



W.P.(MD)No.9989 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.9989 of 2024

and

W.M.P.(MD).Nos.9038 and 9039 of 2024

R.Rajamani

...Petitioner

vs.

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

2.The Madurai Kamaraj University,
represented by its Registrar,
Madurai.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Ref.No.:A1725/MKU/Rev.Pension/2024, dated 05.03.2024, passed by the second respondent and quash the same and consequently direct the respondents to reimburse the recovered amount to the petitioner with



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interest within the time stipulated by this Court.

For Petitioner : Mr.T.C.S.Thillainayagam
For R1 : Mr.T.Amjadkhan
Government Advocate
For R2 : Mr.Ashaiq Ismail
for Mr.T.Cibi Chakraborty

ORDER

Heard Mr.T.C.S.Thillainayagam, learned counsel appearing for the petitioner, Mr.T.Amjadkhan, learned Government Advocate appearing for the first respondent and Mr.T.Cibichakraborty, learned counsel appearing for the second respondent.

2. The petitioner, who was working as a Lab Assistant in the second respondent University and who retired from service on 11.11.1988, has filed this writ petition seeking to quash the impugned order passed by the second respondent in Ref.No.:A1725/MKU/Rev.Pension/2024, dated 05.03.2024 and consequently direct the respondents to reimburse the recovered amount to



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the petitioner with interest.

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3. The learned counsel appearing for the petitioner submitted that by virtue of the impugned order, the petitioner's pension was reduced on the basis that the petitioner's scale of pay was wrongly fixed. The Local Fund Audit Department has raised an objection that the pay fixation of the petitioner was wrongly made in higher scale of pay. The second respondent has reduced the pension amount in the month of December 2023 and passed the impugned order later ie., on 18.03.2023. Before passing the impugned order, the second respondent has not issued any prior notice to the petitioner. Challenging the same, the present writ petition has been filed.

4. This issue has already been dealt with by this Court in W.P. (MD)Nos.8537 to 8546 of 2024. The relevant portions in the above Judgment are extracted below.

"8. It is trite law that the Government Order cannot be supersede by any statutory provisions which are governing the service conditions of



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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



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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 his pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that the 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



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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 nonpractising allowance @ 25% of their pay upto 20-05-2003.””

10...

11...

12...

13. Coming to the next point of issuing



executive instruction not supported by statutes and enactments. After having made an 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



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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



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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 cannot 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 the 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."

5. In the case on hand, the petitioner had retired from service by superannuation and hence, the employer - employee relationship between the petitioner and the second respondent University had come to an end



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and hence, the second respondent University holds no Authority to re-fix the salary and the consequential benefits of the petitioner.

6. In the similar lines, the Administrative Staff Association of Manonmaniam Sundaranar University represented by its General Secretary have also filed a writ petition in W.P.(MD)No.6635 of 2019 and this Court in paragraph No.8, had held as follows.

"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



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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 Government. The impugned communication is without jurisdiction. It is quashed and the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed."

7. The above said judgment will also be applicable to the facts of the present case, because in the instant case also the second respondent University has passed the impugned order, based on the Audit Objection raised with regard to the wrong fixation of pay of the non-teaching staff. As held in the above Judgment, only the Syndicate has the power to appoint the University staffs and fix their emoluments. The re-fixation of salary and consequential pensionary benefits post retirement retrospectively, in the opinion of this Court, is not in accordance with law and hence, the impugned orders are liable to be set aside.



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8. In the result, this Writ Petition is allowed and the impugned order passed by the second respondent, dated 05.03.2024, is quashed. The respondents are directed to reimburse the recovered amount to the petitioner with interest within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

24.04.2024

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

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To

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2.The Madurai Kamaraj University,
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R.N.MANJULA, J.

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