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W.P. Nos.2037 & 2038 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2025

CORAM :

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.Nos.2037 & 2038 of 2014

and

M.P.Nos.1 & of 2015

K.Kaliaperumal

... Petitioner in W.P.No.2037 of 2015

M.S.Rajendran

... Petitioner in W.P.No.2038 of 2015

Vs.

Pondicherry University,
Rep. by its Registrar
R.V Nagar,
Pondicherry.

... Respondents in both W.Ps.

PRAYER in W.P.No.2037 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the respondent to implement the decision taken in respect of Item No.2006.206 of the 90th Executive Council Meeting of the Respondent held on 09.10.2006 as confirmed by the 91st Meeting of the Executive Council vide item No.2006-219 held on 23.11.2006 by stepping up the pay of the petitioner on par with his juniors viz., M.Venkatesan and B.Alaguselvi with effect from 18.12.2000 and with monetary benefits from 15.06.2005 and pay all the consequential arrears of pay.

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W.P. Nos.2037 & 2038 of 2015

PRAYER in W.P.No.2038 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the respondent to implement the decision taken in respect of Item No.2006.206 of the 90th Executive Council Meeting of the Respondent held on 09.10.2006 as confirmed by the 91st Meeting of the Executive Council vide item No.2006-219 held on 23.11.2006 by stepping up the pay of the petitioner on par with his juniors viz., M.Venkatesan with effect from 18.12.2000 and with monetary benefits from 15.06.2005 and pay all the consequential arrears of pay.

In both W.Ps.

For Petitioner : M/s.Balan Haridas

For Respondent : Mr.V.Balamurugan
Standing Counsel

COMMON ORDER

By this Common Order, both these Writ Petitions are being disposed of.

2. In these Writ Petitions, the Petitioners seek for a Mandamus to direct the Respondent to implement the resolutions passed at the 90th Executive Council Meeting dated 09.06.2006 and 91st Executive Council Meeting dated 23.11.2006 of the Respondent, based on the Representation of



the Petitioners. The Executive Council after noting the pay disparity between the Petitioners and their juniors, namely M.Venkatesan and B.Alaguselvi decided to increase the pay scale of the Petitioners on par with their juniors.

3. Relevant portion of the 90th Executive Council Meeting dated 09.06.2006, which was affirmed by the 91st Executive Council Meeting dated 23.11.2006 is extracted hereunder:-

“Shri M.S.Rajendran and Shri K.Kaliaperumal (Sl. No. 1 & 3) were appointed as Junior Assistants on regular basis earlier than their juniors because they had the prescribed typing qualification whereas their juniors acquired the qualifications later than them.

It is felt that the request made by Shri M.S Rajendran and Shri K.Kaliaperumal to award the scale of Rs.5000-8000 at par with their juniors may be considered sympathetically.

Submitted to the Council for consideration to award the scale of pay of Rs.5000-8000 to Shri M.S.Rajendran and Shri K.Kaliaperumal at pay with their juniors, notionally with effect from date of placement of their immediate juniors with actual monetary benefits only from the date of approval of Executive Council.”

4. However, the Respondent at the 100th Executive Council Meeting dated 30.06.2009, going back on their earlier resolution decided not to consider the case of the Petitioners to increase their pay scale on par with



their juniors. The Respondent further decided not to disturb the pay scale of the said juniors, namely M.Venkatesan due to the efflux of time at that stage and further based on the fact that B.Alaguselvi had passed away in the year 2007.

5. Relevant portion of the resolution passed by the Respondent at the 100th Executive Council Meeting dated 30.06.2009 is extracted hereunder:

“The Counsel after perusal of all the documents and communications has opined that “the scale awarded to Shri.M.Venkatesan in the Year 1997 cannot be disturbed at this distance of time as he has not made any misrepresentation about his service status for obtaining the OUM. Once the pay is fixed after long lapse of time the employee gets a vested right to the post and the scale of pay and he cannot be disturbed. Since Shri.M.Venkatesan has already completed 11 years of unblemished service; his case can be reconsidered before passing any order of reversion.”

