



W.P.No.31184 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 26.08.2025

CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

W.P.No.31184 of 2017
and
W.M.P.No.34221 of 2017

1. Dr.C.Padhmanaaban
2. Mrs.P.Chellammal
3. Mr.P.Kannan
4. Mrs.S.Shreedevi

... Petitioner(s)

[P2 to P4 substituted as LR's of the deceased P1
as per order dated 08.01.2024]

Vs.

1. The Tamil Nadu Veterinary
and Animal Sciences University (TANUVAS),
Represented by its Registrar,
Madhavaram Milk Colony, Chennai – 600 051.
2. The Finance Office,
Finance Department,
The Tamil Nadu Veterinary
and Animal Sciences University (TANUVAS),
Madhavaram Milk Colony,
Chennai – 600 051.

... Respondent(s)



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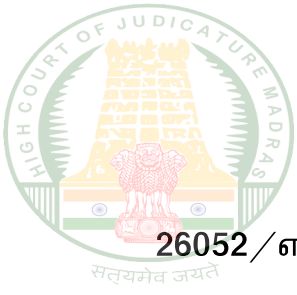
Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent impugned proceedings bearing P.O.A.No.5000182/26052/F-6-1/ 2015 dated 23.09.2015 culminating in the impugned proceedings bearing P.O.A.No.500259/26052/F6-1/2015 dated 30.10.2017, quash the same and direct the respondents to forthwith reimburse all the amounts recovered from the petitioner together with interest and to continue to disburse the pension amount which the petitioner was drawing prior to the impugned proceedings with all future benefits and without any reduction or recovery.

For Petitioner(s) : Mr.Arun Anbumani

For Respondent(s) : Mr.S.Vijayakumar assisted by
Mr.J.Melwin Jabaz

ORDER

Originally, this writ petition has been filed Petitioner No.1, challenging the orders issued by the Respondent No.1 in proceedings bearing ப.ஒ.ஆ.எண்.5000182/



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26052/எபி6-1/2015, dated 23.09.2015, and the proceedings bearing

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ப.ஒ.ஆ.எண்.5000259/26052/எபி6-1/2015, dated 30.10.2017, whereby certain amounts were sought to be recovered in monthly installments from out of the pension payable to him on the ground that the pension was fixed erroneously, resulting in excess payment of Rs.14,05,631/- to him with effect from 01.01.2007 till 31.08.2015 in terms of impugned proceedings dated 23.09.2015, and in terms of impugned proceedings dated 30.10.2017, a revised amount of Rs.19,09,599/- for the period from 01.01.2007 till 30.09.2017.

1.2. During the pendency of this writ petition, the first petitioner passed away. In consequence, petitioners 2 to 4 herein, who are the legal representatives of the deceased first petitioner, were brought on record.

2. The brief facts that are relevant for disposal of this writ petition are as under:-

2.1. The deceased first petitioner (hereinafter referred to as 'the petitioner') was initially appointed as 'Veterinary Assistant Surgeon' in Tamil Nadu Animal Husbandry Department on 23.07.1962, and thereafter, he was promoted to the post



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of 'Assistant Director of Animal Husbandry' on 12.10.1981. While he was working

as such, the petitioner was sent on deputation to the first respondent University on

07.03.1990, and thereafter, on the petitioner expressing his willingness for permanent absorption in the respondent/ University, the same was acceded to, and

his services were absorbed in terms of G.O (Ms) No. 199, Animal Husbandry and Fisheries (AH.6) Department, dated 06.11.1996, on certain conditions. In terms of

the said orders, the entire service rendered by the petitioner in the Animal Husbandry Department was agreed to be counted as qualifying service for the

purpose of fixation of pay, pension, death-cum-retirement gratuity and terminal benefits. The said orders issued in G.O (Ms) No. 199, dated 06.11.1996, were

subsequently modified at the instance of the petitioner through G.O (Ms) No. 112, Animal Husbandry and Fisheries (AH.6) Department, dated 10.07.2000, directing

that the total years of service rendered by the petitioner and another as 'Assistant Surgeon' in Animal Husbandry Department shall be counted for the purpose of

