



W.P.No.24236 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2024

CORAM

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.24236 of 2021 and
W.M.P.No.25551 of 2021

Dr.Nirmal Selvamony

... Petitioner

Vs.

1.The Registrar,
Central University of Tamil Nadu,
Thanjavur Road, Thiruvarur 610 004.

2.The Professor-in-charge (Establishment),
Central University of Tamil Nadu,
Thanjavur Road, Thiruvarur 610 004.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in its No.PF-1-2011/Teaching/2345 dated 06.10.2021 and quash the same and consequently direct the respondents to release the benefits such as salary for April 2018 and arrears of salary in Professor scale from 14.12.2014 upto 31.12.2015 and payments to the petitioner under NPS along with other admissible terminal benefits such as Gratuity, Earned Leave Encashment etc., with effect from 01.04.2018 along with interest.



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For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.K.Srinivasa Murthy, SPCGC

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ORDER

This Writ Petition has been filed seeking issuance of a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in its No.PF-1-2011/Teaching/2345 dated 06.10.2021 and quash the same and consequently direct the respondents to release the benefits such as salary for April 2018 and arrears of salary in Professor scale from 14.12.2014 upto 31.12.2015 and payments to the petitioner under NPS along with other admissible terminal benefits such as Gratuity, Earned Leave Encashment etc., with effect from 01.04.2018 along with interest.

2. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

3. The petitioner herein was originally appointed as Assistant Professor in the Madras Christian College and then promoted to the post of Associate Professor on 17.02.1996 and after completing 28 years of service, the petitioner took voluntary retirement from the Madras



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Christian College and relieved on 08.02.2010. Thereafter, the petitioner was engaged as Visiting Faculty and co-ordinator of language programmes in the Central University of Tamil Nadu, Thiruvarur in the year 2010.

4. Thereafter, the petitioner participated in the recruitment process for the post of Associate Professor in response to the notification issued by the respondent University dated 29.03.2011 and accordingly, the petitioner was selected and appointed as Associate Professor in English through an office order dated 06.01.2012. Thereafter, the petitioner was promoted as professor through the proceedings dated 23.11.2017 and he was extended the scale under PB4 and thereafter, the petitioner retired from service on attaining the age of superannuation on 30.04.2018.

5. Thereafter, the petitioner made a claim for payment of amount under NPS and other terminal benefits. But the respondent University instead of releasing the terminal benefits of the petitioner for the service rendered by him in the respondent University, issued the impugned



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communication dated 06.10.2021 requiring the petitioner to remit an amount of Rs.16,49,939/- purported to be an excess salary paid to the petitioner. As seen from the said communication, the respondent University revised the pay of the petitioner by an order dated 12.01.2021 and arrived at a conclusion that the petitioner was paid excess salary. Aggrieved by the said communication dated 06.10.2021, the petitioner approached this Court by filing the present Writ Petition to quash the same and consequently sought for release of the terminal benefits due and payable to the petitioner.

6. In response to the notice issued by this Court, the respondents filed a counter contending that the petitioner's appointment in the respondent University is by way of re-employment, as the petitioner had previously worked in the Madras Christian College for a period of 26 years and has been drawing pension for the said service rendered by him and therefore, his pay has to be fixed on his re-employment by duly adjusting the pension that the petitioner has been drawing for the service rendered in the Madras Christian College. But, his pay was fixed without



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adjusting the pension amount that the petitioner has been drawing. In support of the said stand of the respondent University, the respondents placed reliance on the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986 and the instructions issued by the Department of Personnel and Training, Government of India, bearing No.3/3/2016-Estt (Pay II) dated 01.05.2017. The copies of the said proceedings are also placed on record.

7. A perusal of the above said orders relied upon by the respondent University shows that the same apply to the persons who are re-employed in Civil Services and posted in connection with the affairs of the Union Government. But the petitioner herein is not the one who was re-employed in Civil Services or the post in connection with the affairs of the Union Government. Therefore, both proceedings that are sought to be relied upon by the respondent University are of no support to sustain the impugned action of the respondents.

