



W.P.(MD)Nos.4651 to 4653 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.01.2024

PRONOUNCED ON : **11.09.2024**

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)Nos.4651 to 4653 of 2024

and

W.M.P.(MD)Nos.4486, 4488, 4490, 4491, 4487, 4489 of 2024

P.Thavaraj	... Petitioner in W.P.(MD)No.4651 of 2024
T.Moorthy	... Petitioner in W.P.(MD)No.4652 of 2024
S.Karuppasamy	... Petitioner in W.P.(MD)No.4653 of 2024

Vs.

1.The State of Tamil Nadu,
Rep. By its Principal Secretary to Government,
Higher Education Department,
Secretariat,
St. George Fort,
Chennai.

2.The Registrar,
Madurai Kamaraj University,
Madurai. ... Respondents in all W.Ps

COMMON PRAYER : Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to the impugned orders passed by the second respondent vide his proceedings in Ref.No:A1744/MKU/Rev.Pension/2024, Ref.No:A1825/MKU/Rev.Pension/2024 and Ref.No:A1793/MKU/Rev.Pension/2024 dated 12.02.2024, 09.02.2024 and 12.02.2024 respectively and quash the same as illegal.



W.P.(MD)Nos.4651 to 4653 of 2024

For Petitioners : Mr.H.Mohammed Imran
For M/s.Ajmal Associates
For 1st Respondent : Mr.M.Sarangan
Additional Government Pleader
For 2nd Respondent : Mr.Sri Charan Rengarajan,
Senior Counsel
For Mr.T.Cibi Chakraborty

COMMON ORDER

All the Writ Petitions have been filed to quash the impugned orders passed by the second respondent vide his proceedings in Ref.No:A1744/MKU/Rev.Pension/2024,
Ref.No:A1793/MKU/Rev.Pension/2024 and
Ref.No:A1825/MKU/Rev.Pension/2024, dated 12.02.2024, 12.02.2024 and 09.02.2024 respectively

2.The petitioners were initially appointed as Sweeper cum Watchman on 23.02.1985 at the second respondent University. Later, they were promoted as Attender and was subsequently, conferred with Selection Grade and Special Grade in the cadre of Attender. The petitioners on attaining their age of superannuation retired from their service as well. After their retirement, the 2nd respondent vide impugned proceedings dated 12.02.2024 and 09.02.2024 respectively, had issued a show cause notice requiring them to give an explanation with regard to refixation and revision of pension within a period of 10 days from the date of the impugned order. Challenging the said order as arbitrary, unjust and unreasonable, these Writ Petitions



came to be filed.

WEB COPY

3.The arguments put forth by the learned counsel for the petitioners can be summarized as follows:-

(i)All the pay fixation and increments of the petitioners were effected from time to time only after getting due permission from the syndicate, vide various syndicate resolutions. However, the impugned order came to be passed by the 2nd respondent University, on the basis of the objections raised by the local fund audit report with regard to pay fixation against the post of Attender and that wrong fixation has been made instead of admissible pay.

(ii)Though the petitioners were issued with show cause notices, the same has been passed with a predetermined notion and the impugned order itself explicitly shows that it has been passed after taking a decision and calling for explanation is only an empty formality.

(iii)Once the refixation is ordered automatically, the same would lead to recovery of amount and the impugned order has been passed by the second respondent improperly in an unjust manner, after a prolonged period of time from the date of retirement of the petitioners.

(iv)Any order affecting the service rights and monetary benefits of an employee, which is passed beyond the period of time and after retirement is absolutely improper. In fact, all the persons who retired before 2013, were not subjected to revision of pension and as such, the impugned order is bad



W.P.(MD)Nos.4651 to 4653 of 2024

in its inception on the sole ground of Article 14 of the Constitution.

