BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)Nos.8537 to 8546 of 2024

and

W.M.P.(MD).Nos.7768, 7769, 7777, 7778, 7779, 7780, 7783, 7784, 7771, 7772, 7773, 7775, 7786, 7787, 7788, 7789, 7774, 7776, 7781 and 7782 of 2024

Prayer in W.P(MD).No.8537 of 2024

T.P.Giridharan ... Petitioner

Vs.

1.The State of Tamil Nadu,

Represented by its Principal Secretary to Government,

Higher Education Department,

Secretariat,

St.George Fort,

Chennai.

2.The Registrar,

Madurai Kamaraj University,

Madurai.

3.The Director,

Department of Local Fund Audit,

No.571, Officers building,

Veterinary Hospital Campus,

Nandanam,

Chennai-600 035. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned order passed by the second respondent vide his proceedings in Ref.Emp.No.A1642/MKU/Show Cause Notice/Reply/2024 dated 26.03.2024 and quash the same as illegal.

For Petitioner	: Mr.Ajmal Khan Senior Counsel for M/s.Ajmal Associates
For R1 and R3	: Mr.T.Amjad Khan Government Advocate
For R2	: Mr.T.Cibi Chakraboorthy

COMMON ORDER

Heard Mr.Ajmal Khan, the learned Senior Counsel appearing for the petitioners, Mr.T.Amjad Khan, the learned Government Advocate appearing for the respondent Nos.1 and 3 and Mr.T.Cibi Chakrboorthy, the learned counsel appearing for the respondent No.2.

2. The writ petitioners, who have served as Senior Deputy Registrar and Senior Superintendent respectively at the time of retirement during the years 2013 and 2014, have filed these Writ Petitions challenging the order of the second respondent University revising their pension pursuant to the Government Order issued in G.O.(D).No.282, Higher Education (H2) Department, dated 13.10.2022.

3. The revision was on the premise that in the Government side, there is no equivalent posts available to the Senior Deputy Registrar and the Senior Superintendent, which were held by the petitioners; due to paucity of funds, certain budgetary measurements were taken by revising the provisional pension given to the petitioners; this is in view of the fact that they held posts not available in the Government but by getting a higher salary and incidental pension impact.

4. Mr.Ajmal Khan, the learned Senior Counsel appearing for the petitioners submitted that the Government Order in G.O.(D).No.282, Higher Education (H2) Department, dated 13.10.2022, cannot be issued superseding the statutory provisions and further the executive instructions cannot take away the rights of the petitioners which have been granted to them in accordance with the statutory entitlement. It is further submitted that even for any reason, the Government Order can be enforceable only with a prospective effect and cannot be operated retrospectively by affecting the pension already accorded in favour of these petitioners. Reliance was placed on the judgments of the Hon'ble Supreme Court of India held in the case of ***State of Jharkhand vs. Jitendra Kumar*** reported in ***(2013) 12 SCC 210*** and ***State of Madhya Pradesh and others vs. Yogendra Shrivastava*** reported in ***(2010) 12 SCC 538***.

5. However, Mr.T.Cibi Chakraborthy, the learned counsel appearing for the second respondent submitted that the Government Order has been approved by the Syndicate which is the supreme body of the University and the implementation has been done only in accordance with law and according to the statutory requirement. It is further submitted that prior to revision, notice has been issued to the petitioners and they have made their submissions and after

considering their submissions, the impugned order has been passed; however, no recovery has been made and the revision of pension has been effected. Hence, these petitioners cannot attack the same.

6. In G.O.(D).No.282, Higher Education (H2) Department, dated 13.10.2022, certain decisions have been taken pursuant to the suggestions and undertaking given by the University to the Government. One of the proposals so sent to the Government was to revise the provisional pension on the revised pay certified by the Local Fund Audit Department wherever applicable. For the sake of clarity, the above part of the Government Order is extracted hereunder:

> *"5.(v) The provisional pension shall be revised based on the revised pay certified by the Local Fund Audit Department where ever applicable. The number of persons drawing provisional pension due to non settlement of audit paras should be reduced immediately starting from the earliest ones to the recent ones."*

7. Even according to the second respondent University, the proposal was given only to the revised provisional pension and not the regular pension which has been granted to these petitioners. Admittedly, the petitioners were not given with any provisional pension and whatever that has been accorded to them was subsequent to their retirement and the regular pension for which they are

entitled to.

