

W.P.Nos.22589 of 2018 etc.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2025

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CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.Nos.22589 & 26792 of 2018 and
W.P.Nos.24661 & 34349 of 2019 and
W.M.P.Nos.26441 & 31147 of 2018 and
W.M.P.Nos.24318 & 35013 of 2019

W.P.No.22589 of 2018

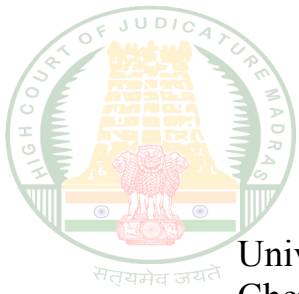
- 1.K.Vijaya (deceased)
- 2.G.Sethuramalingam
- 3.S.Gurudevi
- 4.S.Rakesh

(P2 to P4 are substituted as LR's of the deceased
P1 as per order dated 25.02.2025 in
W.M.P.No.34472 of 2024)

... Petitioners

Vs.

- 1.The Vice-Chancellor,
The Tamil Nadu Dr.M.G.R.Medical University,
No.69, Mount Road,
Guindy, Chennai 600 032.
- 2.The Registrar,
The Tamil Nadu Dr.M.G.R.Medical University,
No.69, Mount Road,
Guindy, Chennai - 600 032.
- 3.The Deputy Director of Local Fund Audit,



W.P.Nos.22589 of 2018 etc.

University of Madras,
Chennai - 600 005.

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(R3 suo motu impleaded as per order dated 25.02.2025)

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the first respondent University in Proc.No.EI(2)/34274/2017-1 dated 15.08.2018; Proc.No.EI(2)/34274/2015-2 dated 15.08.2018 and Proc.No.EI(2)/34274/2017-3 dated 15.08.2018 and to quash the same and direct the respondent University to forthwith sanction the pension, family pension, DCRG and other retirement benefits due to the petitioner in the post of Deputy Registrar from the date of retirement viz., 30.11.2017.

W.P.No.26792 of 2018

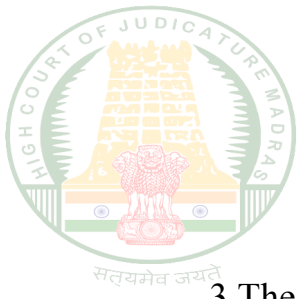
B.Srikumar

... Petitioner

Vs.

1.The Vice-Chancellor,
The Tamil Nadu Dr.M.G.R.Medical University,
No.69, Mount Road,
Guindy, Chennai 600 032.

2.The Registrar,
The Tamil Nadu Dr.M.G.R.Medical University,
No.69, Mount Road,
Guindy, Chennai - 600 032.



W.P.Nos.22589 of 2018 etc.

3. The Deputy Director of Local Fund Audit,
University of Madras,
Chennai - 600 005.

(R3 suo motu impleaded as per order dated 25.02.2025)

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the first respondent in Proc.No.EI(2)/00054/2017 dated 07.09.2018 and to quash the same and direct the respondent University to forthwith sanction the pension, family pension, DCRG and other retirement benefits due to the petitioner in the post of Administrative Officer from the date of retirement viz., 30.04.2017.

W.P.No.24661 of 2019

K.Muthuperumal

... Petitioner

Vs.

1. The Vice-Chancellor,
The Tamil Nadu Dr.M.G.R.Medical University,
No.69, Mount Road,
Guindy, Chennai 600 032.

2. The Registrar,
The Tamil Nadu Dr.M.G.R.Medical University,
No.69, Mount Road,
Guindy, Chennai - 600 032.



W.P.Nos.22589 of 2018 etc.

3. The Deputy Director of Local Fund Audit,
University of Madras,
Chennai - 600 005.

(R3 suo motu impleaded as per order dated 25.02.2025)

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the first respondent in Proc.No.EI(2)/32169/2017 dated 08.08.2019 and to quash the same and direct the respondent University to forthwith sanction the pension, family pension, DCRG and other retirement benefits due to the petitioner in the post of Assistant Librarian from the date of retirement viz., 31.10.2017.

W.P.No.34349 of 2019

P.Jayalekshmi

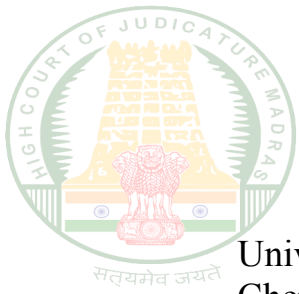
... Petitioner

Vs.

1. The Vice-Chancellor,
The Tamil Nadu Dr.M.G.R.Medical University,
No.69, Mount Road,
Guindy, Chennai 600 032.

2. The Registrar,
The Tamil Nadu Dr.M.G.R.Medical University,
No.69, Mount Road,
Guindy, Chennai - 600 032.

3. The Deputy Director of Local Fund Audit,



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University of Madras,
Chennai - 600 005.

