



W.P.(MD)Nos.16391 to 16395 of 2024, 15915 to 15919 of 2024 & 14708 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

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14708 of 2024 &

W.M.P.(MD)Nos.14208, 14210, 14212, 14214, 14309, 14310, 14220,
14221, 14255, 14258, 13836, 13837, 12894, 12896, 13844, 13845,
13855, 13856, 13849, 13850, 13852 & 13853 of 2024

W.P.(MD)No.16391 of 2024

Perachi

... 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.Manonmaniam Sundaranar University,
Represented by
The Registrar,
Tirunelveli District.

3.The Director,
Local Fund Audit,
Kuralagam,
Chennai - 108.



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4.The Assistant Director,
Local Fund Audit,
Tirunelveli.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in MSU/R/Estt/Admn/Refixation/2024 dated 24.06.2024 on the file of the second respondent and quash the same as illegal and consequently forbear the respondents 2 to 4 from reducing the scale of the pay of the petitioner within a stipulated time.

For Petitioner : Mr.I.Lajapathi Roy,
Senior Counsel
Assisted by
Mr.G.Karthik

For Respondents : Mr.M.Siddharthan
Additional Government Pleader
for R1, R3 and R4

Mr.M.Mahaboob Athiff,
Standing Counsel for R2

COMMON ORDER

Heard Mr.I.Lajapathi Roy, learned senior counsel assisted by Mr.G.Karthick, learned appearing for the petitioner, Mr.M.Siddharthan, learned Additional Government Pleader appearing for the respondents 1,



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3 and 4 and Mr.M.Mahaboob Athiff, learned standing counsel appearing for the respondent University.

2. The petitioners have filed these petitions to quash the impugned order of the respondent University in MSU/R/Estt/Admn/Refixation/2024 dated 24.06.2024 as illegal and consequently forbear the respondents 2 to 4 from reducing the petitioners' scale of pay.

3. Mr.I.Lajapathi Roy, learned senior counsel appearing for the petitioners submitted that even though the revised pay fixation has been done and the pay drawn by the petitioners was reduced, no reasons for the same has been stated in the impugned order. It is his submission that the impugned order is without any rhyme or reason and hence, it is liable to be set aside. It is further submitted that the appointment and promotion has been given only in accordance with the approval given by the Syndicate and hence, the impugned pay revision is illegal.



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4. Mr.Mahaboob Athiff, learned Standing Counsel appearing for the respondent University submitted that earlier, the Apex Court in S.L.P.(C)Nos.9560-9561/2017 and batch vide its order dated 18.12.2019 directed all the Heads of Departments to ensure that Selection Grade / Special Grade pay of Drivers are fixed in terms of Serial No.6 of Schedule II of G.O.Ms.No.162, Finance (Pay Cell) Department, dated 13.04.1998. Hence, the petitioners' scale of pay has been revised according to the above schedule. It is further submitted that the Government Letter in No. 4866/CMPC/2013-14, dated 22.01.2020 that was issued to refix the scale of pay of the Drivers has been adopted for the Drivers of the respondent University also. It is his submission that Some individuals have filed a writ petition before this Court in W.P.(MD)No.9942 of 2020, in which, order has been passed on 20.01.2023 directing the petitioners therein to make representations to the respondent University and the University was also directed to receive the representations and pass orders after giving them an opportunity of hearing. In the above writ petition, this Court has upheld the validity of the aforesaid Government Letter.



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5. But, the fact remains that this Court has made an observation that the letter issued by the Government cannot force the respondent University to modify the scale of pay of the petitioners therein since the pay was fixed by the University based on the Syndicate Resolution. So, it is for the University to adopt the aforesaid Government Letter into their Resolution or Scheme. The validity of the Government Letter has got no relevance for the purpose of the *lis* raised in this writ petitions, though the petitioners herein are also the petitioners who have filed the writ petition in W.P.(MD)No.9942 of 2020.

6. The further argument of the learned Standing Counsel for the respondent University is that some of the petitioners did not satisfy the qualification prescribed for their respective posts, but, they have been regularized erroneously. Hence, in compliance of the order of this Court in ***Dr.R.Sethu vs. The Manonmaniam Sundaranar University in W.P. (MD)No.2368 of 2012 dated 02.03.2018***, the anomaly should be rectified or otherwise the persons incharge of such wrong regularization have to be penalised. The relevant paragraph of the above Judgment is re-produced



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under for better clarification.

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"28.This Court would not stop with these observations. This Court is of a strong opinion that stern action to be taken against all the irregularities and illegalities caused because of certain ill acts of whims and fancies. The authorities who had involved in such activities are to be certainly prosecuted under law. In this regard, the competent higher authorities have to conduct a thorough investigation and find out the irregularities and illegalities and accordingly, initial appropriate action against all the officials, who had committed and are part of such irregularities and illegalities. If this action is not taken by the appropriate officials then the practice of such irregular and illegal appointments will continue in future also. A strong message in this regard to the University is also required that all appointments in future are to be made only by following the selection procedures and by providing equal opportunity to all the eligible citizens of our great nation."

7. Even in the above order, it has been stated about the future appointments and there is no direction whatsoever to recast the pay of the staffs who have been already regularized.

