



W.P. Nos.13320 to 13334 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.08.2024

Pronounced on : 30.10..2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.Nos.13320 to 13334 of 2017

W.P.No.13320 of 2017

A.Amuthan

... Petitioner

Vs.

- 1.The Govt. of Puducherry,
Rep. by its Secretary to Education,
Puducherry-605001.
- 2.All India Council For Technical Education
Rep. by its Member Secretary,
7th Floor, Chanderlok Building, Janpath
Connaught Place, New Delhi-110001.
- 3.The Member Secretary,
Pondicherry Engineering Collge,
Puducherry-605001.
- 4.The Principal,
Pondicherry Engineering College,
Puducherry-605014.
- 5.The Secretary,
Education cum Pro-Chancellor,
Puducherry Technological University
Puducherry – 605014.



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6.The Vice-Chancellor,
Puducherry Technological University,
Puducherry – 605014.

7.The Registrar,
Puducherry Technological University,
Puducherry – 605014.

*R5 to R7 impleaded vide order dated 14.03.2023 made in WMP.22396 of 2022 in W.P.No.13320 of 2017

...Respondents

Prayer in : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records of the 2nd respondent made in Notification No.Nil dated 04.01.2016 in All India Council for Technical Education (Clarifications on certain issues/anomalies pertaining to Qualifications, Pay Scale, Service Conditions, Career Advancement Scheme (CAS) etc., for Teachers and other Academic Staff of Technical Institutions (Degree/Diploma) 2016 in so far as Clause (ii), (iii) and (iv) of the Clarification to issue raised in S.I.No.25 as notified in the Gazette of India No.7 dated 06.01.2016 and the consequential Office Order made in PEC/Estt. (T)/E, 11/Adv.Inc.Ph.D./2017 No.1007 dated 28.04.2017 issued by the 4th respondent and quash the same in so far as the petitioner is concerned and consequently direct the respondents 2 and 4 to restore the basic pay of the petitioner and refund any recovery made and forbear the respondents 2 and 4 in any way recovering or attempting to recover any increments whatsoever paid to the petitioner and continue to retain the petitioner in the present basic pay.



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In all Writ petitions:

For Petitioner : Mr.Silambanan
Senior Counsel for
M/s.Kaavya Silambanan Associates and
M/s.K.Sathish
For R1 & R3 : Mr.R.Syed Mustafa
Special Government Pleader (Pondy)
For R2 : Mr.B.Rabu Manohar

COMMON ORDER

The issue that arise for consideration in all these batch of writ petitions is one and the same and as such they are taken up for consideration together and accordingly, they were heard together and are being disposed of by this common order.

2. All the petitioners, in these batch of writ petitions, are working as Professors or Associate Professors in Pondicherry Engineering College, Puducherry (for short 'PEC') and they all acquired Ph.D degree during the years 2006 to 2015, after they were appointed in the PEC in the post of Lecturer / Assistant Lecturer, etc, all of them were also extended the benefit of three incentive increments for having acquired Ph.D degree. While they were in service, they have been drawing the said incentive increments that was awarded in terms of All India Counsel For Technical Education (in short



'AICTE') [Pay scales, Service Conditions and Qualifications for the Teachers and other Academic Staff in Technical Institutions) (Degree) Regulations, 2010]. While so, the individual impugned orders dated 28.04.2017 were issued by the 4th respondent revising the pay of the petitioners on the ground that there was an Audit objection raised by the Accountant General and also in view of the notification dated 04.01.2016 issued by the AICTE. The two reasons that are mentioned for issuing the impugned order reads as under:

“a) The advance increments for those who acquired Ph.D/M.Phil/M.Tech. And other equivalent qualifications, while in service are not allowed in the PB-4 (Rs.37400-67000).

b) For staff in PB-3 (Rs.15600-39100) three advance increments for acquiring Ph.D is entitled from 05.03.2010 only i.e. from the date of publication of AICTE Notification in the Official Gazette. For those who acquired Ph.D. from 01.01.2006 to 04.03.2010, only two advance increments be allowed.”

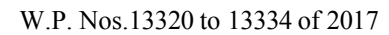
It is aggrieved by the said orders, the petitioners approached this Court by filing these present writ petitions. This Court, while entertaining these writ petitions passed an interim order, dated 24.05.2017 to maintain status quo as on that day.



