



W.P.No.16609 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.07.2024

PRONOUNCED ON : 23.07.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.16609 of 2024 and
W.M.P.Nos.18217 & 18332 of 2024

Dr.A.N.P.S. Arun Vijay Anand

... Petitioner

-Vs-

1. The State of Tamilnadu,
Rep. by its Principal Secretary to Government,
Higher Education Department,
Fort St. George,
Chennai – 600 009.

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

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

4. The Regional Joint Director,
Local Audit Fund Department,
Coimbatore – 641 046.

...Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the second respondent in his proceedings Ref. No.BU/R/E10/2023/7890/18755-3 dated 05.06.2024 and to quash the same as being illegal and unsustainable in law.

For Petitioner : Mrs.N.Kavitha Rameshwar

For Respondents

For R1, R3 & R4 : Mr.C.Jayaprakash
Government Advocate

For R2 : Mr.K.J.Parthasarathy

ORDER

This writ petition has been filed challenging order passed by the second respondent dated 05.06.2024, thereby ordered to recover the excess payment and also revised the pay scale of the petitioner.

2. The petitioner was appointed as Computer Operator against regular vacancies by the second respondent by an order dated 15.04.2010. His pay band was fixed at Rs.5200-20200 with grade pay of Rs.2,200/-. By virtue of government order in G.O.Ms.No.164 Higher Education (G1) Department dated 15.07.2011, the government of Tamil Nadu accorded permission to all university including Bharathidasan University



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Constituent College of Arts and Science for the academic year 2011-12, to fill up various posts. Insofar as the post of Computer Operator, the scale of pay is fixed at Rs.9,300-34,800 + Grade pay of Rs.4,200/-. As per the government order in G.O.Ms.No.169, Higher Education (G1) Department, dated 20.07.2011 also fixed scale of pay for the post of Computer Operator as Rs.9,300-34,800 + Grade pay of Rs.4,200/-, in respect of the Periyar University Constituent Arts and Science College.

3. The said pay scale also confirmed by various government order in G.O.Ms.250 Higher Education (G1) Department dated 21.12.2012, G.O.Ms.Nos.5 & 6 Higher Educational (G1) Department dated 09.01.2015 and G.O.Ms.No.56 Higher Education (G1) Department dated 01.03.2016. It would show that the pay band for the post of Computer Operator is Rs.9,300-34,800 + Grade pay of Rs.4,200/-.

4. Based on the above government orders, the second respondent by its proceedings dated 15.03.2013 revised the scale of pay at Rs.9,300-34,800 + Grade pay of Rs.4,200/- with effect from 16.04.2010 ie., from the date of joining. Thereafter, the petitioner also completed his probation period and he was successfully declared his



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probation with effect from 15.04.2012. After completion of ten years of service, he was transferred to Finance Section of Bharathiar University, Coimbatore.

5. While being so, the petitioner received audit objection with regard to revision of scale of pay. On receipt of the same, the petitioner submitted detailed explanation. However, without considering the explanation submitted by the petitioner, his pay was revised from Rs.9,300-34,800 + Grade pay of Rs.4,200/- to Rs.5200-20,200 with grade pay of Rs.2,200/- with effect from his date of appointment. Further ordered to recover the excess payment due to the refixation of his salary. Aggrieved by the same, the petitioner filed the present writ petition.

6. The second respondent filed counter and the learned Government Advocate appearing for the respondents submitted that, as per the notification for recruitment to the post of Computer Operator, the scale of pay was fixed as Rs.5500-175-9000. The government orders were subsequently issued for specific university and as such the government orders are not applicable to the petitioner, since he was appointed prior to the government orders. Bharathiar University Arts and



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Science College was established based on the government order in G.O.Ms.258 Higher Education Department dated 17.08.2006, which are prior to the subsequent government orders. Therefore, these government orders are not applicable to the case of the petitioner.

