



W.P.(MD)No.13179 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.06.2024

CORAM

THE HONOURABLE MS JUSTICE R.N.MANJULA

W.P.(MD)No.13179 of 2024
and
W.M.P.(MD).No.11670 of 2024

V.Vasu

... Petitioner

Vs.

1.State of Tamil Nadu,
Represented by its Principal Secretary to the Government,
Department of Higher Education,
Fort St. George,
Chennai 9.

2.Madurai Kamaraj University,
Represented by its
The Registrar,
Madurai District.

3.The Principal,
Madurai Kamaraj University College,
Alagarkovil Road,
Madurai 625 002.

4.The Deputy Director (I/c),
Local Fund Audit Department,
Madurai Kamaraj University Audit,
Madurai 21.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for
issuance of Writ of Certiorarified Mandamus, calling for the records pertaining



W.P.(MD)No.13179 of 2024

to the impugned order in L.Dis.No. 115/A1/2024, dated 06.05.2024, on the file of the respondent No. 4 and quash the same as illegal and consequently for a direction, directing the respondent Nos. 2 to 4 to provide the increment arrears and to disburse the monetary benefits and other retirement benefits including pension in accordance with the Resolution passed by the Syndicate of the second respondent university dated 20.01.2023 based on the decision of the Appointment Committee of the second respondent University dated 20.12.2022 within the time period stipulated by this Court.

For Petitioner : Mr.T.Aswin Raja Simman

For R-1 : Mr.M.Siddharthan,
Additional Government Pleader

For R-2 & R-3 : Mr.Cibi Chakraborty

ORDER

Heard Mr.T.Aswin Raja Simman, learned counsel appearing for the petitioner, Mr.M.Siddharthan, learned Additional Government Pleader appearing for the first respondent and Mr.Cibi Chakraborty, learned counsel appearing for respondent Nos.2 and 3.

2. This Writ Petition has been filed challenging the impugned order of the fourth respondent in L.Dis.No. 115/A1/2024, dated 06.05.2024 and consequently to direct the respondent Nos. 2 to 4 to provide the increment arrears and to disburse the monetary benefits and other retirement benefits



W.P.(MD)No.13179 of 2024

including pension in accordance with the Resolution passed by the Syndicate of the second respondent University dated 20.01.2023 based on the decision of the Appointment Committee of the second respondent University dated 20.12.2022 within the time period stipulated by this Court.

3. The petitioner was appointed as an 'Assistant Professor / Associate Professor' in the Madurai Kamaraj University College, Madurai on 20.10.1994. Later, he was appointed as 'Reader in Physics' on 11.06.2007 in Nanoscience / Nanotechnology sanctioned by UGC under University with Potential for Excellence (UPE) by the second respondent, vide his proceedings, dated 06.06.2007. The petitioner's pay anomaly has been regularized with effect from 11.06.2007 under UGC-UPE Scheme by giving pay protection. Later, the petitioner was re-designated in the post of Associate Professor from the date of joining.

3.1. As the petitioner's appointment under UGC-UPE was about to be brought to an end, the petitioner has filed a Writ Petition in W.P.(MD).No.8135 of 2012 seeking to protect the services and got an order of injunction on 18.06.2012 in M.P.(MD).No.1 of 2012. In view of the same, he continued to be in the service under UPE Scheme in the cadre of Associate Professor. On



W.P.(MD)No.13179 of 2024

30.09.2013, the petitioner was relieved from the University even though an interim order was in existence. An Enquiry Committee was constituted to deal with the petitioner's case and on 19.02.2016, the Enquiry Committee recommended that he may be permitted to join the parent Institution i.e., Madurai Kamaraj University Constituent College with immediate effect. The period of absence from 01.10.2013 to 22.11.2016 was recommended to be treated as duty in pursuant to the decision taken by the Syndicate. Prior to the decision taken by the Syndicate, the Appointment Committee itself has taken a decision to regularize the services of the petitioner from 30.09.2013 to 22.11.2016 as a duty period to sanction subsequent increment and the same was approved by the Syndicate. However, the petitioner was not given with annual increment from the year 2011 to 2016. On 13.03.2023 the petitioner was relieved from the post of Assistant Professor in the Madurai Kamaraj University and directed to join in the Madurai Kamaraj University College and reported to the Principal. Thereafter, he attained the age of superannuation on 30.04.2023 and got retired from service.