Career Advancement from the date of joining in the University. The relevant paragraph from the said Government Order reads as under:-

“7. The Government also direct that the total years of service rendered in the Animal Husbandry Department by the erstwhile 2 Veterinary Assistant Surgeons (now Assistant Professor in TANUVAS) shall be counted for the



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purpose of Career Advancement from the date of joining in the University subject to the condition that this concession shall not lead to junior getting advancement to higher pay scales and senior benefits. The above benefits is subject to the undertaking given by them relating to the final verdict of High Court. If the final verdict of High Court goes against them then will have to refund the entire amount received under Career Advancement benefit to Government.”

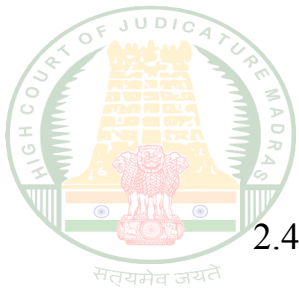
2.2. At this stage, it is necessary to notice that the said Government orders in G.O (Ms) No. 112, dated 10.07.2000, came to be issued pursuant to the proposals submitted by the respondent University which the petitioner was in service during the years 1998 and 1999. By the date of issuance of the said Government Order, the petitioner has retired from service on attaining the age of superannuation on 31.01.2000. It was thereafter, the case of the petitioner was considered under the relevant scheme providing for Career Advancement to teachers and, accordingly, he was placed as 'Assistant Professor (Senior Scale)' on the scale of pay of Rs.3000-100-3500-125-500 (pre-revised) with retrospective effect from 23.10.1997 through proceedings bearing USO No.60016/R.III/2001, dated 26.04.2021. Accordingly, his pay was fixed through proceedings bearing No.309/2001, dated 04.07.2001. The petitioner was also paid the revised terminal benefits through proceedings bearing USO No.500167/4210/F.V-1/2003, dated 03.02.2004.



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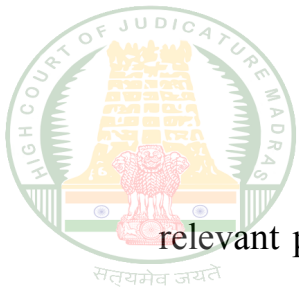
2.3. It was thereafter, the case of the petitioner was once again considered by the respondent University for grant of Selection Grade in the post of 'Assistant Professor' through proceedings bearing USO No.60186/R.3/2013, dated 01.07.2013, and he was placed as 'Assistant Professor (Selection Grade)' in the scale of pay of Rs.3700-125-4950-150-5700 (pre-revised) under the Career Advancement Scheme with retrospective effect from 23.10.1997. While so, when the petitioner was awaiting for re-fixation of his pension and other terminal benefits in terms of proceedings dated 01.07.2013, the respondent University issued impugned proceedings dated 23.09.2015, proposing to recover an amount of Rs.14,05,635/- on the ground that the pension of the petitioner was erroneously fixed at Rs.23,200/- as against his entitlement of Rs.14,437/-, and therefore, the excess amount that was paid during the period from 01.01.2007 to 31.08.2015 was sought to be recovered in 87 monthly installments from out of the pension payable to the petitioner. At that stage, the petitioner submitted a representation, objecting for such recovery and contending that his pension was rightly fixed and that he is entitled for revision of his terminal benefits in terms of proceedings dated 01.07.2013.