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3. Heard Mr.Silambanan, learned Senior Counsel for Ms.Kaavya Silambanan Associates for the petitioners and Mr.Syed Mustafa, learned Special Government Pleader, Puducherry for the 1st and 3rd respondents and Mr.B.Rabu Manohar, learned counsel for the 2nd respondent.

4. The learned Senior Counsel appearing for the petitioners contended that the respondents have totally misconstrued the notification dated 04.01.2016 and the clarification issued thereunder at SI.No.25 and 27, and thereby issued the impugned proceedings revising the pay of the petitioners and proposing to recover certain amounts from the petitioners without even following basic principles of natural justice and without even putting the petitioners on notice. The learned Senior Counsel also has drawn the attention of this Court to the clarifications issued through notification dated 04.01.2016 and contended that the respondents are not entitled to withdraw the incentive increments that were awarded in favour of the petitioners, as all the petitioners herein have already acquired Ph.D decree prior to the date of AICTE Notification, i.e., 04.01.2016 and therefore, they are very much entitled to draw the incentive increment that was already



5. In this connection, he has also drawn the attention of this Court to the further clarification that was issued by the AICTE through its notification dated 20.05.2020 at Serial No.4. He also placed reliance on a judgment rendered by the *High Court of Gujarat* in the case of *Dr. Prakash Chandra Chaudhary vs State of Gujarat* in *R/Special Civil Application No.12012 of 2019* dated 02.02.2022.

6. On the other hand, Mr. Syed Mustafa, learned Special Government Pleader appearing for the respondents 1 & 3 contended that, the Ph.D degree is a mandatory and essential qualification even in terms of the AICTE notification, on revision of pay scales and conditions of service of Teachers, Librarians and Physical Education Personnel of Degree Level Technical Institutions, issued through notification dated 15.03.2000 and therefore, the qualification of Ph.D acquired by the petitioners cannot be treated as a higher qualification entitling them for grant of incentive increments in terms of AICTE Regulations, 2010. He also contended that the Ph.D qualification is a



mandatory qualification for the post of Professors by the year 2000 itself and hence treating the same on higher qualification for awarding incentive increments does not arise.

7. The only question that would arise for consideration in these batch of writ petitions is whether the respondent PEC is justified in revising the pay of the petitioners basing upon the clarification said to have been issued by AICTE through its notification dated 04.01.2016. It is not in dispute that all the petitioners herein were granted non-compoundable advance increments in terms of the AICTE Regulations, 2010 for having acquired Ph.D degree while they were in service. Therefore it is necessary to notice whether the clarification said to have been issued by the AICTE through its notification dated 04.01.2016 can be the basis for withdrawing such non-compoundable advance increments that were awarded in favour of the petitioners or not. The said clarification at Serial No.25 reads as under:

<i>Sl. No</i>	<i>Issue</i>	<i>Clarification</i>
25	Admissibility for Non-compounded advance increments/ Non- compounded increments for higher qualifications (Degree and	(i) There shall be no increments on completion of PDF/D.Sc fellowship programs.



Sl. No	Issue	Clarification
	Diploma Institutions) as a incentive for Ph.D / M.Tech and other higher qualifications.	(ii) There shall be no advance increments for acquiring M.Tech/M.Phil or Ph.D degree to those who are already working as a regular faculty with lower qualification and where such higher basic qualifications are/were essential for the post. (iii) Non-compounded advance increments (Three/Two/One) on acquiring Ph.D/M.Phil/M.Tech. And other equivalent qualifications, while in service, wherever applicable in AICTE Regulations, 2010 shall be granted in PB-3 (Rs.15600-39100) only. The advance increments for those who acquired Ph.D/M.Phil/M.Tech and other equivalent qualifications, while in service are not allowed in the PB-4 (R.37400-67000). (iv) Associate Professor who has completed Ph.D and other higher qualifications while in service/ or directly recruited will not be given any advance increment and their basic Pay will be fixed as per rule. (v) No advance increments are admissible to those who acquired M.E/M.Tech qualification prior to 01-01-2016, while in service.