(v)The right which has been already conferred according to the revised pay fixed by the second respondent to the petitioners cannot be taken away by virtue of the impugned order. The impugned order has been passed by referring some resolution and the same has not been served upon the petitioners. The aforesaid resolution has been passed in consonance with the Government Order in G.O.Ms.No.174, Higher Education Department, dated 25.09.2013, which has already been quashed by the order of this Court in W.P.(MD)No.6635 of 2019 dated 16.06.2023. On the basis of such arguments, the learned counsel pressed for allowing the Writ Petitions.

4.Per contra, the second respondent has filed a counter affidavit and the arguments put forth by the learned Senior Counsel, Mr.Sri Charan Rengarajan, on behalf of the second respondent can be summarized as follows:-

(i).The impugned orders are nothing but show cause notice and hence, the petitioners are in an obligation to reply the same and until and unless a final order has been passed in this regard by the second respondent, the petitioners cannot challenge a show cause notice.

(ii).A Writ Court may not exercise its discretionary jurisdiction in entertaining a Writ Petition, questioning a notice to show cause unless the same *inter alia* appears to have been without jurisdiction.

(iii).Unless this Court is satisfied of the nullity of the show cause



W.P.(MD)Nos.4651 to 4653 of 2024

notice for want of jurisdiction of the authority concerned, the Writ Petitions challenging the show cause notice should not ordinarily be entertained as a matter of routine.

(iv).Hence, the writ petitioners should rather be directed to respond to the notice and this Court should not resist the proceedings emanating from the show cause notice. On such arguments, he pressed for dismissal of the Writ Petitions.

5.Heard Mr.Mohammed Imran, learned counsel for the petitioners, Mr.Sarangan, learned Additional Government Pleader for the 1st respondent, Mr.Sri Charan Rengarajan learned Senior Counsel for Mr.T.Cibi Chakravarthy, for the 2nd respondent and anxiously perused the materials available on record.

6.The cry of the petitioners herein is that, the impugned order has been passed by the second respondent without application of mind with a predetermination, to re-fix and revise the pension of the petitioners with effect from 01.12.2023. However, the same is resisted by the second respondent University, by claiming that while the petitioners were conferred with Special Grade, it was specifically stated vide the University's proceedings, dated 18.02.2019, in the case of P.Thavaraj, 15.03.2010 in the case of S.Karuppasamy and 03.10.2013 in the case of T.Moorthy respectively that, their fixation of pay is subject to audit and that, if any



W.P.(MD)Nos.4651 to 4653 of 2024

excess amount found in the fixation, it would summarily be recovered.

Thereafter, all those petitioners were relieved from service on attaining their age of superannuation.

7.It was also contended by the learned Senior Counsel, Mr.Sri Charan Rengarajan on behalf of the second respondent University that, when the University sent the petitioner's pension proposal to the Local Fund Audit Department for issuance of audit certificate by separate proceedings, the Local Fund Audit Department returned the petitioner's pension proposal citing excess pay fixation to the respective petitioners. Hence, pending audit objections, all these petitioners were paid only with 90% of pensionary benefits, as per the decision of the syndicate resolution, dated 24.05.2019. He further contended that, in the meanwhile, the Government issued G.O. (D).No.282, Higher Education (H2) Department, dated 13.10.2022, directing the University to review the pending audit objections and to take remedial actions by revising provisional pension based on the revised pay certified by the Local Fund Audit Department in order to sanction the grant to the University, on the basis of the undertaking given by the Vice Chancellor of the University. This was also approved by the syndicate, by its resolution, dated 20.01.2023. Subsequently, the University's finance committee in the meeting held on 18.04.2023, considered the loss incurred by the University due to the wrong fixation of pay and resolved to accept the Government letter (MS) No.174, dated 25.09.2013 and G.O.No.282, regarding the



W.P.(MD)Nos.4651 to 4653 of 2024

refixation of pay scale of the University nonteaching staffs on par with Tamil Nadu Government Servants scale of pay and the syndicate also approved the same in the meeting held on 24.04.2023. Only on such background, the impugned show cause notice came to be caused by the second respondent University on the petitioners calling for an explanation to show cause as to why their pay and pension shall not be refixed on par with the Tamil Nadu Government Servants scale and pay and instructed the petitioners to submit their explanation within a period of 10 days. The same being only a show cause notice, it is the bounden duty of the petitioners to submit their respective explanation and the petitioners have no *locus standi* to challenge a show cause notice before a final call is taken on the said issue, after considering their explanation.

