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W.P. No.34392 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.34392 of 2021

S.P.Shanmugam

... Petitioner

Vs.

1.The Principal Secretary
Higher Education Department
Government of Tamil Nadu
Chennai.

2.The Director
Collegiate Education
Chennai – 600 006.

3.The Joint Director of Collegiate Education
Trichy Region
Trichy
Now, Tanjore Region
Tanjore.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified mandamus, calling for the records which relates to the impugned order dated 04.03.2013 bearing letter No.20506/H1/2012-13 on the file of the 1st respondent and the impugned order dated 17.02.2015 bearing Ref No. O.M.No.4813/B3/2014 on the file of the 2nd respondent and quash the same and consequently direct the



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respondents to sanction 3 non compounded advance increments ordered in G.O.Ms.No.350, Higher Education Department dated 09.09.2009 and revise the petitioner's scale of pay and pensionary benefits and disburse the same with interest at the rate of 24% per annum.

For Petitioner : Mr.R.Saravanan for
Mr.T.Saikrishnan

For Respondents : Mr.J.Ravindran assisted by
Additional Advocate General
assisted by Mr.R.Kumaravel,
Additional Government Pleader.

ORDER

The petitioner herein was appointed as Librarian in the Trankubar Bishop Manickam Luthern College, Porayar, Tarangampadi Taluk, Nagapattinam District, in the year 1994 and he was upgraded from time to time and finally upgraded to the post of Librarian Selection Grade. During the continuance of the petitioner in the said post, he acquired Ph.D degree on 18.10.1996 in the discipline of Library Science from Bharathidasan University, Trichy and thereafter, the petitioner retired from service on attaining the age of superannuation on 31.01.2008.



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2. Thereafter, the Government issued G.O.(Ms).No.350, Higher Education Department, dated 09.09.2009 revising the scales of pay and allowances of various disciplines and equivalent cadres in the Universities, Government/Government Aided Colleges governed by UGC and thereby, the Assistant Librarian or College Librarian and other Library Personnel are declared to be entitled for three non-compounded advance increments on acquiring degree of Ph.D. The said Government order is given notional effect from 01.01.2006 with monetary benefits from 01.01.2007.

3. In terms of the said Government order, the petitioner, having found himself eligible for drawing three non-compounded increments, made a claim for award of such increments. The said claim of the petitioner was rejected by the 3rd respondent by passing the impugned order dated 17.02.2015 by placing reliance on Letter No.20506/H1/2012-13 dated 04.03.2013 issued by the 1st respondent. It is aggrieved by the said order dated 17.02.2015 passed by the 3rd respondent and the Letter dated 04.03.2013 issued by the 1st respondent, the petitioner filed the present writ petition.

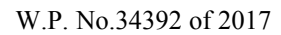


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4. The learned counsel for the petitioner contended that once the Government order is issued under Article 162 of the Constitution of India stipulating the date of effect of the said Government order as 01.01.2006 and with monetary benefit from 01.01.2007, the 1st respondent has no power or authority to issue clarification changing the date of effect of Government order contrary to the said Government order and therefore, the said Letter dated 04.03.2013 of the 1st respondent is liable to be set aside.

5. This Court having taken note of the fact that the 1st respondent herein, by way of clarification letter, made an attempt to amend or change the date of coming into effect of the Government order issued in G.O.(Ms).No.350, Higher Education Department, dated 09.09.2009, though he is not legally empowered to do so, this requires the respondents to clarify as to how the 1st respondent can issue the impugned clarification, through Letter dated 04.03.2013.

6. In response to the same Mr.J.Ravindran, the learned Additional Advocate General appearing for the respondents fairly submitted that the 1st



8. It is settled law that any order issued by the Government in exercise of its power under Article 162 of the Constitution of India cannot be altered, modified or meddled with by the subordinates to the Government and it is only the Government which is competent to modify, amend or alter such Government order.



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9. But in the instant case, the 1st respondent, who is Principal Secretary to the Government, issued clarificatory letter, contrary to the contents of the Government order. The 1st respondent herein has no such power or authority or jurisdiction to amend, modify or meddle with the Government order. Hence, the clarificatory letter dated 04.03.2013 issued by the 1st respondent is liable to be declared as illegal, arbitrary and without power or authority. As a consequence, the impugned order dated 17.02.2015 passed by the 3rd respondent, basing upon the clarificatory letter dated 04.03.2013, is also liable to be declared as illegal and arbitrary.

10. Accordingly, both impugned orders dated 04.03.2013 and 17.02.2015 are hereby set aside and the matter is remanded back to the 3rd respondent for considering the case of the petitioner afresh without reference to the clarificatory letter dated 04.03.2013 issued by the 1st respondent. The 3rd respondent further directed to pass appropriate orders in accordance with law as directed above within a period of eight (8) weeks from the date of receipt of a copy of this order.



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11. Accordingly, the writ petition is allowed and connected miscellaneous petitions, if any, shall stand closed. No costs.

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

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