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(R3 suo motu impleaded as per order dated 25.02.2025)

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the first respondent in Proc.No.EI(2)/34275/2017 dated 08.08.2019 and to quash the same and consequently direct the respondents to forthwith grant the petitioner her pension and pensionary benefits with gratuity, commutation, encashment of earned leave, leave salary etc., due to her in the post of Deputy Registrar from the date of her retirement viz., 31.01.2018.

In all W.Ps.

For Petitioners : Mrs.AL.Ganthimathi, Sr.Counsel for
Ms.S.A.Kanmani

For Respondents : Mr.A.Mohammed Ghouse for R1 & R2
Mr.K.Tippusultan for R3

COMMON ORDER

These Writ Petitions have been filed to call for the records relating to the proceedings of the first respondent and to quash the same and direct the respondent University to forthwith sanction the pension, family



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pension, DCRG and other retirement benefits due to the petitioners in their respective posts from the date of their retirement.

2. Heard Mrs.AL.Ganthimathi, learned Senior Counsel for the petitioners, Mr.A.Mohammed Ghouse, learned Standing Counsel for the respondents 1 and 2 and Mr.K.Tippusultan, learned counsel for R3 in all Writ Petitions and perused the materials available on record.

3. The petitioners have joined in the Government Service as Typist, Steno-typist, Record Clerk in the year 1981, 1983 and 1987 respectively and were permanently absorbed in the respondent University on 02.12.1988, 12.12.1988, 31.07.1989 and 18.01.1989 respectively and thereafter, they were given with subsequent promotions. The petitioners were directed by the University to get qualification in Degree within the stipulated period of four years for further increment and promotion. Accordingly, the petitioners had acquired Degree qualification through Open University System.

4. As per G.O.Ms.No.116, P & AR (M) Department dated

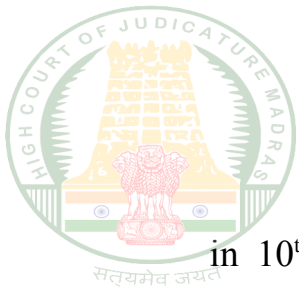


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18.08.2010, the persons who have acquired P.G.Degree through Open University System without obtaining basic Degree could not be considered for appointment in public service. The petitioners claim that their case has to be considered only under G.O.Ms.No.107, P & AR (M) Department dated 18.08.2009 which prescribes that persons who have possessed graduation after completion of SSLC or HSC will be considered for promotion in the Government post.

5. In the impugned orders, it has been stated that the third respondent has raised objection to the promotion awarded to the petitioners that they have acquired +2 qualification after having acquired U.G or P.G.degree and it is not in the pattern contemplated in G.O.Ms.No.107, dated 18.08.2009.

6. So far as G.O.Ms.No.107 dated 18.08.2009 is concerned, that Government Order simply approves the Diploma / UG Degree / PG Degree obtained through Open University as equivalent to Diploma / UG Degree / PG Degree regular stream of respective Universities. However, in the said Government Order, it is made clear that such equivalent benefit can be given to persons who have already acquired qualification



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in 10th STD and +2 and thereafter, secured the degree through Open University. Only in such condition, the Degree obtained through Open University can be considered to be eligible for appointment in Public Service and for promotions.

7. After the Governing Council of the University is said to have adopted G.O.Ms.No.242, the petitioners were informed to complete +2 through memorandum dated 11.11.2013. Thereafter, the petitioners had passed Higher Secondary Examination through private mode. Subsequently, the petitioners were given with promotion to the next level post. After the petitioners had attained the age of superannuation, they were permitted to retire from service.

8. Now, the third respondent has raised objection stating that the petitioners ought not to have given promotion as the education qualification acquired by the petitioners by passing UG or PG degree by Distance Mode is not in accordance with the pattern prescribed under G.O.Ms.No.107 dated 18.08.2009. In view of the above objection, the first respondent University has passed the impugned orders by reverting



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the petitioners to the lower posts and the monetary benefits paid to them in the promoted posts were ordered to be recovered from them and the terminal benefits of the petitioners have also been fixed in the lower posts.

9. The learned Senior Counsel for the petitioners submitted that the petitioners have acquired required qualification as advised by the University every now and then and in accordance with the Government Orders adopted by the Governing Council from time to time. It is further submitted that the copy of the Local Fund Audit objection has not been given to the petitioners in order to make effective representation.

10. The petitioners have acquired necessary qualification after getting permission from the University and after they have been advised through a memorandum to acquire particular educational qualification. Only after having satisfied that the petitioners have acquired the qualification as advised by the University, the Governing Council has approved the qualification of the petitioners and thereafter only, the petitioners were given with promotion. The third respondent / Local Fund



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Audit during the annual inspection has not raised any objection with regard to the promotion given to the petitioners or fixation of pay made to the petitioners in the promoted post.