8.After an anxious perusal of the materials available on record, this Court carefully considered Para no.18 of the counter, which states as follows:-

“It is respectively submitted that there is no question of recovery, when the show cause notice issued itself clearly states that the refixation will be implemented only with effect from 01.12.2023. The allegation of predetermination and empty formality are denied as not true”.

9.In consonance to the said Paragraph, the impugned order reads as follows:-



W.P.(MD)Nos.4651 to 4653 of 2024

WEB COPY



MADURAI KAMARAJ UNIVERSITY

(University with Potential for Excellence)
Re-accredited by NAAC with 'A++' Grade in the 4th Cycle



18

Prof. Dr. M. Ramakrishnan, M.E., Ph.D., Ph.D.
Registrar (H/o)

Palkalai Nagar, Madurai - 625 021,
Tamil Nadu, India.

Ref.No.: A1744/MKU/Rev.Pension/2024

Date: 12.02.2024

To
THIRU. P. THAVARAJ (A1744)
HOUSE NO. 3/61, KALVI NAGAR 13TH
STREET,
ALAMPATTI,
MADURAI - 625 019

Sub: Estt.(Admin) - Local Fund Audit objection in Audit Reports from 2012-13 to 2022-23 - G.O.(D) No.282 of Higher Education (H2) Department, Dated: 13.10.2022 - Resolution of the Finance Committee dated 18.04.2023 - Resolution of the Syndicate dated 24.04.2023 - Tamil Nadu Government Ministerial Scale of pay - Revision of pension - Show cause notice - Explanation - REG.

Ref: 1. L.F. Audit Reports from 2012-13 to 2022-23
2. Resolutions of the Syndicate held on 07.02.2014, 24.05.2015 & 18.08.2023
3. G.O.(D) No.282, Higher Education (H2) Dept, dt.13.10.2022
4. Resolution of the Finance Committee held on 18.04.2023
5. Resolution of the Syndicate held on 24.04.2023

I am, by direction, to inform you that you are being paid provisional pension without L.F. Audit certificates as per the resolutions of the Syndicate held on 07.02.2014, 24.05.2015 and 18.08.2023.

In this regard, the Local Fund Audit Department has raised objection with respect to your pay fixation on the ground that the fixation against your post of Attender was wrongly fixed by the University i.e., higher scale of pay was fixed instead of the pay fixation admissible to your post as per Tamil Nadu Government Ministerial service scale of pay (Enclosed).

The Government vide its order 3rd cited above has sanctioned a block grant to the University on the basis that the University would review the pending audit objections and that it would take all necessary remedial actions by revising the pension on the basis of the revised pay certified by the Local Fund Audit Department. The above said G.O. was approved by the Finance Committee and the Syndicate vide its resolution 4th and 5th cited above respectively.

Now, considering the severe financial crisis and the decisions of the Government of Tamil Nadu, Finance Committee and Syndicate, the University intends to re-fix your scale of pay and revise your provisional pension by getting suitable audit certificate as indicated hereunder and hence you are hereby called upon to show cause as to why your pay shall not be re-fixed and as to why your pension should not be revised correspondingly as indicated hereunder and you are instructed to submit your explanation if any within a period of 10 days from today. In the absence of any explanation, re-fixation and revision of pension will be effected immediately deeming that you have no explanation to offer.

Designation	Existing Provisional Pension RS.	Revised Pension RS.	With effect from
Attender (Special Grade)	19485	14000	01.12.2023

The above revision of pension is subject to the Local Fund Audit verification.

