BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.11849 of 2024 &
W.M.P.(MD)Nos.10562 & 10563 of 2024

M.Baskaran ... Petitioner

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.

3.The Director,
Department of Local Fund Audit,
No.571, Officers Building,
Veterinary Hospital Campus,
4th Floor, Nandanam,
Chennai - 600 035. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the impugned order passed by the second respondent vide his proceedings in

Ref.Emp.No.A1768/MKU/Show Cause Notice/Reply/2024 dated 27.04.2024, quash the same as illegal.

For Petitioner	:	Mr.S.Vanchinathan
For Respondents	:	Mr.T.Amjadkhan, Government Advocate for R1 and R3 Mr.Ashqiq Ismail for Mr.T.Cibi Chakraborthy for R2

ORDER

Heard Mr.S.Vanchinathan, learned counsel appearing for the petitioner. Mr.T.Amjadkhan, learned Government Advocate takes notice for R1 and R3 and Mr.Ashqiq Ismail, learned counsel takes notice for the second respondent.

2. The petitioner who worked as a Senior Superintendent in the second respondent University and retired on 28.02.2019 has filed this writ petition to quash the impugned order passed by the second respondent in Ref.Emp.No. A1768/MKU/Show Cause Notice/Reply/2024 dated 27.04.2024.

3. Through the impugned order, the petitioner's post of Senior Superintendent has been re-designated as Superintendent and on that basis, the petitioner's pension has been re-fixed with effect from 01.12.2023.

4. Mr.Ashqiq Ismail, learned counsel appearing for the second respondent submits that the action has been taken in view of the Local Fund Audit objection, resolution of the Finance Committee dated 18.04.2023 and the resolution of the Syndicate dated 24.04.2023 for fixing the scale of pay of the employees on par with the Government scale of pay and hence, the petitioner's post was re-designated as Superintendent; his pay was re-fixed; and consequently, his pension was also re-fixed.

5. Once an employee retires, there cannot be any employer-employee relationship between the individual and the second respondent University. In such case, the second respondent University cannot assume power to revise and re-fix the salaries of the retired persons due to the pressure given by the Audit Body.

6. The issue involved in this case has already been dealt with in the Judgment of this Court dated 04.04.2024 in W.P.(MD)Nos.8537 to 8546 of 2024, in which case, this Court had the occasion to deal with the similarly placed persons who worked as Senior Deputy Registrars and Senior Superintendents at the time of retirement and subsequently re-designated as Deputy Registrars and Superintendents and whose pay has been re-fixed and also the consequential pension. The relevant portions in the above Judgment are extracted below.

> *"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 nonpractising allowance @ 25% of their pay upto 20-05-2003.""*

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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."*

7. In the case on hand also, the petitioner has retired by superannuation and hence, the employer - employee relationship between the petitioner and the second respondent University had come to an end. The second respondent University holds no Authority to re-fix the salary and the consequential benefits of the petitioners. Since the issue raised in the instant case is squarely covered in the above Judgment of this Court, this petitioner is also entitled to the same relief and hence, the impugned order of the second respondent is liable to be set aside.

8. In view of the above stated reasons, the writ petition is **allowed** and the impugned order of the second respondent in Ref.Emp. No.A1768/MKU/Show Cause Notice/Reply/2024 dated 27.04.2024, is quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

07.06.2024

NCC: Yes/No
Index : Yes/No
Speaking/Non-Speaking order

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To

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R.N.MANJULA, J.

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