11. Having allowed the petitioners in the promoted post till their retirement, all of a sudden, the third respondent has raised the objection citing the Government Order. The petitioners are in no way responsible to get the benefit and they did not suppress any materials facts. As the reversion orders have been passed against the retired employees, such reversion is impermissible. The Hon'ble Supreme Court in the case of *State of Punjab Vs. Rafiq Masih (White Washer) etc. reported in (2015) 4 SCC 334* has held that the recovery made against the retired employees is an impermissible one. For the sake of clarity, the essential portion of the above judgment is extracted hereunder:

“18. It is not possible to postulate all situation of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations,



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wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) in any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

12. As the petitioners' case would fall under Clause (ii) & (iv) of the above judgment, the order of recovery contemplated for the



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petitioners by reverting them to the lower post and fixing their terminal benefits in the lower post is illegal.

13. In this regard, it is also relevant to refer the judgment of this Court in *W.A.No.997 of 2018 etc., batch dated 08.03.2024*, wherein also the similar issue has been dealt. In the said judgment, the following preposition has been laid in paragraph No.72.

"72. In the result, this batch of cases are disposed of with the following orders :

(i) Accordingly, the W.A.No.997 of 2018 and the writ petitions in W.P.No.18697 of 2018, W.P.No.14477 of 2019 and W.P.No.57 of 2022 filed by OUS Group candidates seeking for promotion or challenging the panel prepared by the University excluding their candidature of OUS candidates are hereby dismissed.

(ii) The other writ petitions filed by the NOUS Group candidates in W.P.No.11540 of 2013, W.P.No.27184 of 2013, W.P.No.27185 of 2013, W.P.No.28292 of 2013, W.P.No.33764 of 2013, W.P.Nos.4574 to 4579 of 2015 and W.P.Nos.4581 to 4583 of 2015 are also disposed in view of the observations we have made where the promotions



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earned by the OUS Group candidates so far was directed not be disturbed.

(iii) As a sequel, the OUS Group candidates though not entitled for any further promotion either functionally or notionally, their promotions already earned either in the year 2014 or in any other year, such promotions shall not be disturbed and whatever the benefits accrued on them or earned by them by virtue of such promotions also neither be disturbed nor be recovered.

(iv) Insofar as W.P.No.26942 of 2022 is concerned, it is the claim of the writ petitioner that, subsequently, he has earned the qualification by adopting the method of 10+2+3 pattern, i.e., passed 10th standard, 12th standard and then Degree, the claim made by the said petitioner in W.P.No.26942 of 2022 shall be considered by the University in accordance with the settled legal position as has been discussed herein above by adopting the method of 10+2+3 pattern or 10+2+3+2 pattern as the case may be for any such posts, for which such petitioner is otherwise entitled to based on the seniority. However, such promotion if any to be given to the petitioner, that shall be considered only prospectively from the date he has acquired such qualification one by one by adopting



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the 10+2+3 pattern and not before the date of acquiring such qualification. Therefore to that extent, the candidature of the said petitioner alone shall be considered by the University for necessary promotion.

(v) In view of the detailed orders passed in the Writ Appeal and Writ Petitions, no further persuasive action is required in the Contempt Petitions. Accordingly, the Contempt Petitions in Cont.P.Nos.20 and 134 of 2022 are closed."

14. The petitioners have not been given with any charges prior to their retirement and no disciplinary proceedings have been initiated against them by alleging that they have suppressed any material facts in order to cancel their promotion or any monetary benefit attached to the same. The petitioners have been discharging their duties in their respective posts at the time of their retirement.

15. Without subjecting the petitioners to any disciplinary action before retirement, reversion cannot be done to the lower posts as though



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it is a punishment. The first respondent University without choosing to give any clarification for the third respondent for the objections raised by them, had passed the impugned orders in a mechanical fashion. As the impugned orders have been passed unmindful of the legal position already settled in this regard by the Hon'ble Supreme Court in the case of *State of Punjab Vs. Rafiq Masih (White Washer) etc. reported in (2015) 4 SCC 334*, they are liable to be set aside.

16. In the result, these Writ Petitions are allowed. The impugned orders passed in Proc.No.EI(2)/34274/2017-1, Proc.No.EI(2)/34274/2015-2 and Proc.No.EI(2)/34274/2017-3 dated 15.08.2018, Proc.No.EI(2)/00054/2017 dated 07.09.2018, Proc.No.EI(2)/32169/2017 dated 08.08.2019 and Proc.No.EI(2)/34275/2017 dated 08.08.2019 are set aside. The first respondent is directed to forthwith sanction the pension, family pension, DCRG and other retirement benefits due to the petitioners in the promoted posts from the date of their retirement and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.



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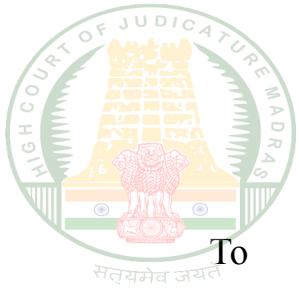
Index : Yes

Speaking

Neutral Citation : Yes

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To

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The Tamil Nadu Dr.M.G.R.Medical University,
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R.N.MANJULA, J.

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