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2.4. It was at that stage, the respondent University, having recovered the amount for three months, stopped further recovery, as the claim of the petitioner was under consideration. It was thereafter, through proceedings dated 30.10.2017, the respondent University reiterated its stand and ordered for recovery of an amount of Rs. 19,09,599/-, being the amount paid allegedly in excess of the entitlement of the petitioner for the period from 01.01.2007 to 30.09.2017 and after adjusting the amount already recovered for three months to the tune of Rs.35,259/-, the balance amount of Rs.18,74,340/- was ordered to be recovered from the petitioner in 94 monthly installments. It is aggrieved by the said proceedings dated 23.09.2015, as reiterated through proceedings dated 30.10.2017, the petitioner approached this court by filing the present writ petition.

3. The respondents filed a counter-affidavit and an additional counter-affidavit contending that the pay of the petitioner was erroneously fixed at Rs.37400-67000+9000 Grade Pay in the VI Pay Commission under G.O (Ms) No.41, dated 15.03.2010, as against his entitlement for pay scale of Rs.15600-39100 + 7000 Grade Pay and, consequently, there is erroneous fixation of his pension at Rs.23,200/- as against his entitlement for monthly pension of Rs.14,437/-. The



relevant paragraph from the counter-affidavit filed by the first respondent reads as

under:-
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“With regard to the averments contained in Para Nos.5 to 7 of the affidavit, it is submitted that, the petitioner's revised scales of pay in the cadre of Assistant Professor (Senior Scale) ought to be fixed at Rs.15600-39100 + GP 7000, whereas, his pay was erroneously fixed at Rs.37400-67000 + 9000 GP, which results in excess salary claimed for the period from 01.01.2007 to 28.2.2010 and excess pension at Rs.23,200 per month from 01.03.2010 to 31.08.2015 instead of monthly pension at Rs.14,437/-.”

4. In the additional counter-affidavit filed by the first respondent also, the same stand was reiterated. The relevant portion from the additional counter-affidavit reads as under:-

“But the pension of the deceased writ petitioner was mistakenly overlooked the aforesaid G.O.41 and revised accordingly in the cadre of AP (SG) at the scale of pay corresponding to existing AP (SG)/ Assoc. Professor with Ph.D., at Rs.37400-67000 with AGP of Rs.9000.

It is submitted that the deceased writ petitioner did not possess the eligibility for the post of Assoc.Professor as he was not having Ph.D., degree which is mandatory requirement under G.O (Ms) No.208, Agriculture (AU) Department, dated 07.03.1989.”



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5. Having contended above, the first respondent tried to justify its action by stating that the petitioner is not entitled for pension at the rate of Rs.23,200/-. Their counters also proceeds to contend that the petitioner is not entitled for award of pay scale attached to the post of 'Associate Professor', as he does not possess the Ph.D. Degree and therefore, in terms of G.O (Ms) No.41, dated 15.03.2010, the petitioner is not entitled for higher pay scale.

6. Heard Mr.Arun Anbumani, learned counsel for the petitioner and Mr.S.Vijayakumar assisted by Mr.J.Melwin Jabaz, learned counsel for the respondents.

7. In the light of the elaborate submissions made on either side, two questions would arise for consideration before this court.

(1) Whether the respondent University is entitled to effect recovery of any amount from the pension that is payable to the petitioner after the petitioner has retired from service on attaining the age of superannuation or not.



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(2) Whether the action of the respondent University in

coming to the conclusion that the pension of the petitioner was erroneously fixed at higher rate by placing reliance on G.O (Ms) No.41, dated 15.03.2010, is in accordance with law or not.

8. **Question No.1:-** Admittedly, the petitioner retired from service on attaining the age of superannuation on 31.01.2000. The impugned recovery from the pension payable to the petitioner is by virtue of the impugned orders issued on 23.09.2015 initially, and as confirmed through proceedings dated 30.10.2017. Thus, it is evident that the impugned recovery is after a lapse of more than 15 years since the date of retirement of the petitioner from service.

9. The Hon'ble Apex Court in the case of “*State of Punjab -vs- Rafiq Masih (White Washer)*” reported in **2015 (4) SCC 334**, has considered the authority of the employer to recover amounts from its employees and laid down certain guidelines in Paragraph No.18 of the said decision, which reads as under:-

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of



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their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, 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).

