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W.A.No.1415 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2025

CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE**

**W.A.No.1415 of 2023
and
C.M.P.No.13783 of 2023**

Registrar,
University of Madras,
Chepauk,
Chennai - 600 005.

... Appellant

-Vs-

1. Dr.V.Chandrasekaran
2. The State of Tamil Nadu,
Represented by its Principal Secretary,
Higher Education Department,
Fort St.George,
Chennai - 600 009.
3. The University Grants Commission,
Represented by its Chairman,
Bahadur Shah Zafer Marg,
New Delhi - 110 002.

... Respondents

PRAYER : Appeal under Clause XV of Letters Patent against the order dated 14.02.2023 made in W.P.No.6774 of 2018.

For Appellant : Mr.A.S.Vijayaragavan



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Standing Counsel

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For Respondents : Mr.Rajinish Pathiyil for R1
Mr.D.Ravichander
Special Government Pleader for R2

J U D G M E N T

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This intra Court appeal has been directed against the order dated 14.02.2023 made in W.P.No.6774 of 2018.

2. That the first respondent was working as a Associate Professor in Education Institute of Advanced Study in Education under the control of Directorate of Collegiate Education who in turn was appointed as a Professor in the Department of Education in the appellatant University on 27.10.2015.

3. At the time of appointment, his emoluments was fixed at Rs.43,000/- in the pay band of Rs.37,400-67,000 with AGP of Rs.10,000/- This was made in accordance with G.O.(Ms)No.350, Higher Education (H1) Department, dated 09.09.2009.

4. Thereafter, the first respondent was relieved from the erstwhile



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employment and joined at the appellant University. Thereafter the first respondent had made a request to the appellant University to state that he had drawn the last pay of Rs.59,050/- with AGP of Rs.10,000/- at the erstwhile employment which shall be protected and the same pay has to be paid to him. This of his representation having been considered, the University granted the said relief by order dated 28.10.2015 fixing his salary at Rs.59,050/- + AGP of Rs.10,000/-.

5. However after some time, i.e., in the year 2018, it has again been re-fixed and an order has been passed on 23.02.2018 stating that in view of the re-fixation of pay at Rs.43,000/- instead of Rs.59,050/-, a sum of Rs.11,27,505/- being the amount which has been paid as an excessive payment has to recovered from him. Therefore, for the recovery of said amount, an order has been passed on 23.02.2018. This was under challenged in the writ petition.

6. It is the further case of the first respondent / writ petitioner that even though he superannuated and retired from service, till date his retiral benefits has not been provided to him citing the reasons that the issue is not settled and the matter is pending before the Court of law.



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7. The writ Court, having heard the said writ petition has allowed the same by citing the reason that the pay protection has already been provided under G.O.(Ms)No.350 dated 09.09.2009 under which only the first respondent / writ petitioner having been relieved and was appointed as a Professor at the appellant University. When that being so, the pay ought not to have been reduced and therefore, the amount for which he is entitled to ought to have been fixed and paid to him, therefore, the salary arrears as well as retiral benefits which has already been withheld by the University even after the superannuation of the first respondent has to be paid back to him. This was the order that has been passed by the learned Judge through the impugned order.

8. Heard Mr.A.S.Vijayaragavan, learned Standing Counsel appearing for the appellant University and Mr.Rajinish Pathiyil, learned counsel appearing for the first respondent and Mr.D.Ravichander, learned Special Government Pleader appearing for the second respondent.

9. Insofar as withholding of the said retiral benefits is concerned, the learned Standing Counsel appearing for the appellant University would submit that the issue of fixation of the first respondent / petitioner pay since had been in dispute and excess payment according to the audit objection since has been



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made to the extent of more than Rs.11,00,000/-, the same has to be recovered from him and therefore his retiral benefits has not been given to him and his pay should have been fixed only at Rs.43,000/- as objected by the audit and moreover, the enhancement given to the first respondent / writ petitioner for enhanced pay of Rs.59,050/- was made by the Registrar unilaterally without having been approved either by the Finance Committee or by the Syndicate of the University, therefore the said enhancement was rightly found out and reverted back to the original pay of Rs.43,000/- however these aspects have not been considered by the learned Judge in proper perspective, hence the order impugned is liable to be interfered with.

