



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.02.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Appeal No.3932 of 2019
and C.M.P.No.24709 of 2019**

Tamil Nadu Veterinary and
Animal Sciences University,
Represented by its Registrar,
Madhavaram Milk colony,
Chennai – 51.

... Appellant

Vs

Dr.Peer Mohammed

... Respondent

PRAYER: Writ Appeal has been filed under Clause 15 of Letter Patent to set aside the order dated 23.10.2017 passed by the learned Single Judge in W.P.No.9707 of 2013.

For Appellant : Mr.S.Vijayakumar
Senior Counsel
Assisted by Mr.D.Melwin Dabaz

For Respondent : Mr.R.Syed Mustafa



JUDGMENT

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(Judgement of the Court was made by Mr.K.KUMARESH BABU.,J.)

This Intra-Court Appeal had been preferred against the order passed by the learned Single Judge, wherein, the learned Single Judge had issued a direction to the appellant University to recognise the period spent by the respondent on duty for the purpose of pay, allowance, increment and pension benefits for the period from 15.02.2006 to 23.02.2008 and with all other consequential benefits.

2. Heard Mr.S.Vijayakumar, learned Senior Counsel assisted by Mr.D.Melwin Dabaz, learned counsel appearing for the appellant and Mr.R.Syed Mustafa, learned counsel for the respondent.

3. Mr.S.Vijayakumar, learned Senior Counsel for the appellant would submit that the respondent while working as an Assistant Professor, had submitted an application to undergo P.hd programme at Gandhi Gram Rural University, Dindugal in the year 2004 and that the same was accepted on certain terms and conditions. Such permission was granted on the condition that there will be no pay and allowances that would be given to him for



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that period. However, after completion of the higher studies, the respondent had made a representation seeking to treat the said period as study leave with pay and allowance. He would further submit that having accepted the permission granted to him to do his P.hd programme and that too without challenging the terms and conditions at the time of granting permission to do his Ph.d Programme, the respondent after completing his higher studies had filed the Writ Petition claiming full pay and allowances for the said period. The learned Single Judge without considering these aspects, by relying upon the guidelines as prescribed in the Study Leave Rules of Tamil Nadu Leave Rules, 1933 had held that the respondent is being discriminated from the other similarly placed persons, who have been permitted to avail Study Leave Rules and had directed the appellant to treat the period which had been utilised by the respondent to do his P.hd programme, as a period on duty for the purpose of pay, allowances, increment and pensionary benefits. He would further submit that even if the said rule is applicable, the order could not have been passed, since, the Rules only provide for payment of salary and not allowance. Therefore, he would seek interference of this Court.



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4. Countering his arguments, Mr.R.Syed Mustafa, learned counsel appearing on behalf of the respondent would submit that the respondent was not granted study leave or he was not even sent on deputation as per the Study Rules, which had been extended to similarly placed persons. Therefore, there was a clear discrimination of the respondent when compared to others who have been extended the similar benefit. Therefore, he would contend that there is no infirmity in the order passed by the learned Single Judge.

5. We have considered the submissions made by the learned counsels appearing on both sides and perused the materials available on record before this Court.

6. It is an admitted case that pursuant to the application filed by the respondent, he had been granted permission on condition that he would not be entitled to any pay and allowances. Having accepted the condition and had completed the degree, the respondent had turned back to claim pay and allowances by treating the said period as duty. In such view of the matter,



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the respondent is estopped from making such a claim.

7. Be that as it may, the respondent had also not challenged the permission granted by the appellant University at that point of time. Therefore, the respondent cannot be heard to make a claim for treating such period as duty and therefore, he would not be eligible to avail pay and allowances for the said period.

8. In such circumstances, we are of the view that the order impugned before us had been made without considering all the above factors and the learned Single Judge had applied the Study Leave Rules of Tamil Nadu Leave Rules, 1933 to the case of the respondent, which in our view is a material irregularity and therefore, warrants interference by this court.

9. In fine, this Writ Appeal is allowed and the order impugned is set aside. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.K.,J.)

(K.B., J.)



14.02.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
gba

R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

gba

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