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W.P.No.17819 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.17819 of 2024

1. P.Sundararaj
2. S.Nadarajan
3. A.Murthi
4. P.G.Venkatakrishnan
5. S.Kumaresan

.... Petitioners

Vs

1. The State of Tamil Nadu,
Represented by the Secretary to Government,
Higher Education (11) Department,
Secretariat, Fort St.George,
Chennai – 600 009.

2. The Commissioner of Technical Education,
O/o. The Commissioner of Technical Education,
53, Sardar Patel Road,
Anna University,
Guindy, Chennai – 600 025.

.... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the respondents to disburse the annual increment and promotion increment from the year 2013 onwards respectively along with the monetary benefits as per the G.O.Ms.No.78, Higher Education (B1) Department, dated 20.04.2017 and by considering the petitioner's respective representations within the period that may be stipulated by this Court.



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For Petitioner : Mr.K.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.C.Jayaprakash
Government Advocate

ORDER

This Writ Petition has been filed for a direction, directing the respondents to disburse the annual increment and promotion increment from the year 2013 onwards respectively along with the monetary benefits as per the G.O.Ms.No.78, Higher Education (B1) Department, dated 20.04.2017.

2. Heard Mr.M.Ajmal Khan, learned Senior Counsel, appearing for the petitioner and Mr.C.Jayaprakash, learned Government Advocate appearing for the respondents.

3. Mr.M.Ajmal Khan, learned Senior Counsel appearing for the petitioners submitted that the petitioners were appointed as Associate Lecturer in Metallurgical Engineering in the Government College of Engineering, Salem on various dates. Thereafter, they were promoted as Associate Professor on 01.01.2006. At that relevant point of time,



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holding a P.hd., degree is not a mandatory condition. Further, they were promoted as Professor under Career Advancement Scheme. However, as per the revised guidelines issued by the Government in G.O.Ms.No.95 Higher Education Department dated 05.05.2010, for the post of Associate Professor securing a P.hd., degree has been made as a mandatory condition. The petitioners were not given with any increment from the year 2013 onwards for the reason that the petitioners did not possess the prescribed qualification of P.hd., degree at the relevant period.

4. He further submitted that at the time when the petitioners were appointed, possessing a P.hd., Degree is not mandatory and hence the Government Order in G.O.Ms.No.95, which has been made on 05.05.2010 by stipulating a P.hd., Degree as a mandate for appointment of Associate Professor has not been given with retrospective effect and denied the petitioner's entitlement for annual increments.

5. Even in G.O.Ms.No.95 dated 05.05.2010, which has prescribed the revised qualification norms for appointment of Associate Professor and other posts, it has been made clear that when the rules were amended vide G.O.Ms.No.78 Higher Education Department dated



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20.04.2017, it has been specifically mentioned that the amendment shall come into effect only with effect from 05.05.2010 on which date the earlier G.O.Ms.No.95 dated 05.05.2010 was issued. In fact, in the said Government Order in G.O.Ms.No.78 dated 20.04.2017, a Saving Clause also introduced in the amendment which would read as under:

Amendments

In the said Rules

1) For the expression "Assistant Professor" wherever it occurs, the expression "Associate Professor" shall be substituted.

2) In rule 3(i), for the expression "Lecturers", the expression "Assistant Professors" shall be substituted.

3) In rule 5, for item (i), (ii), (iii), the following shall be substituted, namely:-

(i) (a) B.E/ B.Tech and M.E / M.Tech in relevant branch with first class or equivalent either in B.E. / B.Tech or M.E / M.Tech and Ph.D or equivalent, in appropriate discipline.

(b) Post Ph.D publications and guiding Ph.D students is highly desirable; and

(ii) Minimum of five years experience in teaching/research/industry experience of which TWO years post Ph.D experience is desirable.



(iii) *In case of Architecture, Professional Practice of 5 years as certified by the Council of Architecture shall also be considered valid.*

Explanation:-

1. Equivalence for Ph.D. is based on publication of 5 international Journal papers, each Journal having a cumulative impact index or not less than 2.0 with incumbent as the main author and all 5 publications being in the authors area of specialization.

2. Ph.D. shall be from a recognized University.

3. For an incumbent Assistant Professor, experience at the level of Assistant Professor will be considered equivalent to experience at the level of Associate Professor, provided the incumbent Assistant Professor has acquired or acquired Ph.D Degree in the relevant discipline.

4. Experience at Diploma Institutions is also considered equivalent to experience in degree level Institutions at appropriate level and as applicable. However, qualifications as above shall be mandatory.

5. If a class/division is not awarded, minimum of 60% marks in aggregate shall be considered equivalent to first class / division. If a Grade Point System is adopted the Cumulative Grade Point Assessment (CGPA) will be converted into equivalent marks as below.



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Grade Point	Equivalent Percentage
6.25	55%
6.75	60%
7.25	65%
7.75	70%
8.25	75%

4) after rule 9, the following rule shall be added namely;

'10 Savings: Nothing contained in these rules shall adversely affect the persons holding the post on the date of publication of these rules in the Tamil Nadu Government Gazette.

6. So, the above Saving Clause would clarify that the amended rule shall not adversely affect any person holding the post on date of publication of the amendment. This has got direct reference to the petitioners' case where the petitioners were holding the post of Associate Professor even before issuance of Government Order in G.O.Ms.No.95 in the year 2010. Despite the same, the respondents appears to have misconstrued the amendment and withheld the petitioners' entitlement for annual increment. In fact, One Dr.Sidhardhan and others filed a Writ Petition in W.P.(MD).Nos.8569 of 2016 and 12032 of 2017 before the High Court seeking for promotion to the level of Professor and Principal. According to the direction given by the Court vide order dated 07.06.2023, a Government Order in G.O.(D).No.229 dated 31.07.2023



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has been passed with regard to giving promotion to the petitioners. In such case, it is unreasonable to deny their earlier incremental dues on the ground that they did not possess P.hd., degree during the time of their appointments.

7. Since the petitioners have given representations to that effect and the same was not considered so far, I feel an appropriate direction should be given.

8. In the result, the Writ Petition is allowed and the respondents shall consider the petitioners' representations in the light of the above observations and pass orders by granting the annual increment along with monetary benefits from the year 2013 onwards and disburse the same to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes/No
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Speaking/Non-speaking order
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To



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G.K.ILANTHIRAIYAN, J.

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1. The Secretary to Government,
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