10. We have also heard Mr.Rajinish Pathyil, learned counsel appearing for the first respondent / petitioner who would submit that the pay protection emanates from G.O.(Ms)No.350, Higher Education (H1) Department, dated 09.09.2009 and moreover, once a person had already been working as an Associate Professor and his pay was fixed at Rs.59,050/- which was last drawn pay, at any cost, that cannot be reduced to a lesser amount of Rs.43,000/- and this was accepted by the University, therefore the pay has been correctly fixed by the orders of the University dated 28.10.2015 as the University is represented by the Registrar who passed an order that order cannot be found fault with



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merely because of the audit objection.

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11. The learned counsel appearing for the first respondent would submit that insofar as making of payment to the first respondent / petitioner including the arrears as well as retiral benefits are concerned, the necessary amount has already been sanctioned and the University has received that amount on 26.07.2019 itself, therefore the amount received by the University cannot be withheld by the University without having paid the same to the first respondent, therefore the retiral benefits as well as arrears, if any, has to be paid to the first respondent with nominal interest to be fixed by this Court, he contended.

12. We have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

13. As has been rightly held by the learned Judge of the writ Court that the pay protection has been made under G.O.(Ms)No.350, Higher Education (H1) Department, dated 09.09.2009.



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14. Moreover the first respondent / writ petitioner had already been working as an Associate Professor under the Government of Tamil Nadu Department of Collegiate Education. When that being so, at any rate, his pay should be protected as it is only a transfer in service by way of appointment to the post of Professor at the appellant University. When that being so, the pay last drawn by the first respondent, i.e, Rs.59,050/- cannot be reduced. When that was reduced to Rs.43,000/- that has been rectified by the University of course at the request of the first respondent and the same has been rectified.

15. Accordingly as per the pay protection, the correct pay has been paid to him for three years. When that being so, all of a sudden, the University has come forward to reduce the same and seeking for recovery of an alleged excess amount of Rs.11,00,000/- is because of the audit objection and also additional reason that it has not been approved by the Finance Committee or the University Syndicate.

16. If at all it has to be approved by the Finance Committee as well as the Syndicate, it can be placed before those forum to get ratify the order passed by the University through Registrar. Therefore, that would not give rights to the University to withdraw the benefits already been conferred on the Professor,



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i.e., first respondent.

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17. Moreover, if an incumbent had already been paid a particular salary in a Government Organisation from where he has got appointment in any foreign service by way of transfer and appointment, the pay has to be protected, it is a settled proposition. Even against the said settled proposition and also against G.O.(Ms)No.350, no order to reduce the pay as has been made by the University by its order dated 15.02.2018 and 23.02.2018 ought not to have been passed. Therefore, the learned Judge has set aside those orders, of course, correctly. The said view of the learned Judge and the conclusion reached by him cannot be found fault with and therefore, since we do not find any reason to interfere with the order passed by the writ Court, accordingly the orders passed by the writ Court shall be complied with and all retiral and other pay benefits for which the first respondent is entitled for nominal interest shall be calculated and be paid by the appellant University within a period of three months from the date of receipt of a copy of this judgment.

18. With these directions, this Writ Appeal is dismissed. However, there



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shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.K., J.) (A.D.M.C., J.)
24.04.2025

NCC : Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

To

1. The Principal Secretary,
State of Tamil Nadu,
Higher Education Department,
Fort St.George,
Chennai - 600 009.
2. The Chairman,
The University Grants Commission,
Bahadur Shah Zafer Marg,
New Delhi - 110 002.



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