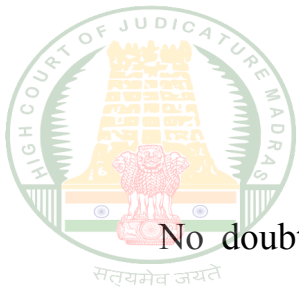
(ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.

(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."

10. In terms of Clause (ii) of Paragraph No. 18 above, as held by the Hon'ble Apex Court, recovery of any amount from the persons who have already retired from service is impermissible. Therefore, the impugned recovery is liable to be quashed.



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No doubt, the learned counsel appearing for the respondents placed reliance on various decisions of learned Division Bench of this court in W.A.No.1753 of 2015 dated 01.03.2018, W.A (MD) No.1154 of 2018 dated 25.09.2018 and W.A.No.1471 of 2013 dated 13.03.2023. However, the said decisions will not come in aid of the case of the respondents for the following reasons:-

(1) In the case of W.A.No.1753 of 2015, dated 01.03.2018, though the learned Division Bench took note of the decision of the Hon'ble Apex Court in the case of **Rafiq Masih**, the learned Division Bench neither distinguished nor considered the effect of the said decision and proceeded to uphold the recovery in the facts and circumstances of the said case.

(2) Then coming to the decision of this court in W.A (MD) No.1154 of 2018 dated 25.09.2018, the learned Division Bench, though having taken note of the law laid down by the Hon'ble Apex in the case of **Rafiq Masih**, has proceeded to consider only Clause (i) of Paragraph No.18 of the said decision, while ignoring Clause (ii) of Paragraph



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(3) So also, in W.A.No.1471 of 2013 dated 13.03.2023, the learned Division Bench failed to take note of Clause (ii) of Paragraph No.18 of **Rafiq Masih's** decision, but considered only Clause (iii).

In the light of the above, the decisions relied upon by learned Senior Counsel appearing for respondents are all bound to be treated as *per incuriam* because of non-consideration of the binding decision of the Hon'ble Apex.

11. In the light of the binding precedent of the Hon'ble Apex Court in the case of **Rafiq Masih**, the impugned recovery is bound to be declared as illegal and arbitrary.

12. **Question No.2:-** As already noted above, the entire stand of the respondents in issuing the impugned proceedings holding that the pension of the petitioner was erroneously fixed at a higher rate, is only on the ground that, in terms



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of G.O (Ms) No.41, dated 15.03.2010, the pay of the petitioner was fixed at Rs.37400-67000+9000 Grade Pay, as against his entitlement of revised pay scale of Rs.15600-39100+7000 Grade Pay in terms of G.O (Ms) No.41, dated 15.03.2010.

13. As already noted above, the petitioner has already retired from service as early as on 31.01.2000. Through G.O (Ms) No.41, dated 15.03.2010, the revised pay scales of the VI Pay Commission were made applicable to the respondent University with effect from 01.01.2006. Thus, the said revised pay scales will be application to the employees who are in service as on 01.01.2006. Paragraph 2(H) of the said Government Order specifically mandates that the revision of pension, family pension, gratuity, encashment of earned leave, etc., to the teachers and equivalent cadres governed by UGC-ICAR pay scales shall be as applicable to the State Government at well. The said Paragraph 2(H) reads as under:-

“As regards the revision of Pension, Family Pension, Death-cum-Retirement Gratuity, Encashment of Leave, Ex-gratia Compensation and Provident Fund, etc. to the teachers and equivalent cadres governed by UGC-ICAR Pay Scales shall be as applicable to the State Government Employees.”

Thus, the orders issued in the G.O (Ms) No.41, dated 15.03.2010, have no application to the cases of revision of pension, but only applies to the revision of



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pay scales of the employees who are in service as on 01.01.2006.

