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W.P.No.15619 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2024

CORAM:

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

W.P.No.15619 of 2022
and W.M.P.Nos.14836, 14837 & 14838 of 2022

Dr.G.Shanmugavelayutham

... Petitioner

-Vs-

1. The Registrar,
Bharathiar University,
Coimbatore – 641 046.

2. The Audit Coordinator,
Registrar's Office,
Bharathiar University,
Coimbatore – 641 046.

3. The Assistant Director,
Local Fund Audit,
Bharathiar University,
Coimbatore – 641 046

... Respondents

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the third respondent in his proceedings dated 05.02.2021 (Audit Slip No.29 for the year 2019-20) communicated by the first respondent to the petitioner and to quash the same as being illegal and unsustainable in law.

For Petitioner : Ms.Kavitha Rameshwar



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For Respondents : Mr.K.Shakespeare
Standing Counsel

ORDER

This writ petition has been filed challenging the proceedings issued by the third respondent dated 05.02.2021, thereby revised the pay scale and refix the same and also ordered to recover the excess payment from the petitioner.

2. The petitioner has been appointed as an Assistant Professor in the department of Physics in the first respondent university on 28.02.2011. His service was regularized on 13.04.2015 from the date of joining. His probation was also declared on 16.12.2016 from 01.03.2013. 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 02.03.2015 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



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of past services as Post-Doctoral Researcher at the university of Tokyo, Japan during the period of February 2006 to March 2006. It is also to be counted for the purpose of promotion under CAS. He had also completed one orientation course that was held on 04.06.2012 and one refresher course on 01.10.2013 as required under the norms. He was given promotion with effect from 02.03.2013 by an order dated 18.09.2018. However, the counting of his past service has not been carried out and his promotion was not revised from 02.03.2013.

4. The third respondent had raised an audit objection by way of Audit Slip dated 05.02.2021 and the petitioner was called upon to reply. The petitioner submitted detailed reply dated 22.03.2021 to the first respondent. In pursuance to the circular issued by the first respondent dated 09.07.2021, called for application from eligible faculty members for promotion under UGC-CAS. The petitioner submitted his application for his promotion from Assistant Professor Stage II to Stage III along with necessary documents. However, it was not considered. In respect of his reply to audit slip forwarded by the first respondent, it is pending. Once again, the first respondent communicated the same by the letter dated 02.02.2022. Though the petitioner made several representation to the



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audit objection raised by the third respondent, it was not considered. The requirement for orientation and refresher course for promotion due under the CAS shall not be mandatory upto 31.12.2018. However, the audit slip is still pending and kept alive.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. 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***, 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



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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 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.*



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** 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.

7. 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, which power of the university includes 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



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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 be reiterated 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 shall not be sustained and liable to be quashed.

8. Accordingly, the impugned proceedings dated 05.02.2021, viz., Audit Slip No.29 for the year 2019-20, passed by the third respondent, is hereby quashed and the Writ Petition stands allowed. Consequently, connected miscellaneous petitions are closed. There shall be no orders as to costs.

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

rts

To

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