



L.P.A.No.26 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

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1. M. Raju, I.A.S.,
Health Secretary cum Vice Chairman,
PKMCS Perunthalaivar Kamaraj Medical College Society,
Puducherry, represented by Government of Puducherry,
No.225, Vazhudavur Road,
Kathirkamam, Thattanchavadi,
Pondicherry 605 009.
 2. Dr. Kuber Sankh,
Principal,
Rajiv Gandhi Ayurveda Medical College Society,
(A Unit of Perunthalaivar Kamaraj Medical College Society)
Post Box No.26,
Mahe - 673 310
Union Territory of Puducherry
- ... Appellants/ Contemnors

Vs.

1. Dr. Shine S Nair
Lecturer
Rajiv Gandhi Ayurveda Medical College,
Chalakkara,
New Mahe 673 311



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2. Dr. N. Shajil,
Associate Professor,
Rajiv Gandhi Ayurveda Medical College,
Chalakkara,
New Mahe 673 311

... Respondents

Prayer: This Letters Patent Appeal has been filed under Clause 15 of the Letters Patent to set aside the judgment and order dated 04.12.2024 passed in Cont.P.No.2176 of 2024.

For Petitioner	: Mr. R. Syed Mustafa, Spl. Govt. Pleader (Puducherry)
For Respondents	: Mr. Ravikumar Paul, Senior Counsel, for Mrs. Paul and Paul, for R1
	: R2 not ready in notice

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

The Health Secretary cum Vice Chairman, PKMCS Perunthalaivar Kamaraj Medical College Society, Puducherry, is the appellant in the present Letters Patent Appeal.

2. The 1st respondent instituted writ proceedings in W.P.No.13412 of



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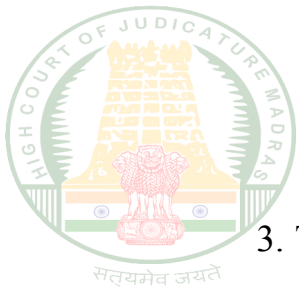
2016 challenging the appointment of one Dr. N.Shajil dated 04.03.2016 as

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Associate Professor in the appellant Medical College. The learned Single Judge of this Court elaborately considered the issues and found that the appointment of Dr.N.Shajil as Associate Professor is illegal and consequently his appointment was set aside in the writ order. Paragraph 34 of the Writ order reads as under:

" 34. The respondent nos.1 and 2 have to balance the interest of the students also while selecting the third respondent, who does not have the requisite qualifications. He no longer has the right to continue in the post of Associate Professor in Kaumarbhritya Department in the second respondent college. A direction is issued to forthwith remove him from that particular post and appoint the petitioner herein with all attendant benefits, taking into consideration the date of appointment of the third respondent in that particular post, for which entire period, he was not eligible and he did not deserve to be in such post. The petitioner is entitled for all attendant benefits. The respondent nos.1 and 2 may also take a decision to recover the salary paid to the third respondent, since he was selected without any qualifications at all.

35. Writ Petition stands allowed . No costs. Connected miscellaneous petitions are closed".



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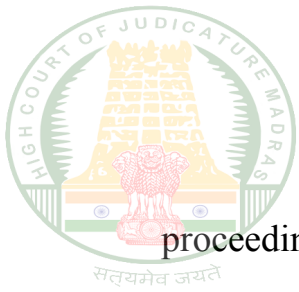
3. The appellant herein preferred an appeal before the Division Bench in Writ Appeal No.2430 of 2023 and the Division Bench of this Court vide order dated 29.01.2024 confirmed the order of the learned Single Judge in the writ petition. Dr.Shajil, preferred SLP before the Hon'ble Supreme Court of India in SLP.(C).No.14129 of 2024 and the said SLP was disposed of with the following observations, which reads as under:-

" 4. we are of the opinion that the observations made by the learned Single Judge in the penultimate paragraph of the judgment dated 01.08.2023, relating to the option given to the respondents no.1 and 2 to recover the salary paid to the petitioner, deserve to be deleted and is so directed.

5. The petition for Special Leave to Appeal is disposed of on the above terms along with pending application."

4. The Hon'ble Supreme Court deleted the portion of the writ order passed by the learned Single Judge that the salary paid to Dr.Shajil for the services already rendered by him shall not be recovered. At the outset, the salary paid to Dr.Shajil was protected by the Apex Court of India.

5.The appellant herein implemented the orders of the Courts in



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proceeding dated 23.08.2024. The first respondent Dr. Shine S Nair was

appointed in the place of Dr.Shajil retrospectively from 05.03.2016. It is not in dispute that the appointment was given with retrospective effect from the date on which Dr.Shajil was illegally appointed by the appellant Medical College.

6. Implementation order dated 23.08.2024 issued by the Rajiv Gandhi Ayurveda Medical College imposes terms and conditions of appointment and clause 2(i) states that "*Notional Appointment is effective from 05.03.2016. He is entitled for monetary benefits such as pay and allowances as applicable in the post of Associates Professor (Kaumarabritya) from the date of notional appointment.*"

7. Pursuant to the retrospective appointment, pay fixation order was passed by the medical college in proceedings dated 04.09.2024. The pay fixation order reveals that the pay was fixed notionally in the post of Associate Professor w.e.f 05.03.2016 and accordingly the 6th Central Pay commission, 7th Central Pay Commission benefits were added and finally his pay was fixed at Rs.99,800/- along with 50 % D.A. of Rs.49,900/-, HRA 20% 9980, TA 5400, CPF 9980, total 1,75,060/- .

8. Mr.R.Syed Mustaffa, learned Government Pleader, Puducherry,



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appearing for the appellant would submit that the fresh appointee will be getting the salary of Rs.99,000/-. However, in the case of the first respondent, the pay was retrospectively fixed w.e.f. 05.03.2016 and all the attendant and consequential monetary benefits were included notionally and the actual pay is disbursed prospectively from the date on which the first respondent joined as Associate Professor in the appellant medical college.