8. In fact, the show cause notice issued to the petitioners on 06.05.2024 would make a reference about the earlier show cause notice,



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which was given to the petitioners on 17.05.2023, 19.05.2023 and 23.05.2023 respectively. The above show cause notices have been given in pursuant to the Government Letter in Letter (Ms) No.174, dated 25.09.2013. Admittedly, the said Government Letter has been quashed by the Judgment of this Court held in ***W.P.(MD)No.6635 of 2019 dated 16.06.2023.***

9. However, the learned standing counsel for the respondent University placed much reliance on the subsequent orders of the Single Judge of this Court passed in ***W.P.(MD)Nos.24312 to 24316 of 2023 dated 16.11.2023.*** In fact, the subject matter of the said writ petitions is the show cause notice given to the similarly placed persons. The said writ petition was disposed by observing that the stage of show cause notice is prematured to challenge the action of the authority. Subsequent to the same, the respondent University has issued the show cause notice dated 06.05.2024.

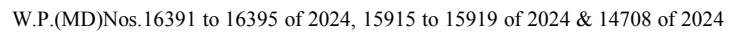


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10. However, even in that show notice the first reference was made only in respect of the earlier show cause notice which was issued on the basis of the Government Letter in Letter (Ms) No.174, dated 25.09.2013. The short and long conclusion that can be directly drawn is that the show cause notice dated 06.05.2024 itself would loose its validity in view of the fact that the base on which the show cause notice was issued itself has been quashed. To put in other words, the Government Letter in Letter (Ms) No.174, dated 25.09.2013 and which was the basis for the first reference shown in the show cause notice dated 06.05.2024 itself has been quashed and hence no further action can be done in pursuant to the above Government Letter.

11. For any extraneous reasons, if the respondent University claims that the show cause notice dated 06.05.2024 has been given irrespective of the instructions given in the Government Letter in Letter (Ms) No.174, dated 25.09.2013, then the substance of the show cause notice should have stated on what basis or for what reasons, the



12. In this regard, it is relevant to refer the Statute 10 and 11 of the University Statute which would state that the scale of pay payable to various categories of posts under the University shall be determined by the Syndicate, provided that scale of pay fixed shall be comparable to those deputed or accepted for similar posts under the Government and University Grants Commission, provided that the University shall provide a Dearness Allowance, house rent allowance and city compensatory



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allowance shall be regulated as per the Rules applicable to the employees of the Government of Tamil Nadu from time to time.

13. The Statute came into force from 23.01.1995. Some of the petitioner have been appointed even prior to the above Rules come into force. Hence, the Rules cannot be enforced in a retrospective manner. Even for those petitioners who have been appointed subsequent to the year 1995, the application of Statute 10, has to be construed that the rule only mandates the fixation of pay and allowance not below the pay and allowance applicable to the similar posts in the Government of Tamilnadu. In the event of fixing pay or allowance for any posts more than the pay and allowance payable to the similar government posts, the same cannot be cut down subsequently by citing Statute 10. It is reiterated that the Statute 10 is the minimum guarantee given to the employees that their pay and allowance will not be below than the pay and allowance for similar posts in the government. The above rule does not prohibit fixation of pay or allowance higher than the pay or allowance payable to the equal posts in the Government of Tamil Nadu. Even if the university intends to



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fix pay equal to that of the similar government posts that should be done at the time of appointment itself and there cannot be any re-exercise of cut-down if higher pay and allowance is allowed to be fixed at the time of the appointment.

14. It is not the case of the respondent University that the appointment of the petitioners itself is illegal. So far no action on that ground has been taken. Neither the show cause notice nor the impugned order has stated that the very appointment of the petitioners itself is illegal. Even in such case, that will not result in revision / rejection of pay. In fact, the petitioners have been regularized by respondent University by orders dated 22.08.2008, 01.04.1993, 30.08.1997, 10.10.1998, 07.07.2000, 14.11.1997 and 25.01.2003.

15. Hence, in whatever way the respondent University states about the qualification criteria and legality of the appointment of the petitioners, that was not the crux of the pay revision exercise. All that has been done is only to ensure the parity of pay or relevance about the



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employees of the University and the Government in the matter of pay. No doubt, the syndicate of the University has the liberty to take any policy decision in respect of the service conditions of the petitioners in accordance with law and Statute. But it is needless to reiterate that such exercise cannot be done in a retrospective manner which is unknown to service law.

16. Despite, the learned standing counsel for the respondent University has made a lengthy argument by citing various Judgments of the Supreme Court and High Court, he has requested to file a counter.

17. It is pertinent to point out that similar matters of this nature are being filed time and again. One such matter has been listed today in W.P.(MD)No.15915 of 2024 and batch and the same is being taken up together with the present writ petitions and common order is passed. Since these matters are repeatedly posted, nothing would have prevented the respondent University from filing any counter and the Court cannot expect to waste time to deal with the very same issue in different petitions



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without availing the convenience of dealing with the connected matters pertaining to the same issue together.

18. In view of the above stated reasons, the writ petitions are **allowed** and the impugned order of the respondent University in MSU/R/Estt/Admn/Refixation/2024 dated 24.06.2024 is quashed. The scale of pay of the petitioners shall not be reduced. No costs. Consequently, connected Miscellaneous Petitions are closed.

23.07.2024

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

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R.N.MANJULA, J.

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To

- 1.The Principal Secretary
to the Government,
Department of Higher Education,
Fort St.George, Chennai - 9.
- 2.The Director,
Local Fund Audit,
Kuralagam, Chennai - 108.
- 3.The Assistant Director,
Local Fund Audit, Tirunelveli.

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