8. From the above clarification in Column 2 at Serial No.iii, it is stated that the advance increments for those who acquired Ph.D/M.Phil/M.Tech and other equivalent qualifications while in service are not allowed in the PB-4. Thus, basing upon the said clarification, the impugned proceedings have been issued by the respondent No.4. The said clarification that was issued through notification dated 04.01.2016 was further clarified by the AICTE by issuing another notification dated 20.05.2020 wherein at Serial No.4 it was clarified that the clarification that was issued under notification dated 04.01.2016 shall be applicable for those who acquired Ph.D degree after 04.01.2016 only. The relevant clarification at Serial No.4 of the notification dated 20.05.2020 reads as under:

<i>Sl.No</i>	<i>Issue</i>	<i>Clarification</i>
Additional increment as an incentive for acquiring higher qualifications		
4.	Whether three advance increments shall be application as an incentive for acquiring a Ph.D. degree during service?	In the clarification dated 04 th January 2016 it has been clarified at Sr.No.25 that the advance increments for Ph.D. are not allowed for the incumbents who are in PB-4 (Rs.37400-67000). However, this Clarification



<i>Sl.No</i>	<i>Issue</i>	<i>Clarification</i>
		shall be applicable for those acquiring Ph.D. degree after the date of publication of AICTE clarification dated 4 th January 2016.

9. In the cases on hand, admittedly all the petitioners have acquired the Ph.D degree much prior to the year 2016 and they were all awarded with the incentive increments for having acquired such Ph.D degree, much prior to 04.01.2016. Thus, the action of the respondents in revising the pay of the petitioners by withdrawing the incentive increments basing upon the clarification, issued through notification dated 04.01.2016, cannot be sustained in the teeth of further clarification, issued by the AICTE through notification dated 20.05.2020.

10. When a similar aspect has come up for consideration before various High Courts, basing upon the clarification issued in notification dated 20.05.2020, it was conceded by the learned counsel appearing in the said



matters and accordingly, the matters were closed, upholding the right of the Teachers who are drawing the non-compoundable advance increments. At this stage, it is relevant to refer to a decision rendered by the **High Court of Gujarat** in the case of **Jitendrakumar Chandulal Dave vs State of Gujarat** in **R/Special Civil Application No.12012 of 2019** dated 02.02.2022 wherein it was held as under:

“5.(v) It is also to be noted that even the AICTE in its communication dated 15.10.2020 which is placed on record has opined that the cases of faculty members who had joined services before 05.03.2010 and are otherwise eligible to move to AGP of Rs.9,000/- (stage 4) will continue to be processed as per the provisions mentioned in para 3.8 of the AICTE C/SCA/12012/2019 JUDGMENT DATED: 02/02/2022 Gazette Notification dated 04.01.2016. The communication, therefore, stated that "It may thus be concluded that Ph.D requirement for praying AGP of Rs.9,000/- is essentially only for those faculty members who have joined after 05.03.2010."

6 As per the government response, the petitioner did not hold the qualification of Ph.D which a head of department ought to held in consensus with the rules set out by the notification dated 19.06.2012. Based on this notification



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of 19.06.2012, clause 6 of the Government Resolution dated 12.11.2014 was pressed into service which required specifying the educational qualification of holding of Ph.D degree for the purposes of being a Head of Department.

6.1 Reading the notification dated 08.11.2012, particularly in light of the exception set out in the last para of Clause 3.8, the requisite of holding of Ph.D degree could only be insisted upon if an appointee was post 05.03.2010. Evident it is from the facts narrated hereinabove and which cannot even be disputed by other side is that the appointment of the petitioner was prior to 05.03.2010. that is evident even from the extension of benefits of the AGP of Rs.9,000/- which was granted to the petitioner following the notification of 05.03.2010.

6.2 Clearly therefore, the action of the respondents in recovering the amount of AGP of Rs.9,000/- and reducing the same and withdrawing it C/SCA/12012/2019 JUDGMENT DATED: 02/02/2022 is not in accordance with the position of law enunciated hereinabove.

7. Accordingly, the communication dated 01.07.2019 is set aside. It is declared that the grant of AGP of



Rs.9,000/- to the petitioner with effect from September 2011 is held to be in accordance with law and ought not to be withdrawn.

The respondents are directed to refund any amount that has been recovered from the petitioner pursuant to the impugned communication dated 01.07.2019 and are further directed to restore the AGP of Rs.9,000/- from 17.09.2011 to the petitioner and to pay arrears within a period of six weeks from the date of receipt of copy of this order. Rule is made absolute to the above extent. Direct service is permitted.”

11. In the light of the conclusion arrived at by the High Court of Gujarat, as confirmed in the appeal vide L.P.A.No. C/LPA/97//2023, this Court is in complete agreement with the decision rendered by the High Court of Gujarat.

