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W.P.No. 24867 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No. 24867 of 2017

K. Pandiarajan

... Petitioner

Vs.

The Registrar,
Annamalai University,
Annamalai Nagar,
Chidambaram – 608 002.

... Respondent

Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the entire records relating to impugned order passed by the respondent in university order No.572/2017 (C) dated 10.04.2017, quash the same and consequently direct the respondent to refund the recovered amount of Rs.40,000/- within a stipulated period as fixed by this Court.

For Petitioner : Mr. RM. Venkatesh

For Respondent : Mr. S. Sithirai Anandam,
Standing Counsel

ORDER

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent and perused the materials available on record.



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2. The case of the petitioner is that he was joined in the respondent University as Lecturer in the Department of Chemistry and retired as Professor on 30.06.2010, after rendering more than 35 years of service. Pursuant to the Syndicate Resolution No.66, dated 22.03.1987, the respondent has ordered revision of date of birth in the service register and passed an order in University Order No.236/1987 (C) dated 30.04.1987. The said decision is taken based on the birth certificate of the petitioner and he was permitted to alter his date of birth in service register as 24.08.1949 instead of 08.09.1947. After attaining superannuation on 30.06.2010, the pension was calculated and remitted to the petitioner.

3. After 30 years, the respondent issued impugned order in University Order No.596/2017 (C) dated 20.04.2017 cancelling the alteration of date of birth and refixed as per the original date of birth and further ordered for recovery of excess payment. Aggrieved by the said order, the present writ petition is filed.

4. Learned counsel for the petitioner submits that the order impugned in this writ petition was passed suddenly after 30 years without any notice to the petitioner, as such, is erroneous, arbitrary, illegal and unsustainable in law. The learned counsel further contends that before passing impugned order, no opportunity was provided to the petitioner to put forth his version and as such, is clear violation



of principles of natural justice. The learned counsel also would submit that ordering recovery is not permissible in law at the belated stage and sought to allow the writ petition.

5. On behalf of the respondent, a counter affidavit has been filed. Based on the averments made in the counter affidavit, the learned Standing Counsel for the respondent University submits that the respondent University was taken over by the Government, in the year 2013 and thereafter, the Government had regularised and streamlined several procedures and processes adopted by the University. In that process, the Deputy Director, Local Fund Audit Department has raised objections against the amendment of date of birth in certain cases which are done in violation of the Government Rules.

6. Learned Standing Counsel would submit that the Government in its Letter No.154, P & AR dated 24.06.1995 had issued instructions which has been incorporated in Rule 49 of the Tamil Nadu State and Subordinate Service Rules, wherein, it is stated that any application for alteration of date of birth received after 5 years of entering into service or any application which is not supported with entries in SSLC, School, College or University records and records of local bodies shall summarily be rejected. The learned Standing Counsel further contends that the then



administration of the respondent University made alteration in date of birth in many cases without following the said rules and several objections were received by the Government and the University was instructed to review the orders amending the date of birth of the employees of the University. In that process, it is found that the petitioner who applied for alteration of date of birth in the year 1984 i.e., after 10 years of his appointment. As the said alteration is contrary to Rule 49 of the Tamil Nadu State and Subordinate Service Rules, the University passed the impugned order cancelling the alteration of date of birth of the petitioner and ordered for recovery of the excess amount paid to the petitioner as per the resolution of the Finance Committee of the University. He further submits that a sum of Rs.40,000/- was recovered from the petitioner. The learned Standing Counsel has placed reliance of the orders of this Court in W.P.No.26187 of 2010, W.A.No.757 of 2012, W.P.No.14584 of 2017, W.A.No.2261 of 2019 and W.P.No.27983 of 2019 to support his contentions and finally, sought to dismiss the writ petition.

7. On careful consideration of the submissions of the respective counsel and on careful perusal of the materials available on record, the admitted facts in this case are, the petitioner was permitted to alter his date of birth in the service register pursuant to the Syndicate Resolution No.66, dated 22.03.1987 and the respondent University has ordered revision of date of birth in the service register as per order in



University Order No.236/1987 (C) dated 30.04.1987. Thereafter, the petitioner retired from service on attaining superannuation on 30.06.2010. It is also an admitted fact that till 2013, the respondent University is under the management of the trust. It is not the State owned University. Only in the year 2013, the respondent University was taken over by the State Government. Under the guise of streamlining the mismanagements took place by the then respondent University, the present impugned order is passed on 20.04.2017 cancelling the alteration of date of birth of the petitioner and ordered for recovery of the excess payment.

8. On perusal of the impugned order, it appears that based on the resolution passed by the Finance Committee of the respondent University, the impugned order is passed. Before placing the issue of cancellation of the order passed by the University vide Syndicate Resolution No. 66 dated 22.03.1987, wherein, it is ordered for revision of date of birth of the petitioner in service register, no notice is issued to the petitioner or atleast before passing the impugned order, the petitioner was not put in notice or no opportunity was accorded to the petitioner to put forth his case before the respondent. The respondent passed the impugned order unilaterally without following any procedure or settled principles of law.



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9. Pursuant to the Syndicate Resolution No. 66 dated 22.03.1987, the respondent University has ordered revision of date of birth in service register of the petitioner and passed an Order No.236/1987 (C) dated 30.04.1987. This University was taken over by the State Government only in the year 2013. Prior to 2013, the provisions of the Tamil Nadu State and Subordinate Services Rules are not applicable to the employees working in the respondent University. As and when, the Rule 49 of said Rules is not applicable to the employees of the respondent University prior to 2013, invoking the said Rule 49, after 30 years of decision of the University Syndicate and passing the impugned order is illegal and untenable.

10. The Hon'ble Apex Court and this Court, time and again declared that any order passed without affording opportunity to the aggrieved person, is in violation of principles of natural justice.

11. Admittedly, the order impugned in this writ petition is passed is clear violation of principles of natural justice and as such, it is unsustainable under law.

12. This Court, carefully have gone through the copies of the orders passed by this Court on which the learned Standing Counsel placed reliance. This Court has no different opinion about the proposition of law laid down in the said orders. But



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the facts and circumstances in the present case are different, as such, with great respect, this Court opines that the said orders are not applicable to the present case.

13. In the light of the above factual position, in the considered opinion of this Court, it is appropriate and reasonable to set aside the impugned order to meet the interest of justice and to remand the issue to the respondent for taking appropriate decision after affording reasonable opportunity to the petitioner, if so advised.

14. Accordingly, this Writ Petition is allowed. No costs.

15. The respondent shall refund the amount recovered from the petitioner in view of the impugned order within a period of four weeks from the date of receipt of copy of this order.

06.03.2024

Index :Yes/No

Neutral Citation :Yes/No

AT

To
The Registrar,
Annamalai University,
Annamalai Nagar,
Chidambaram – 608 002.



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BATTU DEVANAND, J.

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