8. It is trite law that the Government Order cannot be superseded by any statutory provisions which are governing the service conditions of the employees. So far as these petitioners are concerned, they had retired from service and the relation between the petitioners and the second respondent University as that of employee and employer had ceased to exist. It is not the argument of the respondent that the posts, by names, Senior Deputy Registrar and Senior Superintendent, were not in existence at the time of their employment. Only because those posts are available, the petitioners are rightly placed in those posts on their promotion and they were allowed to retire as how they have been designated. In this regard, it is worthwhile to refer to the judgment of the Hon'ble Supreme Court of India in the case of ***State of Jharkhand vs. Jitendra Kumar*** reported in ***(2013) 12 SCC 210***, wherein, it has been held that the right to receive pension is recognised as a right in “property” and the executive instructions cannot have a statutory character and hence those executive instructions cannot be called as law. The words of the Hon'ble Supreme Court of India are given as under:

"16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in "property". Article 300-A of the Constitution of India reads as under:

*"**300-A. Persons not to be deprived of property save by authority of law.-** No person shall be deprived of his property save by authority of law".*

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

17. It hardly needs to be emphasised that the executive instructions are not having statutory character and therefore, cannot be termed as "law"within the meaning of the aforesaid Article 300-A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory Rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these Rules, the position would have been different.

18. We, accordingly, find that there is no merit in the instant appeals as the impugned order of the High Court is without blemish. Accordingly, these appeals are dismissed with costs quantified at Rs. 10,000/- each."

9. With regard to the date of implementation of any of the Statutory Rules leaving alone the executive instructions, it has been categorically held that such Rules can operate only with prospective effect and not retrospectively. In the said judgment, it has been held as under:

> "*15. It is no doubt true that Rules made under Article 309 can be made so as to operate with retrospective effect. But it is well settled that rights and benefits which have already been earned or acquired under the existing Rules cannot be taken away by amending the Rules with retrospective effect. (See N.C.Singhal vs. Armed Forces Medical Services; K.C.Arora vs. State of Haryana and T.R.Kapur vs. State of Haryana). Therefore, it has to be held that while the amendment, even if it is to be considered as otherwise valid, cannot affect the rights and benefits which had accrued to the employees under the unamended rules. The right to NPA @ 25% of the pay having accrued to the respondents under the unamended Rules, it follows the respondent employees will be entitled to non-practising allowance @ 25% of their pay upto 20-05-2003.*"

10. The petitioners, who were working as Senior Deputy Registrar and Senior Superintendent, were not subjected to any disciplinary proceedings and while allowing them to retire no conditions were imposed in view of any pending or contemplated disciplinary action. As stated already, the pensionary benefits sanctioned to the petitioners are all regular pension in accordance with

the Rules. Hence, the respondents have got no authority to call for those orders which are given already and to revise the same pursuant to the subsequent Government Order issued due to change of policy of the University.

11. The learned Senior Counsel appearing for the petitioners submitted that the order which has not been issued for recovery of the pension already granted itself would amount to implementing the Government Order with prospective effect and hence, they can not be given with retrospective effect.

12. The reduction of pension has been made only because the posts by names Senior Deputy Registrar and Senior Superintendent are something luxurious and hence, they have to be re-designated as Superintendent and Deputy Registrar respectively, as how they available in the government departments. Such re-designation has been made with effect from the year 2008 and consequence thereof, the pension due to the petitioner has been revised through the impugned order. No re-designation has been impacted on those persons who are no more in service. In other words if any re-designation exercise is done in respect of retired individuals that is possible only by going posterior in time. Whichever way it is looked, the attempt of the second respondent University to implement the Government Order against the

petitioners in a retrospective manner is glaringly visible.

