



W.P.No.16604 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 31.07.2024

CORAM
THE HON'BLE MR.JUSTICE G.K. ILANTHIRAIYAN.

W.P.No.16604 of 2024

A.Saravanan .. Petitioner
Vs.

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

2. The Registrar
Periyar University
Salem. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, seeking for a writ of certiorarified mandamus, calling for the records of the second respondent in his proceedings PU/R/R6/000452/24F86453/2024-1 dated 28.03.2024 and to quash the same as being illegal and unsustainable in law and for a consequential direction to the respondents to disburse all my service and terminal benefits such as pension, leave salary, UPF (University Provident Fund), SPF (Special Provident Fund) and all other benefits which the petitioner is entitled to as Assistant Registrar.

For Petitioner : Ms.N.Kavitha Rameshwar

For Respondents : Mr.C.Jayaprakash
Government Advocate
for R1

Ms.H.Mary Sowmi Rexi
for R2



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ORDER

This writ petition has been filed challenging the order passed by the second respondent dated 28.03.2024, thereby not allowing the petitioner to retire from service.

2.1 The petitioner was initially appointed as an Assistant through direct recruitment and joined service on 03.05.2000 in the second respondent University. The essential qualification for the post of Assistant, as per the notification, was Under Graduation, Type-Writing in Higher Grade (English/Tamil) and a certificate in Computer Education. The petitioner is qualified with B.Sc. Mathematics Degree, Type-Writing in Higher Grade in English and Tamil and certified with a course in Computer Education.

2.2. Thereafter, the service of the petitioner was regularized on 21.04.2005 with effect from the date of joining, i.e., 03.05.2000. Subsequently, the petitioner was promoted to the post of Superintendent on 01.08.2006 and as Section Officer on 20.11.2009. The petitioner was then promoted to the post of Assistant Registrar on 04.01.2016.



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2.3. The petitioner passed his District Office Manual [DSO] test, ATSOP – I [Account Test for Subordinate Officer Paper] and ATEO [Account Test for Executive Officer]. While the petitioner was about to retire from service on attaining superannuation on 31.03.2024, the order impugned in the present writ petition was passed, thereby not allowing the petitioner to retire from service on the ground that the petitioner has not passed the DSO, ATSOP – I and ATEO for declaration of probation in the feeder category.

2.4. Further, it is alleged in the show-cause notice dated 21.04.2023 that without even passing ATSOP – II, the petitioner was promoted to the post of Superintendent, which is against the Rules, and once again he was posted as Section Officer without passing ATSOP – II and before even completing four years of service in the post of Superintendent. Further, he was promoted to the post of Assistant Registrar without passing ATSOP – II in the year 2016.

2.5. Before the impugned order was passed, the petitioner was served with the show-cause notice dated 21.04.2023, calling for



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explanation on or before 08.05.2023. The petitioner submitted his explanation and according to the petitioner, the same was not considered and the petitioner was not allowed to retire from service by the order impugned dated 28.03.224.

3. The qualification for the post of Assistant, the promotional posts of Superintendent, Section Officer and Assistant Registrar, by way of promotion, as per the regulations, are as follows:-

<i>Post</i>	<i>Qualification</i>	
	By Direct Recruitment	By Promotion
Assistant Registrar	(a) A Master's degree with at least 55% of Marks/B grade of the UGC seven point scale. 2. By transfer from the post of Lecturer	A) Section Officer/Superintendent with 5 years of service b) Pass in Account test for executive Officer and in DOM. Note: Section Officer/Superintendent who do not possess a PG qualifications shall also be promoted on condition that they should acquire PG degree within four years and be eligible to draw increment.
Section Officer	1. Graduate (55% or B grade) 2. A pass in Account test for subordinate officer part-	By promotion from the category of Superintendent with four years of service.



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<i>Post</i>	<i>Qualification</i>	
	By Direct Recruitment	By Promotion
	I with not less than 5 years' service in the cadre of Assistant. 3. Typewriting Higher grade in English and Tamil. 4. Diploma in Computer Applications.	
Superintendent	1. Graduate (55% or B grade) 2. A pass in Account Test for subordinate officer Part I 3. The Assistants who do not possess the degree qualification shall be promoted on condition that they will be eligible to draw increments after acquiring a degree in four years. 4. Typewriting Higher grade in English and Tamil. 5. Diploma in Computer Applications.	By Promotion from the category of Assistant with four years of service.
Assistant	1. B.Sc. (Comp. Sci) or BCA or PG Diploma in Comp. Applications. 2. Typewriting Higher grade in Tamil and English 3. Knowledge of Tamil to	By promotion from the category of Junior Assistant/Steno Typist with four years of service.