8. Though it is contended by the learned Standing Counsel for the



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respondents that the respondent University is established under a Central enactment and therefore, the re-employment of the petitioner in the respondent University is to be construed as an employment in connection with the affairs of the Union Government and in addition to the same, he also placed reliance on a resolution dated 10.12.2011 passed by the Executive Council of the respondent University in 5th meeting, wherein, the issue relating to Travelling Allowance and other entitlement of the Teaching and Non-Teaching Staff were placed for consideration as Agenda Item No.17. While, deciding the said Agenda Item, it was resolved that the University is desirous of following the rules pertaining to the employees of the Central Government. The Agenda Item No.17 and the resolution passed by the Executive Council is extracted hereunder:

"Agenda Item No.17 : Travelling Allowance and other entitlements of Teaching and Non-Teaching Staff"

The Council was informed that the University has already recruited the first batch of non-teaching staff on regular basis and is in the process of recruiting the teaching posts. It has become necessary for it to prescribe the Rules that have to be followed



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for such categories of the regular staff. Being an Autonomous Institution of Government of India, the University is desirous of following the below mentioned Rules (as amended from time to time) for its employees who have joined / would be joining on regular basis.

1.FR & SR - Part I - For pay related matters

2.CCS (Leave) Rules

3.CCS (Joining Time) Rules

4.CCS (LTC) Rules

5.FR&SR- - Part II - TA Rules

6.Instructions of UGC on service related matters

7. Instructions of GOI not covered within above.

Decision :

The Executive Council approved that the University may follow the rules as listed above for all its employees. "

9. The contention of the learned Standing Counsel for the respondent University that the petitioner is to be treated as an employee re-employed in connection with the affairs of the Union Government cannot be accepted as the respondent University is an autonomous body



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governed by different set of rules framed for itself and it has nothing to do with the affairs of the Government of India. Mere fact that the respondent University was established under the Central Enactment, does not make it a part of the Government of India. Then coming to the reliance placed on the resolution passed by the Executive Council is concerned, in the considered view of this Court, the said resolution is only in respect of the Travelling Allowance and other entitlements, but not in connection with the pay scales or pay fixation of the employees of the respondent University.

10. In addition to the above, the petitioner participated in the recruitment process in response to the advertisement issued by the respondent University. When he was appointed by a specific office order in a particular pay scale and his pay scale was revised by granting additional increments from time to time and it is not as if the petitioner has suppressed the fact of his previous employment in the Madras Christian College and it is also not the case of the respondents that the petitioner has suppressed the same. When the petitioner was appointed in the post of Associate Professor with the specific pay scale and the



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petitioner has drawn salary in terms of the said scale alone, it cannot be said that the petitioner has drawn excess salary. Even otherwise, similar aspect has fallen for consideration before the High Court of Delhi in the case of ***Uma Kant Sadhav and Another Vs. Union of India and Others***, reported in ***2023 SCC Online Del 2875***, wherein, it was held as under:

"37. Therefore, going by the aforementioned judgments including of this Court in E. Sreedharan (supra), and coming home to the facts of the present case, it is evident that Petitioners were not 're-employed' as the advertisement invited applications from general public fitting Neutral Citation Number: 2023:DHC:3122 into the eligibility conditions mentioned therein. There was no requirement of the retired Government employees submitting their PPOs, unlike in the advertisement issued by the Respondents in 2018. Clearly, the representation to the aspiring candidates was that on selection, they would be 'appointed' and would be paid the salary mentioned in the advertisement. It also needs a mention that at no stage, Petitioners were informed or given any impression that their pay will be fixed after deducting the pension earned by them for their service in the erstwhile Government departments. On the contrary, Section 20H of 2010 Act and Rule 3 of NMA Rules, 2011 clearly indicate that the pay of the Petitioners is ordained to be fixed in the Pay Band Rs.67,000-79,000/- with a Basic Pay of Rs. 67,000/- and cannot be varied to their disadvantage. Moreover, as held by the Supreme Court Pension is not the bounty of the State and the right to draw the



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same cannot be taken away or abridged in any manner in course of a subsequent employment unless statute under which the employment is made specifically provides for such abridgement. In this case, there exists no provision in the Act/Rules permitting the Respondents to abridge the indefeasible right to pension earned by the Petitioners and the impugned action is in the teeth of Section 20H and Rule 3."