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14. The revision of pension, etc., of the Government employees is governed by the orders issued in the G.O (Ms) No.235, Finance (Pay Cell) Department, dated 01.06.2009 with effect from 01.01.2006. Therefore, the revision of pension of the petitioner who has already retired from service as early as on 31.01.2000, is required to be revised only in terms of the orders issued in the G.O (Ms) No.235, Finance (Pay Cell) Department, dated 01.06.2009. The question of revision of pay scale of the petitioner, as on 01.01.2006 in terms of G.O (Ms) No.41, dated 15.03.2010, does not arise, as the petitioner cease to be on the rolls of the respondent University as on 01.01.2006. Therefore, any amount of reasoning or defence set up by the respondent university for issuing the impugned orders and for sustaining the same by contending that the pay of the petitioner was erroneously revised in terms of the G.O (Ms) No.41, dated 15.03.2010, is liable to be rejected.

15. It is not in dispute that the Selection Grade was awarded in favour of the petitioner in the cadre of 'Assistant Professor' through proceedings dated 01.07.2013. It is also not in dispute that the said proceedings is still operating and is



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not modified, withdrawn or cancelled. Through the said proceedings dated 01.07.2013, the petitioner was placed as 'Assistant Professor (Selection Grade)' in the scale of pay of Rs.3700-125-4950-150-5700 (pre-revised) under Career Advancement Scheme with retrospective effect from 23.10.1997. In terms of G.O (Ms) No. 112, dated 10.07.2000, the entitlement of the petitioner for counting the service rendered by the petitioner in the Animal Husbandry Department for the purpose of Career Advancement in the part of 'Assistant Director' is also not in dispute. Both the impugned proceedings, though states that the pension of the petitioner was erroneously fixed at Rs.23,200/- as against his alleged entitlement of Rs.14,437/-, absolutely no reasoning is assigned in the impugned orders and the reasoning that was supplemented through counter-affidavit and additional counter-affidavit is already found to be unsustainable by this court.

16. Be that as it may, the impugned proceedings dated 23.09.2015 came to be issued in utter violation of the principles of natural justice and without affording any opportunity to the petitioner. So also, when the petitioner raised an objection against the proceedings dated 23.09.2015, the respondent University issued impugned proceedings dated 30.10.2017, without even advertng to any of the



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objections raised by the petitioner, leave alone the personal hearing. In the circumstances, both the impugned proceedings are liable to be quashed for want of compliance with the principles of natural justice as well.

17. In the light of the above, both the impugned proceedings are liable to be quashed and accordingly, the proceedings bearing प.रु.आ.ए.नं.5000182/26052/एप6-1/2015, dated 23.09.2015, and प.रु.आ.ए.नं.5000259/26052/एप6-1/2015, dated 30.10.2017 are hereby quashed. The amounts, if any, recovered from the petitioner pursuant to the impugned proceedings shall be forthwith refunded to the petitioners 2-4. The respondents are further directed to pay the pension/ family pension payable to Petitioner No.2, together with arrears, if any.

18. Accordingly, writ petition is disposed of, directing the respondents to continue to pay the pension/ family pension to the eligible petitioners. However, it is made clear that in case if the respondents are of the view that there is any erroneous fixation of pension in terms of the relevant Government Orders, they are at liberty to



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take appropriate action strictly in accordance with law by duly taking into consideration the observations made in this order. No costs. Connected miscellaneous petitions, if any, shall stand closed.

26.08.2025

skr

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1. The Tamil Nadu Veterinary and Animal Sciences University (TANUVAS),
Represented by its Registrar, Madhavaram Milk Colony, Chennai – 600 051.
2. The Finance Office, Finance Department,
The Tamil Nadu Veterinary and Animal Sciences University (TANUVAS),
Madhavaram Milk Colony, Chennai – 600 051.

MUMMINENI SUDHEER KUMAR, J.

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