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Post	Qualification	
	By Direct Recruitment	By Promotion
	the extent of carrying official correspondences and drafting reports. 4. Knowledge in visual basic, oracle and web tech. with two years experience.	

4. Accordingly, the petitioner possessed the relevant qualifications for the promotional posts. In view of the proposal sent for service benefits, approval of local fund audit is necessary for disbursement of service benefits, however, as per the local fund audit report, the petitioner was served with show-cause notice. That too, after a period of twenty three years of his service and at the vague end of his carrier.

5.1. On instructions, *Ms.H.Mary Sowmi Rexi*, learned counsel for the second respondent submits that only on the basis of the local fund audit report, the petitioner was issued with show-cause notice and he was not allowed to retire from service.

5.2. In this regard, it is relevant to rely upon the judgment of



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the Division Bench of this Court in a batch of writ appeals in W.A.No.224 of 2023 and etc. batch dated 20.10.2023, where it is held as follows:

"21. The decision referred to above makes it clear as daylight 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 promotions. The other decision relied upon by the learned counsel for the appellants is Sushil Kumar Tripathi v. Jagadguru Ram Bhadracharya Handicapped University and Ors., [AIR 2021 SC 5702], wherein, in similar circumstances, under the UGC Plan, assurance was obtained from the University to maintain and take over the liability of these posts after the plan period of the UGC. The Hon'ble Supreme Court held that the termination of the services of the appellant therein was incorrect and therefore, his services were to be continued as per the UGC plan. Further, in identical circumstances, in R. Soranam v. Manonmaniam Sundaranar University, in WP (MD) No. 3935 of 2012 decided on 20.09.2012 in respect of the very same UGC XI plan, this Court taking into



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consideration the guidelines of the UGC, which had stipulated that in order to get grant from the UGC, it is for the University to file an undertaking with respect to maintenance of the posts after the UGC XI Plan period, held that the University cannot after having benefited under the UGC plan and utilising the funds and grants made by the UGC, wriggle out of such an undertaking as was required under the guidelines of the UGC.

22. The above judgements would make it clear that the second respondent had ignored this factual background as well as the circumstances in which the appellants claim 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. This Court deprecates the practice of the second respondent of not accepting or settling the objections even after a period of 13 years, especially, when it is the annual accounts of the University which is to be looked into by the second respondent and to the extent as provided for,



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without causing any undue interference into the internal administration and management of the University. It is unfortunate that even after 13 years of service in the respondent University and after having completed probation as well as being promoted, the appellants are made to face such audit objections with respect to their initial appointments itself, which hang like the sword of Damocles, on their careers. The audit objections therefore deserve to be quashed and the respondent University is directed to pay the appellants within four (4) weeks, the arrears of pay that they are entitled to on the basis of the CAS promotion orders, and the consequent pay fixation orders passed during the pendency of these appeals.”

5.3. Therefore, the local fund audit report cannot be sustained and the show-cause notice issued in pursuance to the local fund audit objection and the order of not permitting the petitioner to retire from service cannot be sustained.

6.1. Further, as per the show-cause notice, the salary of the



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petitioner was re-fixed and ordered to recover the excess payment, which was paid due to his promotions to various posts.

6.2. Recovering the excess, where the employee has wrongly been regarded to discharge duties of a higher post and been paid accordingly, even though it should have rightfully been recovered to work against an inferior post, the recovery shall not be made. That too, after a period of several years.

6.3. In this regard, it is relevant to rely on the judgment of the Hon'ble Supreme Court of India in the case of **State Of Punjab & Ors vs Rafiq Masih (White Washer) and Ors.**¹, wherein it is 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

¹ (2015) 4 SCC 334



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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.

(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."

7. Thus, it is clear that the Audit Department cannot interfere



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with the decision of the second respondent to grant promotions. After functioning in all the promotional post, the petitioner is now being sought to be recovered, that too, at the verge of his retirement. Further, the petitioner has not been promoted on his false representation or any misrepresentation.

8. In view of the above, the order passed by the second respondent dated 28.03.2024 cannot be sustained and deserves to be quashed and accordingly, stands quashed. The second respondent is directed to allow the petitioner to retire from service on attainment of his superannuation, that is, on 31.03.2024 and disburse all the service and terminal benefits forthwith. There shall be no order as to costs. Consequently, W.M.P.Nos.18206 &18209 of 2024 stand closed.

31.07.2024

Neutral Citation : Yes/No

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To:

1. The Principal Secretary to Government
State of Tamil Nadu
Higher Education Department
Secretariat, Fort St. George
Chennai – 600 009.



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G.K. ILANTHIRAIYAN, J.

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