Copy to

1. Vice-Chancellor's office
2. Deputy Registrar, Finance
3. Personal file

REGISTRAR (H/o)

Phone: 0452 - 245 8456, Fax: 0452 - 248 8101, www.mku.academy.org, Email: vka@mkuniv.ac.in, vka@mkuniv.ac.in, vka@mkuniv.ac.in, vka@mkuniv.ac.in, vka@mkuniv.ac.in



W.P.(MD)Nos.4651 to 4653 of 2024

WEB COPY

10.A careful reading of the fourth paragraph of the impugned order along with the tabulation there at, would throw light on the predetermination of the second respondent University. That apart, the cases in hand are not one of wrong fixation but the same are cases of re-fixation. It is necessary to point out at this place that after the retirement of the petitioners, the service conditions cannot be altered, more particularly, in the absence of any provision for such alteration. In addition to the same, Para no.14 of the counter reveals that the decision in the show cause notice has been taken by the University's Finance Committee dated 18.04.2023, by resolving to accept the Government letter M.S.No.174, dated 25.09.2013. It is pertinent to mention here that the aforesaid Government letter No.174, dated 25.09.2013, has already been impugned before this Court and this Court in W.P.(MD)No.6635 of 2019 dated 16.06.2023, has quashed the same and the relevant portion of the same is extracted as follows:-

“5.I carefully considered the rival contentions and went through the materials on record. I need not go into the factual and legal aspects at length for the simple reason that a similar issue was raised in W.P.Nos.49 of 2007 etc. The writ petitions were filed by the Madras University Staff Association, Manonmaniam Sundaranar University All Administrative Staff Association, Bharathidasan University Staff Welfare Association, Tamil Palkalai Kazaga Panialargal Sangam etc. A learned Judge of this Court vide order dated 04.04.2012 held as follows:~



'32. In view of my elaborate discussions in the foregoing paragraphs, I would sum up the conclusions in the following terms :

(i) As the law has been made by the State legislature conferring the power of regulation of service conditions of non-teaching staff of the universities on Syndicate, the executive is not empowered to pass the impugned order in regard to that matter in exercise of his executive power under Article 162 of the Constitution nor can he exercise such power with reference to that matter through the officers subordinate to him.

(ii) A law having occupied the field, it is not open for the State, in exercise of its executive power, to prescribe the same field, by an executive order.

(iii) Executive power of the State cannot be repugnant to the enactment of the legislature.

(iv) Executive order of the State can be issued only when the statutes or enactments are having gaps and do not cover the area by the existing rules.

(v) Mere funding of the State to the Universities does not confer any privilege on the State to issue executive orders, so as to interfere with the administration of the Universities.

(vi) Executive order i.e., the impugned order of the first respondent in G.O.Ms.No.402, Higher Education (H2) Department, dated 13.12.2006, is inoperative and it is, accordingly, declared ultra vires to the provisions of the Acts'

6. My attention is also drawn to the decision of the Hon-ble Apex Court reported in (2003) 10 SCC 253 (State of Punjab and Another vs. Sardari Lal and Others). In the said decision, it has been held as follows:~

'2. The State Government being the authority which funds the University for several purposes sought to rely upon the provisions of



W.P.(MD)Nos.4651 to 4653 of 2024

Sections 19, 23 and 25 of the Guru Nanak Dev University Amritsar Act, 1969 (for short "the Act") and it was contended that the provisions of the aforesaid sections if read together, it would appear that the State Government retains the power of control, particularly when it relates to the funds being spent by the University for various purposes including the grant of accelerated increment and allowance to its employees.