11. Similarly, this Court also had an occasion to deal with similar situation in the case of ***P.Arumugam Vs. The Registrar, Tamil University Thanjavur, reported in (2006) 3 MLJ 1025***, wherein, the Division Bench of this Court has held as under:

"11.5. In the above stated circumstances, the question that remains to be considered is as to whether the respondent can be permitted to re-work the fixation of pay and the excess payment, if any, paid to the appellant based on wrong fixation of pay right from 01.02.1984 and seek for recovery of a huge sum of Rs.3,95,093/- from the terminal benefits payable to the appellant. It is relevant to state that between 01.02.1984 i.e. the date of appointment of the appellant as Superintendent in the respondent University, till he was allowed to retire from service on 31.12.2001, the respondent did not raise its little finger as regards the alleged excess payment paid to the appellant. On the other hand, knowing



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fully well about the previous employment of the appellant, the respondent University in its offer of appointment, dated 13.06.1983 as well as the order of appointment dated 21.0.1983, specifically mentioned that the pay of the appellant was being fixed in a particular scale ensuring the pay last drawn by the appellant in his previous employment. That apart, it is not known why inspite of the Audit Objections raised as early as in the year 1984-85, the respondent did not intimate the same to the appellant nor taken any proceedings for suitably re-fixing the pay fixed at the time of issuance of the order of appointment in accordance with Rule 44(4)(i) of the Tamil Nadu Pension Rules. The respondent thus, with its eyes wide open, fixed the pay of the appellant in a particular scale of pay applicable to him and also allowed him to draw that pay throughout his service in the respondent university till the date of his retirement. Therefore, while the respondent was squarely responsible for the wrong fixation of pay, if any, of the appellant, the appellant was never to be blamed as regards his pay fixation. Neither in the offer of appointment nor in the appointment order, the appellant was ever reminded about any intimation required as regards the receipt of pension in the erstwhile service rendered by him in the State Government.

11.6. Having regard to all the above factors, we are of the considered opinion that the respondent are now estopped



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from attempting to reverse the whole process of pay fixation made and the payment of salary made to the appellant right from the date of his appointment till the date of his superannuation. For whatever excess payment made to the appellant, even if the same was due to wrong fixation of pay contrary to the provisions contained in Rule 44(4)(i) of the Tamil Nadu Pension Rules, the whole liability will have to be borne by the respondent or if need be, the said liability to be recovered from the concerned authorities who was/were responsible for the commission of such lapses which resulted in any excess payment of salary. Certainly, in our considered view, the appellant cannot be made to bear such a huge liability and recovery of the same to be permitted, that too from the terminal benefits payable to the appellant. Such a course, as rightly held by the Single Judge, would be highly inequitable and will be totally unjustified."

12. In the light of the above decision of the High Court of Delhi and considering the facts of the present case as noted above, this Court is of the considered view that the grounds on which the respondent University proposed to recover the amount of Rs.16,49,939/- cannot be sustained.



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13. Further, as already noted above, the petitioner retired from service on 30.04.2018 on attaining the age of 65 years. The amounts that are now alleged to have been paid in excess of his entitlement to the petitioner are pertaining to the period commencing from 06.01.2012 onwards. The so called excess amount paid to the petitioner is sought to be recovered through the impugned communication dated 06.10.2021 (i.e) almost after a decade.

14. The Hon'ble Apex Court had an occasion to consider the scope and ambit of such recovery proceedings and laid down the general guidelines in the case of ***State of Punjab and Others Vs. Rafiq Masih (white Washer) and Others, reported in (2015) 4 SCC 334***, as under:

"18. 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:



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(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."

15. In terms of Clauses 2 and 3 of paragraph No.18 of the above decision, the recovery from the retired employee is held to be impermissible in law. As already noted above, the petitioner herein retired from service in the year 2018 and the proposed recovery is in the year 2021 (i.e) after a period of three years. In the light of the law laid



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down by the Hon'ble Apex Court as noted above, the impugned recovery cannot be sustained. In the light of the above, the impugned communication dated 06.10.2021, is liable to be quashed.

16. Accordingly, this Writ Petition is allowed and the impugned order dated 06.10.2021 is quashed. Consequently, the respondents are directed to release all the terminal benefits and other amounts which are otherwise due and payable to the petitioner consequent upon his retirement with effect from 30.04.2018 and pay all such amounts as expeditiously as possible within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes /No
Speaking / Non-speaking
Neutral Citation : Yes / No
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MUMMINENI SUDHEER KUMAR, J.

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To

- 1.The Registrar,
Central University of Tamil Nadu,
Thanjavur Road, Thiruvarur 610 004.
- 2.The Professor-in-charge (Establishment),
Central University of Tamil Nadu,
Thanjavur Road, Thiruvarur 610 004.

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