3.2. However, the petitioner's salary for the period between 01.10.2013 to 22.11.2016 and the annual increment for the period from 2011 to 2017 and retirement benefits were not disbursed to the petitioner. The petitioner has also



W.P.(MD)No.13179 of 2024

not been paid with the pension. On 28.03.2024, the fourth respondent without jurisdiction has returned the pension proposal by stating that the petitioner is not entitled to get salary and increment during the period between 01.10.2013 to 22.11.2016 on the principle of 'no work no pay'. Despite the petitioner has given clarification that the fourth respondent has issued the impugned order dated 06.05.2024 by returning the pension proposal, it is stated that the petitioner is not entitled to salary or increment.

4. Mr.T.Aswin Raja Simman, learned counsel appearing for the petitioner submitted that the Syndicate is the apex body of the University and the Local Fund Audit cannot have any objection. He drew my attention to the earlier judgment of this Court in W.P.(MD).No.9989 of 2024 dated 24.04.2024. While passing the order in the above case, reference was made in the earlier judgment of this Court in W.P.(MD).No.6635 of 2019 wherein direction was given by the Government to the Registrar of the Universities to refix the pay / reverse wrong promotions / increments as pointed out in the report of the Director of Local Fund Audit was quashed. For the sake of clarity, the essential paragraphs of the Judgment in W.P.(MD).No.9989 of 2024 are extracted hereunder:

“6. In the similar lines, the Administrative Staff Association of Manonmaniam Sundaranar University represented by its General



W.P.(MD)No.13179 of 2024

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 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



W.P.(MD)No.13179 of 2024

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.”

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.”

5. Mr.Cibi Chakraborty, learned counsel appearing for respondent Nos.2 and 3 submitted that the Syndicate has passed a resolution to consider the impugned period as duty and nowhere, it is stated about disbursing the salary pertaining to the duty period. He further submitted that the petitioner had challenged the inter departmental proceedings (impugned order), despite he stated that the copy has not been served upon him. It is further submitted that by invoking principle of ‘no work no pay’, the petitioner is found to be not entitled to get any pay for the period of his absence.

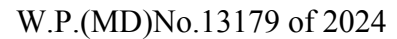


W.P.(MD)No.13179 of 2024

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6. Even though the copy of the Local Fund Audit objection was not served upon the petitioner, the petitioner could have known about the same by making enquiries with respondent Nos.2 and 3. Since it affects the interest of the petitioner, he has filed his Writ Petition to challenge the same. In fact, the Syndicate has taken a decision to consider the petitioner's absence as duty within its discretion and consequent to the decision taken by the Appointment Committee to reinstate the petitioner. If the petitioner is affected, the question of lack of *locus standi* would not arise even in the absence of a copy of the Local Fund Audit Objection served upon him.

7. Even though the Madurai Kamaraj University College has taken a favourable decision for regularizing the petitioner's absence during the period from 01.10.2013 to 22.11.2016, in view of the financial crunch, it appears that respondent Nos.1 and 2 have taken the opposite view now and claims that no decision has been taken to disburse the salary of the petitioner for the impugned period. The financial crunch cannot be cited as a reason for settling the service benefits of the employees.



9. It is reiterated that the financial shortage cannot be attributed as a reason for denying the monetary benefits flow out of the financial conditions ensured by the earlier University decisions and its order. So the inaction on the part of the respondents for settling the retiral benefits of the petitioner including his pensionary benefit is not correct.

10. In view of the aforesaid reasons, this Writ Petition is **allowed** and the impugned order in L.Dis.No. 115/A1/2024, dated 06.05.2024, on the file of the respondent No. 4 is quashed and the respondent Nos.2 to 4 are directed to provide the increment arrears and to disburse the monetary benefits and other retirement benefits including pension in accordance with the Resolution passed by the Syndicate of the second respondent University dated 20.01.2023 based on the decision of the Appointment Committee of the second respondent



W.P.(MD)No.13179 of 2024

University dated 20.12.2022 within a period of four weeks from the date of

receipt of a copy of this order. No costs. Consequently, the connected

miscellaneous petition is closed.

25.06.2024

NCC:yes/no

Index:yes/no

Internet:yes/no

TSG

To

The Principal Secretary to the Government,

State of Tamil Nadu,

Department of Higher Education,

Fort St. George,

Chennai 9.



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W.P.(MD)No.13179 of 2024

R.N.MANJULA, J.

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W.P.(MD)No.13179 of 2024

25.06.2024