12. Then, coming to the contentions of Mr.Syed Mustafa, this Court is unable to accept the same, for the simple reason that, in terms of AICTE, Regulations 2010, the incentive increments were sought to be extended for Ph.D/M.Tech and other higher qualifications, in the wisdom of the AICTE, it



though it fit to extend such benefit to all those Teachers who acquired such degrees while they were in service. If the said qualification itself was a mandatory and essential qualification, the question of Teachers being appointed to their respective posts and acquiring Ph.D qualification while they were in service does not arise.

13. The yet another contention raised by Mr.Syed Mustaffa, learned Special Government Pleader, contending that the purview of AICTE is only to the extend of laying down the standards and norms of education and it is for the employer, namely Government of Pondicherry, whether to extend such incentive increments for having acquired Ph.D degree or not, depending upon the financial viability and capacity of respective institutions is concerned, this Court is unable to agree with such contention for the simple reason that once, the AICTE, which is the Apex Body insofar as laying down guidelines for providing standard of education and conditions of service etc., of the employees working in the technical institutions, the same is bound to be complied with by all the institutions and Universities. In case, if the institutions or universities are in dis-agreement with any such criteria laid down by the AICTE, it is for the respective institutions to take appropriate



steps against the such prescription. In the absence of any such challenge to the relevant Regulations/notifications issued by the AICTE, it is not open for the respondents herein to contend otherwise.

14. Further, as seen from the AICTE Regulations, 2010, there shall be only three designations in respect of Teachers in Universities and Colleges namely, Assistant Professors, Associate Professors and Professors, and no one shall be eligible to be appointed, promoted or designated as Professors unless he or she possess a Ph.D degree and satisfies their academic conditions as laid down by the AICTE from time to time. However, it is clarified that the same would not effect to those who are already designated as Professor without Ph.D degree.

15. From the above, it is evident that there can be Assistant Professors, Associate Professors or Professors without Ph.D qualification also and the necessity of possessing Ph.D qualification for being appointed to the post of Professor has become mandatory only with effect from 05.03.2010, when the AICTE Regulations 2010 were notified. Further, when the clarification was issued to the AICTE Regulations 2010 through notification



dated 04.01.2016 read with notification dated 20.05.2020, and clarified that, the Teachers who acquired Ph.D qualification prior to 04.01.2016, and have been drawing the non-compoundable incentive increments on or before 04.01.2016 are entitled to draw such incentive increments, the PEC can't refuse to act upon such clarification.

16. Yet another ground on which the impugned orders cannot be sustained is the violation of principles of natural justice. Through the impugned orders, the pecuniary benefits, that were granted in favour of the petitioners and are being enjoyed by the petitioners for number of years, is sought to be revised and withdrawn, while ordering for recovery without following the basic principles of natural justice and without putting the petitioners on notice. For this reason also the impugned proceedings are liable to be quashed.

17. In the light of above and also in the light of the decision rendered by the High Court of Gujarat, as noted above, this Court is of the considered view that the impugned proceedings issued by the 4th respondent in all these batch of writ petitions are unsustainable and they are accordingly quashed



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with further directions to the respondents, to refund the amounts, if any, recovered from the petitioners pursuant to the impugned orders as expeditiously as possible at any rate within a period of eight (8) weeks from the date of receipt of a copy of this order.

18. Accordingly, all these writ petitions are allowed. The connected miscellaneous petitions, if any, shall stand closed. No costs.

30.10.2024

Index : Yes/No
Speaking Order : Yes/No
dpa

To:

1.The Secretary to Education,
Govt. of Puducherry,
Puducherry-605001.

MUMMINENI SUDHEER KUMAR,J.
dpa

2.The Member Secretary,
All India Council For Technical Education
7th Floor, Chanderlok Building, Janpath
Connaught Place, New Delhi-110001.

3.The Member Secretary,
Pondicherry Engineering Collge,

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Puducherry-605001.

4.The Principal,
Pondicherry Engineering College,
Puducherry-605014.

5.The Secretary,
Education cum Pro-Chancellor,
Puducherry Technological University
Puducherry – 605014.

6.The Vice-Chancellor,
Puducherry Technological University,
Puducherry – 605014.

7.The Registrar,
Puducherry Technological University,
Puducherry – 605014.

Pre-Delivery Order made in
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30.10.2024