6. Defending the Impugned Orders, the learned counsel for the Respondent would submit that the requests of the respective Petitioners were rejected as early as on **24.09.2008**, **28.10.2008** and **22.04.2010**. It is further submitted by the learned counsel for the Respondent that these orders have



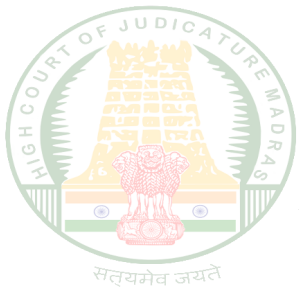
not been challenged by the Petitioners, and therefore, the Petitioners cannot seek for a mandamus in these Writ Petitions.

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7. That apart, it is further submitted by the counsel for the Respondent that the Petitioners are seeking to implement the resolution passed in the 90th and 91st Executive Council Meetings dated **09.10.2006** and **23.11.2006**, in the year 2015. Therefore, it is submitted that these Writ Petitions filed in the year 2015 has to be dismissed on the ground of laches.

8. That apart, it is submitted by the learned counsel for the Respondent that neither the said junior, namely M.Venkatesan, nor the UGC has been made a party in the present Writ Petitions and therefore, the Writ Petitions are liable to be dismissed on the ground of non-joinder of necessary parties.

9. That apart, learned counsel for the Respondent would also submit that the respective Writ Petitioners had offered to withdraw these Writ Petitions after filing them, however, they have not withdrawn the same.



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10. That apart, it is submitted by the learned counsel for the Respondent that the mistake that has been committed by the Respondent would not entitle the respective Petitioners to claim parity in pay, as there is no equality in illegality.

11. In this connection, the learned counsel for the Respondent has drawn attention of this Court to the following three cases:

- 1) State of Bihar and others Vs. Kameshwar Prasad Singh and Another, (2000) 2 SCC 94**
- 2) State of West Bengal and Others Vs. Debasish Mukherjee and Others, (2011) 14 SCC 187**
- 3) P.Singaravelan and Others Vs. District Collector, Tiruppur, (2020) 3 SCC 133.**

12. Further, the learned counsel for the Respondents drew the attention of this Court to the date of regular appointment of the respective Petitioners, as well as that of the said M.Venkatesan and one B.Alaguselvi. In this connection, reference is made to **Table 1 in Para 7** of the Counter Affidavit, which is as follows:

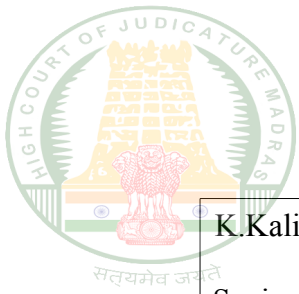


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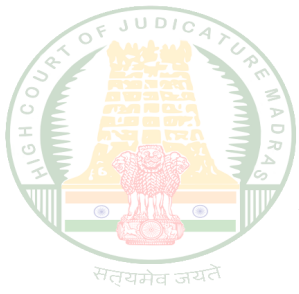
SI. No	Name	Date of appointment on consolidated pay	Date of regular appointment	Date of completion of 8 years including consolidated service	Scale of pay (Pre-Revised)
1.	Shri.K.Kaliaperumal	17.05.1990	17.05.1991	17.05.1998	4000-6000
2.	Smt.B.Alaguselvi	01.11.1989	07.07.1991	31.10.1997	5000-8000
3.	Shri.M.S.Rajendiran	09.07.1990	09.07.1991	08.07.1998	4000-6000
4.	Shri.M.Venkatesan	01.11.1989	16.12.1991	31.10.1997	5000-8000

13. It is submitted by the Respondents that the Petitioners were entitled to Assured Career Progression (in short 'ACP'), 2nd Modified Assured Career Progression (in short 'MACP') and 3rd MACP as per the UGC regulations. In this connection, reference is made to the following **Table Paragraph No.16** of the Counter Affidavit, which is as follows:



