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W.P.No.25757 of 2023 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2024

CORAM:

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

W.P.Nos.25757, 27158, 27332 & 32496 of 2023
and
W.M.P.Nos.25185, 25186, 26697, 26702, 26762,
26763, 32102 to 32104 of 2023

K.Sivasubramanian	... Petitioner in W.P. No.25757 of 2023
V.Raja	... Petitioner in W.P. No.27158 of 2023
M.Krishnamoorthi	... Petitioner in W.P. No.27332 of 2023
R.Srinivasan	... Petitioner in W.P. No.32496 of 2023

-Vs -

1. The State of Tamil Nadu,
Rep by Secretary to Government,
Higher Education Department,
Fort St. George,
Chennai – 9.
2. The Syndicate of Annamalai University,
Rep. by its Secretary,
Annamalai University,
Annamalai Nagar,
Chidambaram.



W.P.No.25757 of 2023 etc.

3. The Registrar,
Annamalai University,
Annamalai Nagar,
Chidambaram.
4. The Deputy Director,
Local Fund Audit,
Annamalai University,
Annamalai Nagar,
Chidambaram.
5. The Finance Committee of
Annamalai University,
Rep. by its Secretary,
Annamalai University,
Annamalai Nagar,
Chidambaram.

... Respondents

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in Resolution No.39, dated 30.09.2021, on the file of the second respondent and consequential order in University Orders No. 467/2023 [C1] dated 31.07.2023, Nos.509 to 511/2023[C1] dated 04.09.2023, respectively, on the file of the third respondent and quash the same as arbitrary, unconstitutional, in violation of Article 21, incompetent and without jurisdiction and further to direct the respondents to release the amount recovered in pursuant to the above order and release full pensionary benefits of the petitioner with 12% interest till the date of payment, in view of the judgment of the Apex Court reported in (2015) 4 SCC 334 and 2022 SCC online SC 536.



WEB COPY



W.P.No.25757 of 2023 etc.

In all W.Ps.

For Petitioners : Mr.M.Muruganantham
For Respondents
For R1 : Mrs.S.Anitha
Special Government Pleader
For R2 to R5 : Mr.J.Ravindran
Additional Advocate General
Assisted by Mr.E.C.Ramesh

COMMON ORDER

These writ petitions have been filed challenging the order passed by the third respondent thereby ordered to recovery of excess amount by cancelling the promotion granted to the petitioners and also refixed their pay scale.

2. All the petitioners are the retired employees of the respondent university viz., Annamalai University. All the petitioners were retired as Assistant Section Officers. They were originally appointed as Attendant and the said post was confirmed by the respondent university. After completion of nearly 30 years of service, they were notionally promoted as “Deemed Assistant” on different dates during the year 2011. Thereafter, they were redesignated as “Assistant” by dropping the prefix “Deemed”. Subsequently, on 03.05.2018, the



W.P.No.25757 of 2023 etc.

nomenclature of their post was changed as “Assistant Section Officer” from Assistant by an order dated 03.05.2018 on the file of the third respondent. Thereafter, they are all retired from service on their attainment of superannuation age.

3. Now the third respondent issued show cause notice directing the petitioners to submit their explanation as to why the promotion given to them should not be cancelled and their pay have to be re-fixed in the post of Junior Assistant as it existed on the date of prior to such promotion. Further the show cause notice issued on the ground that their promotion is not in tune with the government order in G.O.Ms.No.107, Personnel and Administrative Reforms Department dated 18.08.2009.

4. The specific case of the petitioners is that they have not misrepresented or suppressed any of the fact to enjoy the benefit of promotion. Further, they did not make any representation for seeking promotion. Having been promoted them to the post of Assistant Section Officer and revised their pay scale according, after retirement of their service, it is not permissible to recovery any amount and also revise their



W.P.No.25757 of 2023 etc.

scale. It is clear violation of the dictum laid down by the Hon'ble Supreme Court of India reported in **(2015) 4 SCC 334** in the case of State of **Punjab and ors Vs. Rafiq Masih and ors**. Hence, they prayed to quash the impugned order passed by the third respondent.

