2024

### **COMMON ORDER**

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These writ petitions have been filed challenging the resolution passed by the second respondent dated 24.12.2020, thereby directed to refix the pension for pensioners.

2. The petitioner in both petitions are the retired employees of the respondent university viz., Annamalai University and they were retired as Section Officer. They were originally appointed as Attendant and the said post was confirmed by the respondent university. The Syndicate of the respondent university introduced a Career Progression Scheme, once in seven years to all non-teaching categories through resolution No.44 dated 20.04.1994 and resolution No.29, dated 01.10.1994.

3. Accordingly, the petitioners were notionally promoted as “Deemed Assistant” on different dates during the year 2011. Thereafter, they were redesignated as “Assistant” by dropping the prefix “Deemed”. Subsequently, on 03.05.2018, the nomenclature of their post was changed as “Assistant Section Officer” from Assistant by an order dated 03.05.2018 on the file of the third respondent. Thereafter, they are all



W.P.Nos.8850 & 8853 of 2024

retired from service in the post of “Section Officer” on their attainment of superannuation age.

4. In the mean time, the Local Fund Audit Department raised objections that the Syndicate's introduction of the Career Progression Scheme, once in seven years, was against the Government norms of the award of selection grade after ten years and special grade after 20 years of service in the absence of promotion. However, the audit objections were ignored by the Administration as the Syndicate had acted within its powers. All the retirement benefits were settled in full for the persons retired before March, 2012.

5. However, from the year 2012-13, the third respondent had been adding a remark in the title of pensionary benefits certificate of a employees as follows:-

*“As the II/III/IV stage pay as recorded on pages(s) of the Service Register was/were fixed based on Syndicate Resolution No.29 dated 01.10.1994, if the Syndicate passes a new resolution altering it, the pensionary benefits would then need to be revised”*



W.P.Nos.8850 & 8853 of 2024

Therefore, only 50% of the Death cum Retirement gratuity and 50% of the leave salary have been paid to them. Thereafter, the second respondent passed the present resolution, thereby directed to refix the pension of the petitioners. Hence, the present writ petitions.

6. The specific case of the petitioners is that they have not misrepresented or suppressed any of the fact to enjoy the benefit of promotion. Further, they did not make any representation for seeking promotion. Having been promoted them to the post of Section Officer and revised their pay scale according, after retirement of their service, it is not permissible to recovery any amount and also revise their scale. It is clear violation of the dictum laid down by the Hon'ble Supreme Court of India reported in **(2015) 4 SCC 334** in the case of State of **Punjab and ors Vs. Rafiq Masih and ors**. Hence, they prayed to quash the impugned resolution.

7. The learned Special Government Pleader appearing for the first respondent submitted that all the petitioners were promoted without required qualification. They were also promoted without following any of the procedure contemplated in the government order. All the petitioners



*W.P.Nos.8850 & 8853 of 2024*

were obtained their bachelor and master degree without completing their 10<sup>th</sup> standard and 12<sup>th</sup> standard. It is against the government order in G.O.Ms.No.107, Personnel and Administrative Reforms Department dated 18.08.2009. Therefore, the third respondent initiated proceedings to cancel the promotion given to the petitioners from the post of Junior Assistant to Deemed Assistant and subsequently promoted to the post of Section Officer.

8. Heard the learned counsel appearing on either side and perused the material placed before this Court.

9. As per the government order in G.O [Ms] No.107 Personnel and Administrative Reforms Department dated 18.08.2009, those who possessed Diploma / Degree / P.G Degree through Open University System after passed 10th standard and 12th standard alone can be considered for appointment or promotion into Public Services. As per G.O (Ms.) No. 116, Personnel and Administrative Reforms [M] Department dated 18.08.2010, those who possesses a Post Graduate Degree through Open University System without obtaining a basic degree cannot be considered as possessing a Post Graduate degree for



W.P.Nos.8850 & 8853 of 2024

appointment to Public Services. In G.O (Ms.) No.65 dated 02.07.2014 of Personnel and Administrative Reforms (S) Department had notified the amendment with respect to the above subjects and the amendment made was deemed to have come into force on the 18<sup>th</sup> of August, 2009. The Amendment notified in the above G.O is extracted below :-

*“AMENDMENT*

*In the said Rules-*

*In rule 19, in the Explanation for item (i) the following item shall be substituted, namely:*

*(i) In cases where the Special Rules prescribe a diploma or a degree or a post-graduate degree as a qualification for appointment, then:*

*a. A diploma obtained, after completion of S.S.LC or Higher Secondary [10+3 (3 Years Diploma)] or [10+2+2 (Lateral Entry)].*

*b. A degree obtained after completion of S.S.L.C and Higher Secondary (10+2+3 or more).*

*c. A post graduate degree obtained after completion of S.S.L.C., Higher Secondary and a degree (10+2+3+2 or 3) from any University or institution recognized by the University Grants Commission mentioned in Schedule II to this part shall be recognized as the Qualification”*



W.P.Nos.8850 & 8853 of 2024

10. In view of the above government orders, the matter pertaining to the promotion of the petitioners were placed before the Syndicate along with other issues pertaining to other Junior Assistants who were promoted as Deemed Assistants without having account test qualification. On considering the above matters, the Syndicate resolved that refix the pay and pension for the employees.

11. In the judgment relied upon by the learned counsel appearing for the petitioners reported in **(2015) 4 SCC 334** in the case of ***State of Punjab and ors Vs. Rafiq Masih and ors.***, the Hon'ble Supreme Court of India held as follows:-

*“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*

*(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*



W.P.Nos.8850 & 8853 of 2024

*(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*

*(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*

*(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*

*(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”*

12. The petitioners were employed as Group B/Class II employees since the Section Officer cadre falls under the Group B cadre. Further immediately after their retirement viz., even before one year, Syndicate resolved to revert back to their earlier position. Further recovery proceedings have been initiated within a period of five years from the date of excess payment made to the petitioners. That apart, the



*W.P.Nos.8850 & 8853 of 2024*

petitioners had wrongfully been required to discharge their duty of a higher post and they were paid accordingly. Therefore, the petitioners did not fall any of the category as held by the Hon'ble Supreme Court of India.

13. Further, the orders impugned in these writ petitions are only resolution passed by the Syndicate. In fact, thereafter the petitioner were issued with show cause notice and on receipt of the said show cause notice, the petitioners had submitted their explanation and all the explanations duly received by the third respondent. Therefore, this Court finds no infirmity or illegality in the resolution passed by the third respondent. Both the writ petitions are devoid of merit and liable to be dismissed. However, the third respondent is directed to pass orders after considering the explanation submitted by the petitioners to the show cause notice on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this Order.

14. With the above directions, both the Writ Petitions are disposed of. Consequently, connected miscellaneous petitions are closed.

There shall be no orders as to costs.



W.P.Nos.8850 & 8853 of 2024

28.03.2024

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Index : Yes/No

Speaking/Non Speaking order

Neutral Citation : Yes/No

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State of Tamil Nadu,  
Higher Education Department,  
Fort St. George,  
Chennai – 9.
2. The Secretary  
Syndicate of Annamalai University,  
Annamalai University,  
Annamalai Nagar,  
Chidambaram.
3. The Registrar,  
Annamalai University,  
Annamalai Nagar,  
Chidambaram.
4. The Deputy Director,  
Local Fund Audit,  
Annamalai University,  
Annamalai Nagar,  
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**G.K.ILANTHIRAIYAN. J.**

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