WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2024

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD).No.15296 of 2024

G.Panneerselvam ... Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by the Secretary to Government,
Higher Education (11) Department,
Secretariat, Fort St. George,
Chennai - 600009.

2. The Commissioner of Technical Education,
O/o. the Commissioner of Technical Education,
53, Sardar Patel Road,
Anna University,
Guindy, Chennai - 600025. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the Respondents to disburse the annual increments to the petitioner from the year 2013 onwards and fix the revised pensionary benefits along with the monetary benefits as per the G.O.Ms.No. 78, Higher Education (B1) Department dated 20.04.2017, and by considering the petitioner's representation dated 03.04.2024 within the period that may be stipulated by this Court.

https://www.mhc.tn.gov.in/judis

WEB COPY

For Petitioner : Mr.M.Ajmal Khan
Senior Counsel

For Respondents : Mr.T.Amjad Khan
Government Advocate

ORDER

By consent of both the parties, the Writ Petition is taken up for final disposal at the admission stage itself.

2. Heard Mr.M.Ajmal Khan, learned Senior Counsel, appearing for the petitioner and Mr.T.Amjad Khan, learned Government Advocate appearing for the respondents.

3. Mr.M.Ajmal Khan, learned Senior Counsel appearing for the petitioner submitted that the petitioner was appointed as Associate Lecturer on 09.01.1985. Thereafter, he was promoted as Assistant Professor (now re-designated as Associate Professor) and posted in the Alagappa Chettiar College of Engineering and Technology, Karaikudi, Sivagangai District on 01.01.2006. At that relevant point of time, holding a Ph.D., degree is not a mandatory condition. However, as per the revised guidelines issued by the Government in G.O.Ms.No.95 Higher Education Department dated 05.05.2010, for the post of

https://www.mhc.tn.gov.in/judis

WEB COPY

Associate Professor securing a Ph.D., degree has been made as a mandatory condition. The petitioner was not given with any increment for a period from the year 2013 to 2019 for the reason that the petitioner did not possess the prescribed qualification of Ph.D., degree at the relevant period.

4. Mr.M.Ajmal Khan, learned Senior Counsel for the petitioner submitted that at the time when the petitioner was appointed, possessing a Ph.D., Degree is not mandatory and hence the Government Order in G.O.Ms.No.95, which has been made on 05.05.2010 by stipulating a Ph.D., Degree as a mandate for appointment of Associate Professor has not been given with retrospective effect and the petitioner's entitlement for annual increments was denied.

5. Even in G.O.Ms.No.95 dated 05.05.2010, which has prescribed the revised qualification norms for appointment of Associate Professor and other posts, it has been made clear that when the rules were amended vide G.O.Ms.No.78 Higher Education Department dated 20.04.2017, it has been specifically mentioned that the amendment shall come into effect only with effect from 05.05.2010 on which date the earlier G.O.Ms.No.95 dated

https://www.mhc.tn.gov.in/judis

WEB COPY

05.05.2010 was issued. In fact, in the said Government Order in G.O.Ms.No.78 dated 20.04.2017, a Saving Clause was also introduced in the amendment which would read as under:

Amendments

In the said Rules

1) For the expression "Assistant Professor" wherever it occurs, the expression "Associate Professor" shall be substituted.

2) In rule 3(i), for the expression "Lecturers", the expression "Assistant Professors" shall be substituted.

3) In rule 5, for item (i), (ii), (iii), the following shall be substituted, namely:-

(i) (a) B.E/ B.Tech and M.E / M.Tech in relevant branch with first class or equivalent either in B.E. / B.Tech or M.E / M.Tech and Ph.D or equivalent, in appropriate discipline.

(b) Post Ph.D publications and guiding Ph.D students is highly desirable; and

(ii) Minimum of five years experience in teaching/research/industry experience of which TWO years post Ph.D experience is desirable.

(iii) In case of Architecture, Professional Practice of 5 years as certified by the Council of Architecture shall also be considered valid.

Explanation:-

1. Equivalence for Ph.D. is based on publication of 5 international Journal papers, each Journal having a cumulative impact index or not less than 2.0 with incumbent as the main author and all 5 publications being in the authors area of specialization.

2. Ph.D. shall be from a recognized University.

https://www.mhc.tn.gov.in/judis

WEB COPY

3. For an incumbent Assistant Professor, experience at the level of Assistant Professor will be considered equivalent to experience at the level of Associate Professor, provided the incumbent Assistant Professor has acquired or acquired Ph.D Degree in the relevant discipline.

4. Experience at Diploma Institutions is also considered equivalent to experience in degree level Institutions at appropriate level and as applicable. However, qualifications as above shall be mandatory.

5. If a class/division is not awarded, minimum of 60% marks in aggregate shall be considered equivalent to first class / division. If a Grade Point System is adopted the Cumulative Grade Point Assessment (CGPA) will be converted into equivalent marks as below.

Grade Point	***Equivalent Percentage***
6.25	*55%*
6.75	*60%*
7.25	*65%*
7.75	*70%*
8.25	*75%*

4) after rule 9, the following rule shall be added namely;

'10 Savings: Nothing contained in these rules shall adversely affect the persons holding the post on the date of publication of these rules in the Tamil Nadu Government Gazette.

https://www.mhc.tn.gov.in/judis

WEB COPY

6. So, the above Saving Clause would clarify that the amended rule shall not adversely affect any person holding the post on date of publication of the amendment. This has got direct reference to the petitioner's case where the petitioner was holding the post of Associate Professor even before issuance of Government Order in G.O.Ms.No.95 in the year 2010. Despite the same, the respondents appears to have misconstrued the amendment and withheld the petitioner's entitlement for annual increment. In fact, the petitioner and others have filed a Writ Petition in W.P.(MD).Nos.8569 of 2016 and 12032 of 2017 before the High Court seeking for promotion to the level of Professor and Principal. According to the direction given by the Court vide order dated 07.06.2023, a Government Order in G.O.(D).No.229 dated 31.07.2023 has been passed with regard to giving promotion to the petitioner. In such case, it is unreasonable to deny his earlier incremental dues on the ground that he did not possess Ph.D., degree during the time of his retirement.

7. Since the petitioner has given representation to that effect and the same was not considered so far, I feel an appropriate direction should be given.

https://www.mhc.tn.gov.in/judis

WEB COPY

8. In the result, the Writ Petition is **allowed** and the respondents shall consider the petitioner's representation dated 03.04.2024 in the light of the above observations and pass orders by granting the annual increment along with monetary benefits for the period between 2013 to 2019 and disburse the same to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs.

10.07.2024

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

To
1. The Secretary to Government,
Higher Education (11) Department,
Secretariat, Fort St. George,
Chennai - 600009.

2. The Commissioner of Technical Education,
O/o. the Commissioner of Technical Education,
53, Sardar Patel Road,
Anna University,
Guindy, Chennai - 600025.

https://www.mhc.tn.gov.in/judis

WEB COPY

R.N.MANJULA, J.

PNM

ORDER IN
W.P.(MD).No.15296 of 2024

10.07.2024

https://www.mhc.tn.gov.in/judis