IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.04.2025

Coram:

THE HONOURABLE Mrs.V.BHAVANI SUBBAROYAN

W.P.No. 15561 of 2023 &
W.M.P.No.15067 of 2023

G.Chenchamma ...Petitioner

Versus

1. The Registrar,
University of Madras
Chepauk, Chennai - 05

2. The State of Tamilnadu
Rep. By its Principal Secretary,
Higher Education Department,
Fort St.George, Chennai – 09

3. Director General of Audit,
Local Fund Audit,
Directorate of Local Fund Audit,
Nandanam, Chennai – 35 ...Respondents

Prayer:

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records relating to the Impugned Show Cause Notice issued by the 1st respondent vide No.F.1.(B)/Estt/2023/214 dated 05.05.2023 and the quash the same as illegal and unconstitutional.

For Petitioner : Mr.T.Karthik Srinath for
M/s K.M.Vijayan Associates

For Respondents : Mr.A.S.Vijayaragavan for R1
Standing Counsel
Mr.S.Arumugam for R2
Government Advocate
Mr.T.M.Rajangam for R3
Government Advocate

ORDER

The present Writ Petitioner has approached this Court seeking quashment of impugned show cause notice issued by the 1st respondent dated 5-5-2023.

2. The brief facts of the case, as averred by the Writ Petitioner, are as follows:-

(i) The petitioner was appointed as Attender under the 1st respondent on 24.06.2015 on a pay of Rs.5,200/- per month in the pay scale of Rs.5,200-20,200+2400/- GP Plus allowances eligible under the University Rules. After the satisfactory completion of probation period of two years, the 1st respondent ought to have confirmed the appointment of the petitioner, but kept pending even after several representations and reminders. The petitioner is in continuous service with clean and good service records till date.

(ii) While so, the 1st respondent issued a show cause notice dated 05.05.2023 indicating that the 3rd respondent had raised an objection for the irregular appointments made by the 1st respondent and the 1st respondent was instructed to rectify the same. Further, by citing G.O.(D) No.71, Higher Education Department, suitable action to be taken on irregular appointments, thereby directed the petitioner to give explanation as to why action should not be taken against the petitioner. It is the grievance of the petitioner that the petitioner's appointment is a regular appointment and the same was kept before the Syndicate and resolution was passed and only thereafter, the petitioner was appointed. The entire service rules and appointments are governed by the Service Rules and Regulation of the University of Madas and the respondents 2 and 3 are not concerned to interfere with the service rules and regulation of the University, hence this petition.

3. The learned counsel for the petitioner would submit that the petitioner having been appointed on regular vacancies, the appointment was confirmed and the petitioner is in service with clean chit till date not having been issued with even a memo as against his service. While that being so, the 1st respondent's action to issue the show cause notice on the basis of the 3rd respondent raising an objection during the audit report is perse illegal as the 3rd respondent has no role to play in the appointments made by the 1st respondent, that too when the

petitioner, who had completed morethan 10 years of service, cannot be thrown away by issuing such illegal show cause notice. That apart, when the appointment was made as a regular appointment, which was kept before the syndicate of the 1st respondent and resolution was passed to that effect, cannot be given a goby mearly because the 3rd respondent has raised an objection during the audit.

4. The learned counsel for the 1st respondent/University filed a detailed counter and submitted that it is usual practice that the recruitment to the inferior establishment like peon, sanitary workers, sweepers, gardeners, watchman and any other cadre in the Class IV are made, as per the recommendations of the establishment committee considering the actual requirement of the Univeristy depending upon the availability of the vacancies in the respective positions or posts only in consultation of the finance committee so as to see that the recruitment are made within the budget provisions. Thereafter, the recommendation of the establishment committee are approved by syndicate of the University following by notification or advertisement calling up for application from eligible candidates. Thereafter, the application will be scrutinized and eligible candidates will be called for interview by a selection committee appointed by the Vice Chancellor for the said purpose and those who were selected by such selection committee alone will be given appointment orders. Even such

appointments also have to be approved by the Syndicates as and when they are placed before the syndicates.

5. The learned counsel for the 1st respondent / University further contended that the appointment procedures as contemplated under the University Regulation were not followed by the then Vice Chancellor and in contravention of all statutues, the petitioner and others were appointed and few of them were also promoted, which is in total disregard to the rules and procedures to be followed. As far as the appointment of the petitioner is concerned, the University had not made any advertisement in the news papers calling for applications seeking employment. The University had also not noticed about the vacancies that exist in the University in each of the post or categories to the employment exchange.