5. The third respondent filed counter and the learned Additional Advocate General submitted that all the petitioners were promoted without required qualification. They were also promoted without following any of the procedure contemplated in the government order. All the petitioners were obtained their bachelor and master degree without completing their 10th standard and 12th standard. It is against the government order in G.O.Ms.No.107, Personnel and Administrative Reforms Department dated 18.08.2009. Therefore, the third respondent initiated proceedings to cancel the promotion given to the petitioners from the post of Junior Assistant to Deemed Assistant and subsequently promoted to the post of Assistant Section Officer.

6. Heard the learned counsel appearing on either side and perused the material placed before this Court.



W.P.No.25757 of 2023 etc.

WEB COPY

7. As per the government order in G.O [Ms] No.107 Personnel and Administrative Reforms Department dated 18.08.2009, those who possessed Diploma / Degree / P.G Degree through Open University System after passed 10th standard and 12th standard alone can be considered for appointment or promotion into Public Services. As per G.O (Ms.) No. 116, Personnel and Administrative Reforms [M] Department dated 18.08.2010, those who possesses a Post Graduate Degree through Open University System without obtaining a basic degree cannot be considered as possessing a Post Graduate degree for appointment to Public Services. In G.O (Ms.) No.65 dated 02.07.2014 of Personnel and Administrative Reforms (S) Department had notified the amendment with respect to the above subjects and the amendment made was deemed to have come into force on the 18th of August, 2009. The Amendment notified in the above G.O is extracted below :-

“AMENDMENT

In the said Rules-

In rule 19, in the Explanation for item (i) the following item shall be substituted, namely:



W.P.No.25757 of 2023 etc.

(i) *In cases where the Special Rules prescribe a diploma or a degree or a post-graduate degree as a qualification for appointment, then:*

a. A diploma obtained, after completion of S.S.L.C or Higher Secondary [10+3 (3 Years Diploma)] or [10+2+2 (Lateral Entry)].

b. A degree obtained after completion of S.S.L.C and Higher Secondary (10+2+3 or more).

c. A post graduate degree obtained after completion of S.S.L.C., Higher Secondary and a degree (10+2+3+2 or 3) from any University or institution recognized by the University Grants Commission mentioned in Schedule II to this part shall be recognized as the Qualification”

8. In view of the above government orders, the matter pertaining to the promotion of the petitioners were placed before the Syndicate along with other issues pertaining to other Junior Assistants who were promoted as Deemed Assistants without having account test qualification. On considering the above matters, the Syndicate resolved that the persons who were promoted without account test qualification and acquired their degree qualification without following 10+2+3 pattern, shall be reverted back to their earlier position vide its resolution



W.P.No.25757 of 2023 etc.

No.39 dated 30.09.2021. On the strength of the resolution, the third respondent issued show cause notice to all the petitioners and directed them to show cause within a period of 15 days as to why the promotion given to them should not be cancelled and their pay has to be re-fixed in the post of Junior Assistant as it existed on the date prior to such promotion.

9. In the judgment relied upon by the learned counsel appearing for the petitioners reported in **(2015) 4 SCC 334** in the case of ***State of Punjab and ors Vs. Rafiq Masih and ors.***, the Hon'ble Supreme Court of India held as follows:-

“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:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).



W.P.No.25757 of 2023 etc.

(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.”*

10. All the petitioners were employed as Group B/Class II employees since the Assistant Section Officer cadre falls under the Group B cadre. Further immediately after their retirement viz., even before one year, Syndicate resolved to revert back to their earlier position and on the strength of the resolution, the third respondent issued show cause notice. Further recovery proceedings have been initiated within a



W.P.No.25757 of 2023 etc.

period of five years from the date of excess payment made to the petitioners. That apart, the petitioners had wrongfully been required to discharge their duty of a higher post and they were paid accordingly. Therefore, the petitioners did not fall any of the category as held by the Hon'ble Supreme Court of India.

11. In view of the above discussions, this Court finds no infirmity or illegality in the orders passed by the third respondent and all the writ petitions are devoid of merit and liable to be dismissed. Accordingly, all the Writ Petitions are dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no orders as to costs.

28.03.2024
(2/2)

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

rts



W.P.No.25757 of 2023 etc.

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G.K.ILANTHIRAIYAN. J.

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