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W.P.No.18551 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2024

CORAM:

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.18551 of 2021
and W.M.P.Nos.19793 of 2021 & 11701 of 2023

M.Uma

...

Petitioner

/vs/

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

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

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records relating to the Audit Slip No.33/2019-20 dated 05.02.2021 on the file of the Assistant Director, Local Fund Audit, Bharathiar University, Coimbatore, the second respondent herein and consequential Letter Ref.No.ET/2021/Audit-12 dated 03.03.2021 on the file of the first respondent herein and quash the same and direct the first respondent to pay petitioner's all retirement benefits, Advance Increments, Career Advancement Scheme benefits and



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also direct the first respondent to sent petitioner's pension proposal to concerned Authorities for sanction of pension as the petitioner's age of superannuation is 60 on 31.08.2020.

For Petitioner ... Mrs.N.Kavitha Rameshwar

For Respondents ... Mr.P.Raja
Standing Counsel,
Bharathiyar University
for R1

Mr.L.P.Shanmugasundaram for R2

ORDER

Heard Mrs.N.Kavitha Rameshwar, the learned counsel for the petitioner, Mr.P.Raja, learned Standing Counsel for R1 and Mr.L.P.Shanmugasundaram for R2.

2. The petitioner has filed this writ petition to quash the Audit Slip No.33/2019-20 dated 05.02.2021 on the file of the second respondent and the consequential Letter Ref.No.ET/2021/Audit-12 dated 03.03.2021 on the file of the first respondent and to direct the first respondent to pay the retirement benefits, Advance Increments, Career Advancement Scheme



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benefits to the petitioner and send petitioner's pension proposal to the concerned Authorities for sanction of pension as the petitioner's age of superannuation is '60' on 31.08.2020.

3. The petitioner got appointed as “Library Assistant” in the first respondent University in the year 1990. By an order dated 06.01.2006, the petitioner was appointed as “Assistant Librarian” on direct recruitment in the same University. In the year 2015 the petitioner was re-designated to the post of “Assistant Professor” with effect from 10.06.2015. According to the learned counsel for the petitioner, the post of “Assistant Librarian” and “Assistant Professor” is interchangeable in accordance with University Grants Commission (UGC) Regulation. On 31.08.2020, the petitioner was allowed to retire on superannuation and thereafter she was given extension of service.

3.1. In the year 2020, the Audit Department of the Government raised objection stating that the petitioner is an “Assistant Librarian” and hence he should be treated in “non-teaching category” and extension ought



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not to have be given to her. The petitioner should have retired at the age of 58 years but she was allowed to be in service till 60 years. To the audit objection received from the Government and forwarded through Local Fund Audit Department of the University, the Registrar of the first respondent University has given a reply stating that the promotions are implemented only in accordance with University Grants Commission Regulation No.F.3-1/2009 dated 30.06.2010 and the Government Order in G.O.Ms.No.350 Higher Education (H1) Department dated 09.09.2009. Further, in the said reply, the Registrar asked the second respondent to drop the audit report in R.C.No.115/A2/2020 dated 25.08.2020 in the light of the clarification given by him. However, the objection has not been dropped and culminated into the another order in Audit Slip No.33/2019-20 dated 05.02.2021 wherein it is held as under:

“ In the light of the above illustrated court verdicts and other directions it is confirmed in audit, the age of superannuation of Assistant Librarians is 58 years. As such the date of retirement of Dr.M.Uma was 31.08.2018. Allowed Dr.M.Uma to continue in service beyond 31.08.2018 is not in order. Hence the pay and allowance paid to Dr.M.Uma beyond 31.08.2018 to 31.08.2020 shall be recovered from her, after deducting eligible pension for this extended two years. ”

Aggrieved over the same, the petitioner has filed this writ petition.



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4. Mrs.Kavitha Rameshwar, the learned counsel for the petitioner, submitted that the Government has no authority to raise audit objection in respect of service conditions and internal management of the University. Reliance was placed on the judgment of the Division Bench of this Court held in ***Dr.R.Prabhakaran Vs. The Registrar, Bharathiar University in W.A.Nos.224 of 2023 and batch dated 20.10.2003*** wherein it is held as under:

*“ ... 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***



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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 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.

5. The learned counsel for the respondent submitted that a similarly placed person by name Thirunavukkarasu has filed a writ petition in W.P.No.21628/ 2016 for not extending his service beyond 58 years and in the said writ petition a direction has been given to consider the representation of Thirunavukkarasu by the Syndicate. The Syndicate, in its meeting held on 18.06.2018, approved “Amendment-2018” in order to place “Non-Teaching” category of “Assistant Librarian” as “Academic Non-Vacation Teaching faculty” with the retirement age of 60 years. But the constitute has not been amended so far by getting accent from the Chancellor. In all other aspects, the first respondent supports the claim of the petitioner.



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6. Even as per the contention of the first respondent, similarly placed persons like the petitioner have already been allowed to be in service until 60 years by considering them as “Academic Non-Vacation Teaching Faculty” category. The technical aspects of not amending the statute in this regard could not stand in the way of extending the same benefit to the petitioner. Further, *Regulation No.2.3.1 of UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010*, will be very much applicable to the first respondent University even if they have not chosen to amend their statute on par with the UGC Regulations. For the sake of clarity, the said regulation is extracted hereunder:

“ 2.3.1 The revised scales of pay and age of superannuation as provided in Clause 2.1.0 above, may also be extended to Universities, colleges and other higher educational institutions coming under the purview of the State Legislature and maintained by the State Governments, subject to the implementation of the scheme as a composite one in adherence of the terms and conditions laid down in the MHRD notifications provided as Appendix I and in the MHRD letter No.F.1-7/2010-U II dated 11 May, 2010 with all conditions specified by the UGC



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in these Regulations and other Guidelines.”

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7. The first respondent University is maintained by the State Government and funded by UGC and hence even without any amendment to the special statute the regulation of UGC is very much applicable to the petitioner. However, the intention of the first respondent University is clear that it did not have any exception to the UGC Regulation which would treat the Assistant Librarian as “Academic Non-Vacation Teaching Faculty”.

8. Since the very claim of the petitioner is only in terms of UGC regulation and also on par with the similarly placed persons in whose case the age of retirement is 60 years, the impugned order impacting recovery of pay and allowance from the petitioner from 31.08.2018 to 31.08.2020 is not sustainable. So the impugned order is liable to be set aside and the respondents to pay all retirement benefits to the petitioner.



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9. In view of the reasons stated above, this Writ Petition is allowed and records relating to the Audit Slip No.33/2019-20 dated 05.02.2021 on the file of the second respondent and Letter Ref.No.ET/2021/Audit-12 dated 03.03.2021 on the file of the first respondent are hereby quashed and the first respondent is directed to pay the retirement benefits, Advance Increments, Career Advancement Scheme benefits to the petitioner, within a period of six weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

20.02.2024

Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No
bkn

To:

1. The Registrar,
Bharathiar University,
Coimbatore – 641 046.
2. The Assistant Director,
Local Fund Audit,
Bharathiar University,
Coimbatore – 641 046.



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R.N.MANJULA ,J.

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