3. Under the University Statute, Statute 41 deals with the grant of accelerated increment and allowance and power is conferred upon the Syndicate or the Vice Chancellor or the Registrar. The power of the State Government under Section 25 of the Act to get the accounts of the University audited will not include within its sweep any power to nullify a decision of the appropriate authority of the University in the matter of grant of accelerated increment or allowance which has been specifically conferred upon the authorities of the University. The power of the State Government under Section 23 of the Act is to the effect that the State Government may provide such amounts by way of grants for meeting the capital recurring or other expenditure of University as it may deem fit. Merely because the State Government has been conferred power to provide amounts by way of grant for meeting the expenditure of the University will not clothe the State Government any further control in the matter of expenditure or the service condition of the employees which is specifically provided for in the Statute itself and the Statute confers powers on the Vice Chancellor, the Syndicate or the Registrar and not on the State Government. The University is an autonomous body and, therefore, the State Government will not be entitled to interfere with the internal administration of the University notwithstanding the fact that the State Government is the funding body until and unless the University Statutes provides for the same or there is any Act of Legislation



W.P.(MD)Nos.4651 to 4653 of 2024

conferring that power on the State Government. In course of arguments, the learned Counsel appearing for the State Government brought to our notice the provisions of Section 10 of the Haryana and Punjab Agricultural Universities Act in support of the contention that since the Vice Chancellor has certain power of control and that power must be held to be with the State Government as the Vice Chancellor exercises that power in aid and advice of the State Government. This provision is not there either in the Statute of the Guru Nanak Dev University or Punjab University. But even for the Haryana and Punjab Agricultural University also the aforesaid power on a plain reading cannot be held to be conferring power on the State Government to take any decision in the internal administration of the University which the Statute itself does not provide. The impugned judgment in C.A. No. 5088/96 clearly indicates that no provision has been pointed out which may show that the Government is entitled to interfere with the internal administration of the University or the grant of benefit to the employees.

4. Having considered the different provisions of the Act and the Statute which had been placed before us, we are unable to accept the contention raised by the learned Counsel appearing for the State Government that the provisions of Sections 23 and 25 of the Act could be construed to have conferred the power on the State Government in the garb of controlling the funds which the State Government grants for the running of the University, to have a control over the internal administration of the University. In the aforesaid circumstances, we see no infirmity with the impugned judgments of the High Court to be interfered with by this Court. These appeals accordingly fail and are dismissed'

7.I could have disposed of this writ petition in the light of the



W.P.(MD)Nos.4651 to 4653 of 2024

aforesaid two decision. However, it is my duty to deal with the contentions advanced by the learned Additional Government Pleader anchored on Section 27 of the Manonmaniam Sundaranar University Act, 1990. This said provision is as follows:~

'27. (1) The annual accounts of the University shall be submitted to such examination and audit as the Government may direct and a copy of the annual accounts and audit report shall be submitted to the Government.

(2) The University shall settle objections raised in such audit and carry out such instructions as may be issued by the Government on the audit report.

(3) The accounts, when audited shall be published by the Syndicate in such manner as may be prescribed by the ordinances and copies thereof shall be submitted to the Senate at its next meeting and to the Government within three months of such publication.'

8. Section 27 of the Act will not empower the Government to issue a direction of this nature. The Director of Local Fund Audit had gone to the extent of stating that the university has been giving wrong promotions / increments. The job of the Local Fund Audit is to see if the expenditure incurred by the university is in consonance with the policy of the university. As per Section 27 of the Act, the Syndicate has the power to appoint the University Lectures, University staff and fix their emoluments. It is not for the Local Fund Audit to go into the justification of the promotions given by the university. The Government has gone entirely by the report of the Local Fund Audit. It clearly amounts to interference with the internal administration of the university. Section 27 of the Act has been misconstrued by the



W.P.(MD)Nos.4651 to 4653 of 2024

Government. The impugned communication is without jurisdiction. It is quashed and the writ petition is allowed.”

