



WP.No.19769 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2024

CORAM

THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

WP.No.19769 of 2020

T.S.Nallaswamy

... Petitioner

-Vs-

1. The Principal Secretary to Govt. of Tamil Nadu,
Higher Education Department,
Fort St. George, Chennai-600 009.
2. The Director of Technical Education,
Directorate to Technical Education,
Guindy, Chennai-600 025.
3. The Accountant General (Accounts and Entitlement),
AG's Office Complex,
361 Anna Salai,
Teynampet, Chennai-600 018.
4. The Principal,
Sakthi Polytechnic College,
Sakthi Nagar-638 315.
5. The Director,
All Indian Council for Technical Education,
Ministry of Human Resource Development,
Government of India,
Nelson Mandela Marg, Vasant Kunj,
New Delhi-110 067.

... Respondents



WP.No.19769 of 2020

Prayer: Writ Petition is filed under Article 226 of The Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the files relating to the impugned orders in reference No. SPC / TSN/ CAS / 2020 dated 18.9.2020 and reference No.SPC / TSN/ CAS / 2020 dated 3.11.2020 passed by the 4th respondent and quash the same and consequently direct the respondents 1, 2 and 4 sanction the new pension and pay the earned and unearned leaves salary, medical leave reimbursement, and all other retirement benefits along with 10 percentage interest with effect from 1.6.2017 to the petitioner within a time frame as fixed by this Honourable High Court.

For Petitioner : Mr.G.Mutharasu

For Respondents : Mr.C.Jayaprakash
Government Advocate for R1 & R2
Ms.J.Sreevidya for R3
Mr.D.Balaraman for R4
Mr.D.Rabu Manohar for R5

ORDER

The instant writ petition has been filed challenging the impugned order of recovery dated 18.09.2020 and the consequential order dated 03.11.2020.

2. The learned counsel for the petitioner would submit that he is entitled to get the Academic Grade Pay as he was fully qualified for the



WP.No.19769 of 2020

same as on 01.12.2009 and that he has been paid the Academic Grade Pay of Rs.9,000/-. In the meanwhile, he was retired on 31.05.2017 and after his retirement, the 3rd respondent issued an order dated 18.09.2020, to recover a sum of Rs.5,00,266/- on the ground that the petitioner was not entitled to have such Academic Grade Pay.

3. Furthermore, when the petitioner claimed Earned and Unearned Leave from the respondents, the same was also rejected in view of the impugned recovery proceedings dated 18.09.2020. It is the submission of the learned counsel for the petitioner that he is fully qualified to get the Academic Grade Pay. Therefore, the recovery proceedings are in contravention to the applicable Rules. Further, the very issuance of the recovery proceedings after retirement and after a period of more than 5 years, would squarely be in contravention to the judgment of the Hon'ble Supreme Court in *State of Punjab and Ors Vs. Rafiq Masih (White Washer) etc.*, reported in *AIR 2015 SC 696*. Therefore, prayed to interfere with the impugned order by allowing the writ petition.



WP.No.19769 of 2020

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4. Per contra the learned Government Advocate would vehemently contend that the petitioner's entitlement of Rs.9,000/- was put to challenge by this petitioner in a batch of Writ Petitions in WP.Nos.7135 of 2020 etc., by and in which, the learned Single Judge, vide order dated 06.03.2024, held that the persons those who have been already paid the Academic Grade Pay and if there is any issue in respect of their entitlement, an individual notice was directed to be issued to them to decide their entitlement, until then it was directed to pay such Academic Grade pay, and that they have already preferred an appeal against the order of the learned Single Judge. In this scenario, it is the contention of the learned Government Advocate that the impugned order is perfectly in order and there are no ground to interfere with the same.

5. I have given my anxious consideration to either side submissions.

6. The specific contention of the learned counsel for the petitioner is that the petitioner is fully qualified to receive the Academic Grade Pay and that he has been receiving the same since 09.03.2009 and in the



WP.No.19769 of 2020

meanwhile, he also retired on 31.05.2017 on attaining superannuation. No doubt, the issue in respect of the entitlement of the Academic Grade Pay is still under challenge.

7. The learned Government Advocate and the learned counsel for the 4th respondent would fairly submit that the similar issue was put on challenge in a batch of writ petitions in WP.No.7135 of 2020 and the learned Single Judge vide order dated 06.03.2024 upheld the entitlement, and if at all if there is any issue in respect of entitlement, an individual notice was ordered to be given, and that until the decision, directed to continue the excess pay.

8. The other way of looking at the matter is, the recovery was effected after a period of 9 years, further the recovery notice was issued subsequent to the date of retirement qua 31.05.2017. Therefore, by applying the principle laid down in *White Washer's* case [cited supra], the impugned recovery notice is even otherwise liable to be interfered with. As a result of which, the impugned notice is liable to be quashed. As a



WP.No.19769 of 2020

concomitant, the petitioner is entitled for the benefit of earned and unearned leave.

9. In the result, this writ petition stands allowed. The impugned orders in reference No. SPC/TSN/CAS/2020 dated 18.9.2020 and reference No.SPC/TSN/CAS/2020 dated 3.11.2020 passed by the 4th respondent are set aside. No costs.

25.10.2024

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Index : Yes/No

Speaking order/Non-speaking order

NCC : Yes/No



WP.No.19769 of 2020

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WP.No.19769 of 2020

C.KUMARAPPAN, J

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WP.No.19769 of 2020

25.10.2024