BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.9029 of 2024

and

W.M.P.(MD).Nos.8221 and 8222 of 2024

M.Raghuram ... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Principal Secretary to Government,
Higher Education Department,
Secretariat, Fort St.George,
Chennai-600 009

2.The Vice Chancellor
Madurai Kamaraj University,
Palakalai Nagar, Madurai, 625 021

3. The Registrar

Madurai Kamaraj Univeristy

Palkalai Nagar

Madurai-625 021

4.The Director,

Local Fund Audit,

Kuralagam, Chennai-108

5.The Deputy Director

Local Fund Audit

Madurai Kamaraj University

Madurai-625 021 ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the third respondent vide his proceedings in Ref.Emp.No.A1711/MKU/Show Cause Notice/Reply/2024 dated 26.03.2024 and quash the same as illegal and without jurisdiction and consequently forbearing the respondents 1 to 5 herein from implementing the revision of scales of pay and revision of pension of the petitioner by refixing the scales of pay of the petitioner on par with the scales of pay in the Departments of Government of Tamil Nadu.

For Petitioner : Mr.M.Muthugeethayan

For R1 : Mr.T.Amjad Khan
Government Advocate

For R2 and R3 : Mr.T.Cibi Chakraboorthy

ORDER

Heard Mr.M.Muthugeethayan, the learned counsel appearing for the petitioner, Mr.T.Amjad Khan, the learned Government Advocate appearing for the respondent No.1 and Mr.T.Cibi Chakrboorthy, the learned counsel appearing for the respondents No.2 and 3.

2. The writ petitioner, who has served as Technician (UG) Selection Grade at the time of retirement during the year 2016, has filed this Writ Petition challenging the order of the third respondent University revising his pay and 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 Technician (UG) Selection Grade, which was held by the petitioner; due to paucity of funds, certain budgetary measurements were taken by revising the provisional pension given to the petitioner; this is in view of the fact that he held posts not available in the Government but by getting a higher salary and incidental pension impact.

4. Mr.M.Muthugeethayan, the learned Counsel appearing for the petitioner 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 petitioner which have been granted to him in accordance with the statutory entitlement. It is further submitted that even for any reason, the Government Order can be enforceable they can be 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 respondents 2 and 3 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 petitioner and he has made his submissions and after considering the submissions, the impugned order has been passed; however, no recovery has been made and the revision of pension has been effected. Hence, the petitioner 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 third respondent University, the proposal was given only to revise the pension which has been granted to this petitioner. Admittedly, the petitioner was not given with any provisional pension and whatever that has been accorded to him was subsequent to his retirement and the regular pension for which he is 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 the petitioner is concerned, he had retired from service and the relationship between the petitioner and the third respondent University as that of employee and employer had ceased to exist. It is not the argument of the respondent that the post, by name, Technician (UG) Selection Grade, was not in existence at the time of his employment. Only because this post is available, the petitioner was rightly placed in that post on his promotion he was allowed to retire as how he has been designated.

9. 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."

10. 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."*

11. The petitioner, who was working as Technician (UG) Selection Grade, was not subjected to any disciplinary proceedings and while allowing him to retire no conditions were imposed in on that account. As stated already, the pensionary benefits sanctioned to the petitioner were 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.

12. The learned Counsel appearing for the petitioner 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 cannot be given with retrospective effect.

13. Coming to the next point of issuing executive instruction not supported by statutes and enactments, 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 case on hand, the entitlement of the petitioner to get pension in accordance with the provisions of pension has been reduced and modified through an administrative order which is thoroughly illegal. Hence in all possibilities and realities of rule of law, the respondents do not have the authority to pass the impugned order. As the impugned orders are unfair and unenforceable and against the spirit and scope of the statutory protection given to the employees, they are liable to be called as illegal and set aside.

15. Accordingly, The Writ Petition is allowed and the impugned order passed by the third respondent vide proceedings in Ref.Emp.No. A1711/MKU/Show Cause Notice/Reply/2024 dated 26.03.2024 is quashed and consequently, the respondents 1 to 5 are prohibited from implementing the revision of scales of pay and revision of pension of the petitioner by refixing the scales of pay of the petitioner on par with the scales of pay in the Departments of Government of Tamil Nadu. There shall be no order as to costs. Connected miscellaneous petitions are closed.

10.04.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
kpr

To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Higher Education Department,
Secretariat, Fort St.George,
Chennai-600 009

2.The Vice Chancellor
Madurai Kamaraj University,
Palakalai Nagar, Madurai, 625 021

3. The Registrar

Madurai Kamaraj Univeristy

Palkalai Nagar

Madurai-625 021

4.The Director,

Local Fund Audit,

Kuralagam, Chennai-108

5.The Deputy Director

Local Fund Audit

Madurai Kamaraj University

Madurai-625 021

R.N.MANJULA, J.

kpr

W.P.(MD)No.9029 of 2024

10.04.2024