6.1. That apart, the second respondent has no authority to revise the scale of pay of the petitioner without getting any concurrence from the finance committee. The finance committee is an authority to revise the salary of the petitioner. The pay revision has to be done only with the approval of syndicate and finance committee. The second respondent without the approval of syndicate and finance committee, the second respondent itself revised the scale of Rs.9,300-34,800 + Grade pay of Rs.4,200/- based on the government orders which are not applicable to the case of the petitioner and revised the scale of pay. Further the petitioner was given opportunity after issuance of audit objection to submit explanation. The explanation submitted by the petitioner was not satisfactory and the finance committee rightly deferred and ordered to recovery by re-fixing the scale of pay of the petitioner.

7. Heard the learned counsel appearing on either side and



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perused the materials placed before this Court.

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8. On perusal of government order in G.O.Ms.No.258 Higher Education Department dated 17.08.2006, there was no mentioning about scale of pay. It was sanctioned permission to Bharathiar University to establish Bharathiar University Arts and Science College, under the constitution of Bharathiar University and sanctioned various teaching and non-teaching post required for the college. Thereafter, recruitment notification was issued on 29.06.2009, for various post including the post of Computer Operator. Accordingly, the petitioner was appointed as Computer Operator and he had joined duty on 16.04.2010 as Computer Operator in the Bharathiar University Arts and Science College, Valparai. By various government orders as mentioned supra, the pay band was fixed for the post of Computer Operator as Rs.9,300-34,800 with grade pay of Rs.4,200/-. Accordingly, the second respondent by its communication dated 15.03.2013, revised the petitioner's pay in the pay band of Rs.9,300-34,800 grade pay of Rs.4,200/-.

9. As per the letter of the Principal Secretary to Government, Higher Educational Department to all the university dated 09.11.2022, it



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was mentioned that at the time of formation of the colleges, the post of Computer Operator was created and the university had appointed personnel to the said post. As per the government order, the post of Assistant programmer created in the same scale of pay. The university informed that the post of Assistant Programmer in the university carries a higher scale of pay and that there is no post with nomenclature of Computer Operator sanction in the present government order or in the university. Hence, it was directed that the university shall issue orders lending the services of the Computer Operators recruited by them mentioning their time scale as Assistant Programmers and depute them to the colleges concerned.

10. On perusal of the audit objection, it was made only on the ground that the second respondent revised the pay scale of the petitioner as per the government orders without getting approval from syndicate and finance committee. It was also mentioned that the request of revision of scale of pay for the Computer Operator and Junior Assistant appointed in the Bharathiar University Arts and Science College, Valparai, was deferred by the resolution dated 18.07.2012 in item No.5 by the finance committee. However, it was not passed, based on any government order.



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Therefore, the second respondent by virtue of various government orders revised the salary of the petitioner.

11. It is not the case of the respondents that on false representation made by the petitioner, his pay scale was revised and he was paid excess salary. Only by virtue of various government orders, the second respondent had revised his salary. After period of 13 years from the date of his revision of pay scale, the audit objections were raised and accordingly, the scale of pay of the petitioner was revised and ordered for recovery. It is not permissible under law to recover excess payment after the period of five years.



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12. In this regard, it is relevant to rely upon the judgment reported in **(2015) 4 SCC 334** in the case of ***State of Punjab and ors Vs. Rafiq Masih (White Washer) and ors.***, in which the Hon'ble Supreme Court of India held as follows :-

“12. 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).

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

(iii) 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.



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(iv) 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.”

Thus it is clear that recovery shall not be made after the period of five years.

13. Insofar as the revision of scale of pay, it was ordered after the period of 13 years and now the scale of pay of the petitioner is revised to the initial scale of pay and ordered for recovery. Now the post of Computer Operator is redesignated as Assistant Programmer and their pay band was fixed as Rs.9,300-34,800 + Grade pay Rs.4,400/-.

14. In view of the above discussion, the impugned order passed by the second respondent cannot be sustained and liable to be quashed. Accordingly, the order dated 05.06.2024, passed by the second respondent in his proceedings Ref. No.BU/R/E10/2023/7890/18755-3 is hereby quashed. The syndicate and finance committee of the Bharathiar University are directed to issue approval for revision of scale of pay which is ordered by the second respondent on 15.03.2013 by necessary



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rectification, within a period of four weeks from the date of receipt of a copy of this Order.

15. With the above directions, the Writ Petition stands allowed.

Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

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

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To

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2. The Registrar,
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4. The Regional Joint Director,
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