6. Further the learned counsel for the 1st respondent / University contended that as contemplated under Rule 3A of Special Rules of Tamil Nadu Basic Services, 1971, the rule of reservation of appointments (General Rule 22) was not followed while appointing the petitioner. In fact, the learned counsel further contended that for the appointments made to the University, the candidates should be sponsored through employment exchange. Even the said basic procedure was not followed in the appointment of the petitioner. The appointment of the petitioner was done without considering the actual requirements of the

University or the availability of the vacancies in the respective position or post in consultation with the finance committee and the petitioner despite all the irregularities at the time of appointment was confirmed on the completion of his probation period.

7. To conclude his arguments among all the other, the learned counsel appearing for the University contended that the University committed fault in appointing the petitioner, which cannot be countenanced in law. The writ petitioner knowing very well that his appointment is either temporary or contractual appointment, cannot seek his appointment to be made regular appointment and since the writ petitioner's appointment was made through back door appointments, which is invalid, the same cannot be enforced at any stretch of imagination. Thus the learned counsel for the University prays to dismiss the Writ Petition with costs.

8. Heard the counsels on either side and perused the documents placed on record.

9. On perusing the impugned order in the Writ Petition, viz., the Show Cause Notice dated 5-5-2023 issued by the 1st respondent, it is seen that the

explanation was called for from the petitioner as to why necessary action should not be initiated for irregular appointments made against her. It is seen from the records that the Writ Petitioner was appointed as Attender on 24.06.2015 . The said fact is not denied by the 1st respondent and it has been almost 10 years since the Writ Petitioner was appointed.

10. This Court is unable to accept the contentions raised by the learned counsel for the 1st respondent / University, regarding the manner in which the appointments were made. Merely shifting the onus on the erstwhile Vice Chancellor, who is alleged to have made the appointments will not absolve the responsibility of the University which claims those appointments were made by not following the procedures contemplated or the required procedures under the University Regulations that too after 10 years of the service, the show cause notice seems to have been given based on the audit objection made by the 3rd respondent.

11. It is pertinent to point out that the basis of the impugned show cause notice is the objection raised by the local fund audit / 3rd respondent herein. The Hon'ble Division Bench of this Court had already dealt with the power of local fund audit departments to raise queries against the internal affairs of the

University. It would be appropriate to extract the relevant paragraph nos.16 and 17, in Review Application (MD) No. 170 of 2022 dated 28-4-2023 [E. Roseline Lobo and others. -vs- S. Maharaja and 68 others].

> *“16. The authority of the Director to cause an audit and his jurisdiction and the extent to which the objections could be raised during the course of audit is stipulated under Section 12 of Act, read with Rule 12 of the Tamil Nadu Local Fund Audit Rules, 2016. For the sake of convenience, these provisions are extracted hereunder.*
>
> *“Section 12 - The Director shall include in the audit report:-*
>
> *(a) any payment which appears to have been made contrary to any law or order of the Government;*
>
> *(b) the amount of any deficiency or loss which appears to have been caused by the negligence or misconduct of any person in the performance of his duties;*
>
> *(c) any case of misappropriation or improper utilisation of the fund;*
>
> *(d) the amount, if any, received which ought to have been brought into*
>
> *account but not brought into account; and*
>
> *(e) any other material impropriety or irregularity observed in the audit.*
>
> *“Rule 12 - Contents of the Audit Report ? (1) Unless otherwise provided in these rules, the contents of the audit reports of the local authorities or local funds shall be in such manner as may be prescribed by the Director . The instructions issued by the Director from time to time with regard to the form of audit report , drafting of audit para, compilation of audit report, contents of the audit report,*

and the enclosures to the audit report shall be followed unless otherwise specified in the Act or in these rules.

(2)There shall be seven separate parts in the audit reports,?

Part~1: containing review of annual accounts, financial statements, balance sheet and its Schedules, income and expenditure statement, receipts and charges and cash flow statements.

Part~2: containing the following details of objections in receipts or revenue items:~

(a) clear cases of loss of receipt shall be incorporated;

(b) cases in which the amount if any received which ought to have been brought into account but not brought into account by any person;

(c) cases of misappropriation of collections made; and

(d) cases of any deficiency or loss of money due to short realization or non~realization of dues which appears to have been caused by the negligence or misconduct of any person.