9. Mr. Ravi Kumar Paul, learned Senior counsel appearing on behalf of the first respondent would strenuously oppose that the learned Single Judge in the writ order directed the appellant herein to pay all attendant benefits. All attendant benefits include the arrears of salary to be paid from the retrospective date of appointment, i.e. 05.03.2016. Attendant benefits is not only fixation of pay, but payment of arrears is inclusive. Thus the implementation was erroneously made. The contempt petition filed by the first respondent was allowed by the learned Single Judge in Contempt Petition No. 2176 of 2024, which is under challenge in the present LPA . The learned Single Judge in the order impugned has clarified that as per the implementation order passed by the appellant vide proceedings dated 23.08.2024, the first respondent was appointed as Associate Professor with monetary benefits, such as pay and allowances as applicable for the post of Associates Professor from the date of notional



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appointment, which was from 05.03.2016. Since the appointment was made

w.e.f. 05.03.2016, the appellant ought to have settled the arrears of salary w.e.f.

05.03.2016, to the 2nd respondent.

10. The learned Single Judge in the impugned Contempt Order specifically stated that the first respondent was appointed as Associate Professor Notionally w.e.f. 05.03.2016 and the actual appointment order was issued in proceedings dated 23.08.2024 and the first respondent joined as Associate Professor only on 26.08.2024. Therefore, fixation of pay was done retrospectively from 05.03.2016 and monetary benefit in actual has been disbursed to the first respondent from the date of joining in the post.

11. The learned Single Judge in the order impugned has clearly observed that the appointment as Associate Professor was granted to the first respondent Notionally w.e.f. 05.03.2016. When the appointment itself was made notionally, the employee is entitled to get the monetary benefit only with effect from the date of actual joining in the post of Associate Professor.

12. In the present case, Dr.Shajil was appointed illegally and drawn the

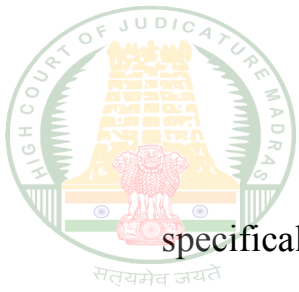


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salary from 2016 to 2024. He served as an Associate Professor in the appellant

college and received the salary. The Hon'ble Supreme Court of India while disposing of the SLP has made clear that the salary paid to Dr.Shajil shall not be recovered from him. While so, the payment of arrears to the first respondent will amount to double payment of salary from the public money for one single post double salary cannot be drawn for one post from the Government treasury and it will result in unjust gain for the first respondent also. The first respondent admittedly had not served as Associate Professor from 2016 to 2024 and therefore, he is not entitled to receive arrears of pay, which would result in unjust gain and further result in financial loss to the State Exchequer. State cannot pay two salary for one post since the salary paid to Dr.Shajil has already been protected by the Hon'ble Supreme Court of India. Thus, the learned Single Judge, has though observed that notional appointment was made from 05.03.2016, directed the appellant to pay arrears of pay. Such a finding in the opinion of this Court is perverse and not in consonance with the established principles of Service Jurisprudence.

13. The learned Senior Counsel Mr.Ravikumar Paul, relied on the judgment of the Hon'ble Supreme Court of India in the case of ***State of Kerala and others /vs/ E.K.Bhaskaran Pillai, reported in 2007(6) SCC 524*** , more



specifically, paragraph 4, the Apex Court made the following observations.

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" ... So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets, which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 percent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before Court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening facts. However, it is very difficult to set down any hard-and fast rule. The principle " no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also."

14. Careful reading of the observations of the Apex Court would reveal



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that with regard to monetary benefit with retrospective promotion is concerned,

WEB COPY that depends upon case to case. There are various facets which have to be considered. Therefore, the Hon'ble Supreme Court of India in clear terms held that the facts of each case is to be considered with reference to its implications.

15. In the present case, it is not a case of promotion, but a case of appointment. On 05.03.2016, the first respondent was neither appointed nor served as Associate Professor. Retrospective appointment was given notionally w.e.f. 05.03.2016 since the Court found that the appointment of Dr.Shajil is illegal . Therefore, the facts are distinguishable and the said case is of no avail to the first respondent for securing arrears of salary from the date on which he was not even in service nor served as Associate Professor.

16. It is not in dispute that the first respondent was appointed retrospectively w.e.f. 05.03.2016 and his pay was notionally fixed from 05.03.2016 along with pay and allowances and actual payment is being disbursed from the date of joining on 26.08.2024 and he is receiving the salary as such. Thus, the first respondent cannot claim arrears of pay from the year 2016, for which he is not entitled even as per the orders of the learned Single Judge. Thus, the contempt order has travelled beyond the scope of the writ



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order passed by the learned Single Judge and interpretation of the learned Single

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Judge regarding the term attended benefit stated cannot be construed as if the arrears of salary to be paid from 05.03.2016, since there was no specific direction to that effect in the writ order. Thus, we are inclined to consider the present LPA.

17. Consequently the impugned contempt order dated 04.12.2024 passed in Cont.P.No.2176 of 2024 is set aside and the Letters Patent Appeal stands allowed.

[S.M.S., J.]

[M.J.R., J.]

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Index: Yes/No

Speaking/Non-speaking order

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S.M.SUBRAMANIAM, J.
AND
M.JOTHIRAMAN, J.

mrp

To

1. Health Secretary cum Vice Chairman,
PKMCS Perunthalaivar Kamaraj Medical College Society,
Puducherry, represented by Government of Puducherry,
No.225, Vazhudavur Road,
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2. Principal,
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