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K.Kaliaperumal Senior Assistant (Retired w.e.f. 31.08.2023)	Initial appointment as Junior Assistant-Cum- Typist On 17.05.1991 F.N. Rs.950-1500 (Level-2)	ACP 17.05.2003 Vth Pay 4000- 100-6000 (on completion of 12 yrs) 1st Promotion Assistant 28.07.2006 Vth Pay 4000- 100-6000 (Level – 4)	II-MACP 17.05.2011 Rs.5200-20200/- + GP Rs.2800/- (On completion of 20 yrs from date of appointment) (Level – 5) 2nd Promotion Senior Assistant 15.10.2011 Rs.9300-34800/- + GP Rs.4200/- (Level – 6)	III-MACP awarded vide Office Order No.07, dt.13.08.2021 in the Level-7, w.e.f. 17.05.2021 On completion of 30 yrs from the date of appointment.
M.S.Rajendran Senior Assistant (Retired w.e.f. 31.07.2023)	Initial appointment as Junior Assistant- Cum-Typist 09.07.1991 F.N. Rs.950-1500 (Level-2)	ACP 17.05.2023 Vth Pay 4000- 100-6000 (on completion of 12 yrs) 1st Promotion Assistant 28.07.2006 Vth Pay 4000- 100-6000 (Level-4)	II-MACP 09.07.2011 Rs.5200-20200/- + GP Rs.2800/- (on completion of 20 yrs from date of appointment) (Level-5) 2nd Promotion Senior Assistant 15.10.2011 Rs.9300-34800/- + GP Rs.4200/- (Level-6)	III-MACP awarded vide Office Order No.81, dat.05.08.2021 in the Level-7, w.e.f. 09.07.2021 On completion of 30 yrs from the date of appointment.



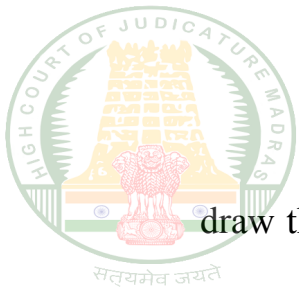
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14. That apart, it is submitted by the learned counsel for the Respondent that the Petitioner in W.P.No.2037 of 2015, namely K.Kaliaperumal, though was initially appointed in the year 1989 on **01.09.1989**, was relieved from service on **14.03.1990** on account of certain misconduct and was reappointed only on **17.05.1990**. Thereafter, as far as the aforesaid ACP is concerned, it is to be reckoned periodically at the end of the first 12 years , the second 12 years and at the end of the 30th year.

15. On the other hand, the learned counsel for the Petitioners also drew the attention of this Court to the decision of the Hon'ble Supreme Court in *Gurcharan Singh Grewal and another Vs. Punjab State Electricity Board and Others*, (2009) 3 SCC 94.

16. The learned counsel for the Petitioner would further submit that the Petitioners are senior to the said M.Venkatesan and in that connection made a reference to **Item No.2006.206** of the **90th Executive Council Meeting** held on 09.10.2006.

17. That apart, the learned counsel for the Petitioners would also



draw the attention of this Court to the **Statute No.12(2)(iii) of the Schedule (Statutes) of the Pondicherry University Act, 1985 and the Statutes of the University**, with specific reference made to the aforesaid clause, which reads as follows:

“12.POWERS AND FUNCTIONS OF THE EXECUTIVE COUNCIL

(1)....

(2) Subject to the provisions of this Act, the Statutes and the Ordinances, the Executive Council shall, in addition to all other powers vested in it, have the following powers, namely:-

(i)....

(ii)....

(iii) to create administrative, ministerial and other necessary posts and to make appointments thereto in the manner prescribed by the Ordinances.”

18. Therefore, it is submitted by the learned counsel for the Petitioners that the resolution passed by the Respondent at the 90th and 91st Executive Council Meetings has not been cancelled and that on this ground, it is a fit case for allowing the Writ Petitions in the light of the decision in **Gurucharan Singh Grewal** (cited *supra*) cited by the learned counsel for the Petitioners.

19. I have considered the arguments advanced by the learned



counsel for the Petitioners and the learned counsel for the Respondent.

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20. The facts are not in dispute. The date of regularization of the respective Writ Petitioners and that of the said M.Venkatesan and B.Alaguselvi are not in dispute. The learned counsel for the Petitioner has also not pointed out any mistake in the aforesaid dates.

21. Therefore, the only issue that arise for consideration in these Writ Petitions is whether the respective Petitioners are entitled to the benefit that was purportedly given to the said M.Venkatesan and B.Alaguselvi in advance in the year 2005, when indeed M.Venkatesan should have received the same benefit only in the **year 2011**.

22. The law on the subject is clear. An illegality or irregularity committed in a case will not give right to claim the same in other instances on the basis of equality. The law laid down by the Hon'ble Supreme Court in the *State of Bihar and Others Vs. Kameshwar Prasad Singh and Another*, (2009) 9 SCC 94, wherein, it was held as under:



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“30. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. In this regard this Court in Gurusharan Sing V. New Delhi Municipal Committee held that Citizens have assume wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court.”