Part~3: containing the following details of objections in payment or expenditure:~

(a) clear cases of excess payment shall be incorporated;

(b) cases of improper utilization of funds;

(c) cases of payments which appears to be contrary to the Act or rules;

(d) cases of any deficiency or loss of any property, stock and the similar items; and

(e) cases of avoidable expenditure.

Part~4: containing the details of objections relating to grants, loans and the similar items; utilized for execution of works or schemes.

Part~5: containing the details of observations and objections relating to deposits and advances.

Part~6: containing the details of observations and objections relating to Provident fund, contributory pension scheme and other miscellaneous funds.

Part~7: containing computation of audit fees due, result of audit and details of pending objections and any other facts noticed during the course of audit which adversely affect the finances of the institution.

(3) The Director shall issue orders modifying the contents of audit report as and when found necessary.

(4) The Director or issuing authority shall be liable to issue the audit report within three months after completion of audit.

17. As per the aforesaid provisions, the Director will be well within his power to conduct an audit and raise objections with regard to any illegal payments, any deficiency or loss caused by negligence or misconduct of any person, misappropriation or improper utilisation of the funds, omission of amounts in the Accounts and other material impropriety or irregular observation. Neither the Act nor the Rules authorize the Director to question any administrative decision taken by the Executive Authority, which is in accordance with law. If such powers to question the administrative decisions are exercised by the Director, it would amount to excessive exercise of powers, which is *not provided for, under the Act. The Director is not an appellate body of the Executive Authority, but is required to act within the powers vested with him under the Act or the Rules."*

12. It is clear from the above law laid down by the Hon'ble Division Bench of this Court that neither the act nor the rule authorized the Director (3rd respondent herein) to question any administrative decision taken by the authority. If such powers to question the administrative decision are exercised by the Director, it would amount to exercise of excessive power which is not provided for, under the Act. Such actions clearly amounts unwanted interference in the internal administration of the University nor the Madras University Act 1923 empowered the Government to issue such direction. The Director of Local Fund Audit has no role to play in the appointments made by the University nor the Director of Local Fund Audit has any say in prescribing the norms to the University, which is not contemplated under the Madras University Act 1923. The syndicate has the power to make appointments as per the requirements and fix the emoluments. It is not for the local fund audit to intervene in the administrative processes or to provide justifications on promotions and appointments made by the University. Such actions are impermisible under the law.

13. It is relevant to note that the learned counsel for the 1st respondent /University did not address the issue of the powers conferred by the 3rd respondent in raising objections into the internal affairs of the University rather the counsel was throwing mud on its own University saying that the formal Vice-Chancellor had made several irregular appointments. That is not the case in this writ petition.

14. As far as the present case is concerned whether the show cause notice can be issued based on the audit objection raised by the 3rd respondent to the 1" respondent is to be answered. As held by the Hon'ble Division Bench of this Hon'ble Court in Review Application (MD) No. 170 of 2022, the Local fund Audit / Director has no role to interfere in the internal administration of the University and can travel only within the scope of Section 12 r/w 12 of Tamil Nadu Local Fund Audit Rules 2016. When the Rules does not permit, the local fund audit/Director, any act done in contravention of Section 12 r/w Rule 12 of Tamil Nadu Local Fund Audit Rules 2016 and Tamil Nadu Local Fund Audit Act 2014 are beyond the jurisdiction of the 3rd respondent or in otherwise excessive jurisdiction has been exercised by the 3rd respondent which paved way for the issuance or impugned show cause notice in the present Writ Petition.

15.Under the above circumstances, it is seen that the basis of the impugned show cause notice forms part of the audit objection raised by the 3rd respondent, which are not legally sustainable. Accordingly, the impugned order dated 5-5-2023 is liable to be quashed and it is hereby quashed. The Writ Petition stands allowed and consequently connected miscellaneous petition is closed. No costs.

30.04.2025

Index:Yes / No
Internet: Yes/no
Speaking / non speaking order
ssd

To

1. The Registrar,
University of Madras
Chepauk, Chennai - 05

2. The State of Tamilnadu
Rep. By its Principal Secretary,
Higher Education Department,
Fort St.George, Chennai – 09

3. Director General of Audit,
Local Fund Audit,
Directorate of Local Fund Audit,
Nandanam, Chennai – 35

V.BHAVANI SUBBAROYAN, J.

ssd

W.P.No.15561 of 2023

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