13. Coming to the next point of issuing executive instruction not supported by statutes and enactments. After having made elaborate discussion in the case of the ***Madras University Staff Association, represented by its President, University of Madras, Chennai-5 vs. State of Tamil Nadu, represented by the Secretary to Government, Higher Education Department, Fort St.George, Chennai-9 and another,*** it is held that it is ultravires to issue instructions contrary to the enactment of the legislature and concluded as under:-

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.

14. In the cases in hand, the entitlement of the petitioners to get pension in accordance with the provisions of pension has been reduced and modified through an administrative order which is thoroughly illegal. In reality, the petitioners' services with the respondent university had ended and thereafter the posts held by the petitioner can not be re-designated as against them. In other words the petitioners are no more holding the posts of Senior Deputy Registrar and Senior Superintendent in order to get it re-designated. Such an action would

amount to doing something on a thing which does not exist. Hence in all possibilities and realities of rule of law, the respondents do not have authority to pass the impugned order. As the impugned notices are against the spirit and scope of the statutory protection given to the petitioners, they are illegal and liable to be set aside.

15. Accordingly,

(i) The Writ Petition in W.P(MD).No.8537 of 2024 is allowed and the impugned order passed by the second respondent vide proceedings in Ref.Emp.No.A1642/MKU/Show Cause Notice/Reply/2024 dated 26.03.2024 is quashed.

(ii) The Writ Petition in W.P(MD).No.8538 of 2024 is allowed and the impugned order passed by the second respondent vide proceedings in Ref.Emp.No.A1683/MKU/Show Cause Notice/Reply/2024 dated 26.03.2024 is quashed.

(iii) The Writ Petition in W.P(MD).No.8539 of 2024 is allowed and the impugned order passed by the second respondent vide proceedings in Ref.Emp.No.A1665/MKU/Show Cause Notice/Reply/2024 dated 26.03.2024 is quashed.

(iv) The Writ Petition in W.P(MD).No.8540 of 2024 is allowed and the impugned order passed by the second respondent vide proceedings in Ref.Emp.No.A1638/MKU/Show Cause Notice/Reply/2024 dated 26.03.2024 is quashed.

(v) The Writ Petition in W.P(MD).No.8541 of 2024 is allowed and the impugned order passed by the second respondent vide proceedings in Ref.Emp.No.A1655/MKU/Show Cause Notice/Reply/2024 dated 26.03.2024 is quashed.

(vi) The Writ Petition in W.P(MD).No.8542 of 2024 is allowed and the impugned order passed by the second respondent vide proceedings in Ref.Emp.No.A1654/MKU/Show Cause Notice/Reply/2024 dated 26.03.2024 is quashed.

(vii) The Writ Petition in W.P(MD).No.8543 of 2024 is allowed and the impugned order passed by the second respondent vide proceedings in Ref.Emp.No.A1656/MKU/Show Cause Notice/Reply/2024 dated 26.03.2024 is quashed.

(viii) The Writ Petition in W.P(MD).No.8544 of 2024 is allowed and the impugned order passed by the second respondent vide proceedings in Ref.Emp.No.A1641/MKU/Show Cause Notice/Reply/2024 dated 26.03.2024 is quashed.

(ix) The Writ Petition in W.P(MD).No.8545 of 2024 is allowed and the impugned order passed by the second respondent vide proceedings in Ref.Emp.No.A1687/MKU/Show Cause Notice/Reply/2024 dated 26.03.2024 is quashed.

(x) The Writ Petition in W.P(MD).No.8546 of 2024 is allowed and the impugned order passed by the second respondent vide proceedings in Ref.Emp.No.A1698/MKU/Show Cause Notice/Reply/2024 dated 26.03.2024 is quashed.

There shall be no order as to costs. Connected miscellaneous petitions are closed.

04.04.2024

NCC:yes/no

Index:yes/no

Internet:yes/no

ssb

To

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

2.The Registrar,
Madurai Kamaraj University,
Madurai.

3.The Director,
Department of Local Fund Audit,
No.571, Officers building,
Veterinary Hospital Campus,
Nandanam,
Chennai-600 035.

R.N.MANJULA, J.

ssb

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