IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.24592 of 2023
and WMP.No.24021 of 2023

R.Arulnandhisivam ... Petitioner

Vs.

1.State of Tamilnadu,
Rep. By its Principal Secretary to Government,
Finance Department,
Fort St.George,
Chennai 600 009

2.The Principal Secretary to Government,
Government of Tamilnadu,
Department of Higher Education,
Fort St.George,
Chennai 600 009

3.The Registrar,
Annamalai University,
Annamalai Nagar,
Chidambaram Taluk,
Cuddalore District ... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus directing the respondents to pay the petitioner the balance amount of gratuity of Rs.6,26,330/- with interest @ 12% p.a. and the balance amount of earned leave wages of Rs.5,80,019/- with interest @ 12% p.a. with effect from 01.11.2019 till the date of payment and award costs.

For Petitioner : Mr.S.Ayyathurai

For Respondents

For R1 : Mr.U.M.Ravichandran,
Special Government Pleader

For R2 : Mrs.S.Anitha,
Special Government Pleader

For R3 : Mr.J.Ravindran,
Additional Advocate General
Assistated by
Mr.E.C.Ramesh,
Standing Counsel

ORDER

This writ petition has been filed for direction to the respondents to pay the petitioner, the balance amount of gratuity of Rs.6,26,330/- with interest @ 12% p.a. and the balance amount of earned leave wages of Rs.5,80,019/- with interest @ 12% p.a. with effect from 01.11.2019 till the date of payment.

2. The case of the petitioner is that he joined the service of the 3rd Respondent University as Instructor on 1.10.1996. He retired from

service as Instructor Special Grade on 31.10.2019. The petitioner was informed by the 3rd Respondent on 27.01.2020 that he would be paid only 50% of the earned leave wages as done earlier in similar cases and he was paid gratuity of Rs.6,26,330/- out of Rs.12,52,660/- (50%) towards gratuity and Rs.5,80,019/- out of Rs. 11,60,038/- (50%) towards earned leave wages. He sent representation dated 22.06.2023 to the Respondents for payment of balance amounts. However, the same has not been considered so far. Hence, he has filed this writ petition for direction to the respondents for payment of balance gratuity and earned leave wages with interest @12% p.a. from 01.11.2019 till the date of payment.

3. The learned counsel appearing for the petitioner submitted that the only contention raised by the respondents during the course of hearing is that there were audit objections, but no proof has been filed or produced to that effect. As held by this Court in W.P. (MD)No. 6635 of 2019 & W.A. (MD) No. 684 of 2019, the local fund audit cannot object to pay fixations by the universities for their employees as they are governed by statutes of the universities. Therefore, the respondents

cannot withhold the balance amount of gratuity and earned leave wages. He further submitted that in any event, the retirement monetary benefits, i.e. pension, gratuity and earned leave wages are the property rights of the petitioner and therefore the denial of the balance amount of gratuity and earned leave wages would amount to Violation of Articles 21 and 300-A of the Constitution. Further, as the balance amount of gratuity and earned leave wages have not been paid since 2017, the petitioner is entitled to get interest thereon.

4. Heard, the learned counsel appearing on either side.

5. In this regard, Dr.S.Muthukumaran Committee was constituted, in order to formulate guidelines to bring about uniformity of service conditions among the non-teaching employees of all the universities on par with Government employees. In the year 2006, the Government issued G.O.Ms.No.402, Higher Education (H2 Department, dated 13.12.2006, based on the recommendations of the Government order that:

(a) the scales of pay of all the non-teaching staff of all the universities should be on par with the employees in the same category in the various Departments of the Government of Tamil Nadu.

(b) The existing posts such as Senior/Deemed Superintendent, Senior Assistants shall not be filled up in future. These posts shall be converted as Selection Grade for those who have put in 10 years of service in the same post and Special Grade for those who have put in 20 years of service in the same post. It may be note that the L.F.A's objections and the orders of the Government in the G.O. are the same.