23. This view was reiterated by the Hon'ble Supreme Court in ***State of West Bengal and Others Vs Debasish Mukherjee and Others, (2011) 14 SCC 187***, wherein it was held as under:

“26. It is now well settled that guarantee of equality before law is a positive concept and cannot be enforced in a negative manner. If an illegality or an irregularity has been committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction of the courts and tribunals to require the State to commit the same irregularity or illegality in their favour on the reasoning that they have been denied the benefits which have been illegally or arbitrarily extended to others.”

24. Yet another decision of the Hon'ble Supreme Court cited by the



learned counsel for the Respondent in ***P.Singaravelan and Others Vs***

District Collector, Tiruppur and others, (2020) 3 SCC 133, also reiterate

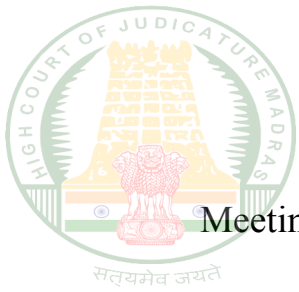
the above decision. Relevant portion of the aforesaid decision is reproduced

below:-

“22. The only question to be settled, therefore, is whether the appellants are entitled to claim parity with the drivers who have so far been granted benefits vide the orders of the High Court and this Court, as mentioned supra in para 4.

23. In this respect, we find that the High Court in the impugned judgement was correct in concluding that the appellants cannot claim such relief on the strength of Article 14 of the Constitution of India, when once it has been found they they are not lawfully entitled to the same. It is well-settled by now that a person cannot invoke Article 14 to claim a benefit extended to someone similarly placed if he is not lawfully entitled to such benefit in the first place. Article 14 embodies the concept of positive equality alone, and not negative equality, that is to say, it cannot be relied upon to perpetuate an illegality or irregularity. In fact, this Court has opined that this principle extends to orders passed by judicial for a as well. Thus, the jurisdiction of a higher court cannot be invoked on the basis of a wrong order passed by a lower forum. In this respect, it would be fruitful to refer to the following passage from the decision of this Court in Basawaraj V. LAO.”

25. Therefore, the claim of the Petitioner, based on the Resolution passed earlier by the Respondent in the 90th and 91st Executive Council



Meetings and based on the decision of the Hon'ble Supreme Court in

Gurcharan Singh Grewal and another Vs. Punjab State Electricity Board and Others, (2009) 3 SCC 94, cannot be countenanced.

26. The Respondent should have taken steps to recover the amount from the concerned officer who committed mistake. This is in accordance with the mandate of the University Grants Commission (UGC) in its guidelines dated 10.03.2006. Paragraph No.2 of the said UGC Guideline reads as under:

“2(i) The cut off date of 08.04.1998 for termination of implementation of One Time Upward Movement (OTUM) in respect of non-teaching staff (Group B, C and D categories) as already decided could be uniformly application to all the central universities/UGC maintained deemed to be universities and Delhi Colleges. If any University/College has granted financial upgradation to its employees under OTUM beyond 8.4.1998, the same should be withdrawn and responsibility for the same should be fixed.

(ii) As on 8.4.98, if an employee was already allowed two or more financial upgradations, she/he shall not be eligible for any further financial upgradation during her/his career. If the employee was allowed only one financial upgradation before 08.04.98m she/he shall be eligible for the 2nd financial upgradation under ACP Scheme, after she/he completes 24 years of service in accordance with the ACP Scheme introduced by Government of India vide



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*Department of Personnel and Training O.M.No.35034/1/97
Estt.(D) dated 9th August, 1999."*

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27. Therefore, these Writ Petitions are liable to be dismissed. However, liberty is given to the Respondent to fix the responsibility on the concerned authority who had wrongly sanctioned the higher MACP to the said M.Venkatesan which has given rise to the present cause of action in these Writ Petitions.

28. Accordingly, these Writ Petitions are dismissed with the above observations. No costs.

28.02.2025

Index : Yes/No
Speaking Order : Yes/No
dpa

To:

The Registrar
Pondicherry University,
R.V Nagar,
Pondicherry.

C.SARAVANAN,J.

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