WEB COPY

11. Fully fortified by the aforesaid order of the learned Single Judge of this Court, I have no hesitation to hold that the job of the Local Fund Audit is nothing but to see if the expenditure incurred by the University is in consonance with the policy of the University. The Local Fund Audit has no business to poke its nose into the promotions and increments given to the employees of the University in terms of the Rules, relevant Act and Policy of the University. Concurring respectfully with the aforesaid order, I reiterate that interference with the internal administration of the University by the Government is unwarranted. The Hon'ble Apex Court in the case of **Siemens Ltd. versus state of Maharashtra and others**, reported in **2006 12 SCC 33**, has dealt with the case of a show cause notice issued with a predetermination and the relevant portion of the same is extracted as follows:-

“9. Although ordinarily a writ court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to show cause unless the same inter alia appears to have been without jurisdiction as has been held by this Court in some decisions including *State of Uttar Pradesh v. Brahm Datt Sharma and Anr.* AIR 1987 SC 943, *Special Director and Another v. Mohd. Ghulam Ghouse and Another*, (2004) 3 SCC 440 and *Union of India and Another v. Kunisetty Satyanarayana*, 2006 (12) SCALE 262], but the question herein has to be considered from a different angle, viz, when a notice



is issued with pre-meditation, a writ petition would be maintainable. In such an event, even if the courts directs the statutory authority to hear the matter afresh, ordinarily such hearing would not yield any fruitful purpose [See [K.I. Shephard and Others v. Union of India and Others](#) (1987) 4 SCC 431 : AIR 1988 SC 686]. It is evident in the instant case that the respondent has clearly made up its mind. It explicitly said so both in the counter affidavit as also in its purported show cause.

10.The said principle has been followed by this Court in [V.C. Banaras Hindu University and Ors. v. Shrikant](#) [2006 (6) SCALE 66], stating:

"48.The Vice Chancellor appears to have made up his mind to impose the punishment of dismissal on the Respondent herein. A post decisional hearing given by the High Court was illusory in this case.

49.In [K.I. Shephard & Ors. etc. etc. v. Union of India & Ors.](#) [AIR 1988 SC 686], this Court held : (SCC p. 499. para 16)

It is common experience that once a decision has been taken, there is tendency to uphold it and a representation may not really yield any fruitful purpose."

[See also [Shri Shekhar Ghosh v. Union of India & Anr.](#) 2006 (11) SCALE 363 and [Rajesh Kumar & Ors. v. D.C.I.T. & Ors.](#) 2006 (11) SCALE 409]

11.A bare perusal of the order impugned before the High Court as also the statements made before us in the counter affidavit filed by the respondents, we are satisfied that the statutory authority has already applied its mind and has formed an opinion as regards the liability or otherwise of the appellant. If in passing the order the respondent has already determined the liability of the appellant and the only question which remains for its consideration is quantification



thereof, the same does not remain in the realm of a show cause notice. The writ petition, in our opinion, was maintainable.

WEB COPY

12. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly.”

12. This Court in **V.Usha v. Director of Town Panchayat and others** reported in **(2008) 1 MLJ 182**, has dealt with the case of reversion of post of Typist to the post of Record Clerk and the portion of the same, which is relevant to this case is extracted as follows:-

“10. (a) In the decision reported in JT 1998 (5) SC 513 (Food Corporation of India etc., v. Om Prakash Sharma & Ors.), the Supreme Court held that amendment to service rules cannot be applied retrospectively taking the vested right of the persons who are in service. In paragraphs 32 and 33 of the decision, the Supreme Court held thus, “32. The last of the above cases has been decided by the Constitution Bench in which one of us (Justice Agarwal) was a member and he spoke for the Bench. It will be advantageous to quote the following passage in that judgment:

‘32. The last of the above cases has been decided by the Constitution Bench in which one of us (Justice Agarwal) was a member and he spoke for the Bench. It will be advantageous to quote the following passage in that judgment:

“In many of these decisions the expressions “vested rights” or “accrued rights” have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby



taking away the benefits available under the rule in force at that time.

It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under [Articles 14 and 16](#) of the Constitution."

33. If the principle laid down in the above judgment is applied here, there is no doubt that the impugned amendments in the present case can not operate retrospectively."