6. The said Government Order was challenged before this Court in W.P.No.49 of 2007 etc., batch and this Court held that the G.O.Ms.No.402, Higher Education (H2) Department dated 13.12.2006, as in operative and *ultra vires* of the provisions of the respective University Acts. The relevant portions of the order is extracted hereunder:-

"18. The legislature has enacted the Statutes, namely, the Acts of Universities But it is to be borne in mind that the legislature, while enacting the Acts, has delegated all powers on the Syndicate with regard to

whole affairs of the Universities. In other words, the Universities, being body corporate having perpetual succession, have got a separate legal entity and, as such, the rules framed by the Government shall not be applicable, unless specifically adopted by the Universities in accordance with the provisions of the Acts by which the Universities are constituted. If the State makes rules or issues any executive instructions by way of regularization of services of the staff of Universities, it would be in violation of the provisions contained in Article 309 of the Constitution of India and opposed to the Constitutional scheme of equality clauses contained in Articles 14 and 16."

"32(i). As the law has been made by the State Legislature conferring the power of regulation of service conditions of non-teaching staff of the Universities on the Syndicate, the Executive is not empowered to pass the impugned order in regard to that matter in exercise of his executive powers under Article 162 of the Constitution, nor can he exercise such power with reference to that matter through the officers subordinate to him".

"(v) Mere funding of the State to the Universities does not confer any privilege on the State to issue

executive orders, so as to interfere with the administration of the Universities."

"(vi) Executive order, ie., the impugned order of the first respondent in G.O.Ms.No.402, Higher Education (H2) Department, dated 13.12.2006 is inoperative and it is accordingly declared ultra vires to the provisions of the Acts".

7. Therefore, the Syndicate has been conferred the authority through the University Act, to regulate the service conditions of the employees of the University and to fix their scale of pay. Even then, the Syndicate had passed Resolution No.41, dated 08.02.2017 ordering reduction of scales of pay of the non-teaching staff and pension of retirees. It was also challenged before this Court in W.P.No.10818 of 2017. However, subsequently, it was withdrawn with liberty to challenge as and when any adverse order was passed

8. Now, the second respondent passed Resolution No.9, dated 24.12.2020 and accordingly, the Finance Committee resolved that the pay and allowances for the serving employees and retired employees for stage movement of 7, 14 and 21 years against Government norms of

completing 10 years and 20 years for Special Grade and additional increments for 30 years of service shall be worked out from 1994 and placed before the Finance Committee. After the decision of the Finance committee necessary action including serving notices for refixing the pay for serving employees and pension for pensioners was done. However, no order has been passed by the Finance Committee so far. That apart, the petitioner was retired from his service as early as on 31.10.2019. However, he has not been paid the balance amount of gratuity of Rs.6,26,330/- and the balance amount of earned leave wages of Rs.5,80,019/-. Therefore, the petitioner submitted a detailed representation on 22.06.2023.

9. In view of the above discussion, the third respondent is directed to consider the representation submitted by the petitioner dated 22.06.2023 and pass orders in merits and in accordance with law, in view of the order passed by this Court in W.P.No.49 of 2007 etc., batch of writ petitions, challenging the Government order in G.O.Ms.No.402, Higher Education (H2) Department, dated 13.12.2006 within a period of twelve

weeks from the date of receipt of a copy of this order.

10. With the above direction, this writ petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

25.03.2024

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

1.Principal Secretary to Government,
State of Tamilnadu,
Finance Department,
Fort St.George,
Chennai 600 009

2.The Principal Secretary to Government,
Government of Tamilnadu,
Department of Higher Education,
Fort St.George,
Chennai 600 009

3.The Registrar,
Annamalai University,
Annamalai Nagar,
Chidambaram Taluk,
Cuddalore District

G.K.ILANTHIRAIYAN, J.

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