



W.P.(MD)No.16773 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.(MD)No.16773 of 2024

K.S.James Stephenson

... Petitioner

vs.

1.The Additional Chief Secretary to the Government,
Higher Education Department,
Secretariat,
Fort St.George,
Chennai - 600 009.

2.The Commissioner of Technical Education,
O/o. The Commissioner of Technical Education,
53, Sardar Patel Road,
Anna University,
Guindy, Chennai - 600 025.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a direction to the respondents to disburse the annual increments that fell due on 01.07.2013, 01.07.2014, 01.07.2015, 01.07.2016 and 01.07.2017 and fix the revised pensionary benefits along with the monetary benefits as per the G.O.(MS)No.77 Higher Education (B1) Department dated 20.04.2017, by considering the petitioner's



W.P.(MD)No.16773 of 2024

representation dated 03.06.2024 within the period that may be stipulated by this Court.

For Petitioner : Mr.P.Prabhakaran

For Respondents : Mr.T.Amjadkhan
Government Advocate for R1

ORDER

Heard Mr.P.Prabhakaran, learned counsel appearing for the petitioner and Mr.T.Amjadkhan, learned Government Advocate appearing for the respondent.

2. The petitioner has filed this writ petition seeking to direct to the respondents to disburse the annual increments that fell due on 01.07.2013, 01.07.2014, 01.07.2015, 01.07.2016 and 01.07.2017 and fix the revised pensionary benefits along with the monetary benefits as per the G.O.(MS)No.77 Higher Education (B1) Department dated 20.04.2017, by considering the his representation dated 03.06.2024 within a stipulated time.



W.P.(MD)No.16773 of 2024

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3. The petitioner's wife who retired on 30.06.2017 as Professor in the Government College of Engineering, Tirunelveli has passed away on 18.04.2019. Since the petitioner's wife had not completed Ph.D. within seven years as per the All India Counsel for Technical Education Notification dated 04.01.2016, she was not given with annual increments from July 2013 to July 2017. Now, the petitioner has filed this petition stating that his wife was very much entitled to get the annual increments as per the Government Order in G.O.Ms.No.77, Higher Education (B1) Department, dated 20.04.2017.

4. In an earlier writ petition in W.P.(MD)No.10735 of 2024, similarly placed persons have sought for a similar relief in pursuance of the Government Order in G.O.Ms.No.78, Higher Education (B1) Department, dated 20.04.2017, wherein, the saving clause introduced in the Government Order in G.O.Ms.No.78, Higher Education (B1) Department, dated 20.04.2017 has been dealt with and positive directions were issued in favour of the petitioner therein. For the sake of clarity, the essential part of the order is extracted hereunder.



W.P.(MD)No.16773 of 2024

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"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 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 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.*



W.P.(MD)No.16773 of 2024

(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.*
- 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.*



W.P.(MD)No.16773 of 2024

<u>Grade Point</u>	<u>Equivalent Percentag e</u>
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

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



W.P.(MD)No.16773 of 2024

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possess P.hd., degree during the time of his appointment.

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.

*8. In the result, the Writ Petition is **allowed** and the respondents shall consider the petitioner's representation dated 22.04.2024 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. Consequently, connected miscellaneous petition is closed.*

5. The only difference in the above referred case and the present case is that in the above writ petition, the petitioner claims relief through the savings clause introduced in the Government Order in G.O.Ms.No.78, Higher Education (B1) Department, dated 20.04.2017 and the present petitioner claims relief through the savings clause introduced in the Government Order in G.O.Ms.No.77, Higher Education (B1) Department, dated 20.04.2017. In such circumstances, I feel that this petitioner is also entitled to the similar relief as granted in the earlier writ petition.



W.P.(MD)No.16773 of 2024

WEB COPY

6. In view of the above stated reasons, the writ petition is **allowed** and the respondents are directed consider the representation of the petitioner dated 03.06.2024 in the light of the above observations and pass orders by granting the annual increments that fell due on 01.07.2013, 01.07.2014, 01.07.2015, 01.07.2016 and 01.07.2017 and re-fix the pensionary benefits along with the monetary benefits within a period of eight weeks from the date of receipt of a copy of this order. No costs.

24.07.2024

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

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To

1.The Additional Chief Secretary to the Government,
Higher Education Department,
Secretariat,
Fort St.George,
Chennai - 600 009.



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W.P.(MD)No.16773 of 2024

R.N.MANJULA, J.

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W.P.(MD)No.16773 of 2024

24.07.2024