(b) The said proposition that retrospective amendment of service rules is impermissible is held by the Supreme Court in the decision reported in AIR 1990 SC 405 = (1990) 1 SCC 411 ([P.Mahendran and others v. State of Karnataka and others](#)), wherein in paragraph 5 (in AIR) it is held thus, "5. It is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the rule must be held to be prospective. If a rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rules of 1987 do not contain any express provision giving the amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the rule with retrospective effect. Since the amending Rules were not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being



considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter."

(c) In the decision reported in AIR 1999 SC 59 = (1998) 8 SCC 154 (*Chandraprakash Madhavrao Dadwa and others v. Union of India and Others*), in paragraph 53 (in AIR), the Supreme Court held as follows,

"53. To put it in a nutshell, the change in the essential qualification made in 1990 or 1998 or the additional functions now required to be performed by the appellants could not retrospectively affect the initial recruitment of the appellants as Data Processing Assistants nor their confirmation in 1989. Recruitment qualifications could not be altered or applied with retrospective effect so as to deprive the recruitees of their right to the posts to which they were recruited nor could it affect their confirmations."

11. The petitioner was fully qualified to hold the post of Typist as she passed Typewriting English Higher Grade in November, 1986, and also passed the departmental tests such as Village Swaraj, Panchayat Act 1958, District Office Manual, Panchayat Development Account Test and Miscellaneous Acts and Rules. Further the petitioner was holding the Typist post for over three years and seven months. She was given three years annual increment and her name also found a place in the interse seniority list of Junior Assistants, Revenue Inspectors and Typists and was placed in Sl.No.29. She was regularly appointed as Typist as per the proceedings dated 7.3.1994 of the District Collector, Villupuram. Hence the reversion of the petitioner by the impugned order really affects her vested right and as there is reduction in her salary and status, it definitely have civil consequences."



13. In yet another case of the ***Punjab State Cooperative Agricultural Development Bank Limited versus the Registrar, Cooperative Societies and Others*** reported in **2022 live law Supreme Court 42**, the Hon'ble Apex Court has dealt with a case where an amendment giving retrospective operation, which has the effect of taking away the benefit already available to the employee has been dealt with and the portion, which is relevant to this case is extracted as follows:-

“47. The exposition of the legal principles culled out is that an amendment having retrospective operation which has the effect of taking away the benefit already available to the employee under the existing rule indeed would divest the employee from his vested or accrued rights and that being so, it would be held to be violative of the rights guaranteed under Articles 14 and 16 of the Constitution.

55. In our view, non availability of financial resources would not be a defence available to the appellant Bank in taking away the vested rights accrued to the employees that too when it is for their socio economic security. It is an assurance that in their old age, their periodical payment towards pension shall remain assured. The pension which is being paid to them is not a bounty and it is for the appellant to divert the resources from where the funds can be made available to fulfil the rights of the employees in protecting the vested rights accrued in their favour.”

14. No doubt in the instant case, the show cause notice has been issued with a predetermination to re-fix the pension of the petitioners and revise the pension to their disadvantage with effect from 01.12.2023. It is



W.P.(MD)Nos.4651 to 4653 of 2024

explicitly indicated so both in the counter affidavit of the second respondent as well as in the perpetrated show cause notice. No doubt, the impugned show cause notice palpably indicates the decision of the second respondent University to take away the accrued right of the petitioners conferred on them in terms of the relevant Rules and applicable laws of the second respondent University. Hence, the policy decision of the Government, which forcibly directs the second respondent University to revise the predetermined benefits, which had accrued on the petitioners is obviously unlawful on the face of it. The non-availability of financial resources would not be a defence available to the respondent University in taking away the vested rights accrued to the employees and I record the same in concurrence to the judgment of the Hon'ble Apex Court in the case reported in **2022 Live Law Supreme Court 42**. Accordingly, the impugned orders are liable to be quashed.

15. Accordingly, these Writ Petitions are **allowed**. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

11.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn



WEB COPY



W.P.(MD)Nos.4651 to 4653 of 2024

L.VICTORIA GOWRI, J.

Mrn

W.P.(MD)Nos.4651 to 4653 of 2024

11.09.2024