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W.P. No.34446 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2025

CORAM :

THE HONOURABLE Ms. JUSTICE **R.N.MANJULA**

W.P.No.34446 of 2018

K.Janardhanan

... Petitioner

Vs.

University of Madras,
Rep.by its Registrar,
University Building,
Chepauk, Chennai-600 005

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned official communication bearing No.F.I(B)/Estt./2018/162 dated 18.04.018 issued by the respondent and quash the same and consequently direct the respondent to cover the petitioner under the old pension scheme.

For Petitioner : M/s.K.M.Ramesh, Senior Counsel
for Mr.K.J.Vijayakumar

For Respondent : Mrs.V.Sudha, Senior Counsel



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ORDER

The petitioner has joined the respondent/University as a driver on a temporary basis on 25.06.1992. Since the petitioner's service was terminated with effect from 01.11.1997, he raised an objection in I.D.No.192 of 1996. The same was allowed and an award has been passed on 12.06.2003. In the said award, the petitioner was granted relief in the form of reinstatement with continuity of service, with back wages and other attendant benefits. The award was also complied by the respondent/University by reinstating the petitioner in service and placing him under the regular time scale of pay.

2. In the Syndicate meeting held on 22.08.2014, a resolution was passed to cover the petitioner under the old pension scheme. However, on 16.12.2016, the respondent suddenly communicated to the petitioner that he was placed under the new contribution pension scheme due to an audit objection. Hence the petitioner has filed a writ petition challenging the order that removed him from the old pension scheme and placed him under the new contribution pension scheme.



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3. The learned counsel appearing for the petitioner submitted that after the petitioner was reinstated in service in accordance with the award of the Labour Court, the issue of whether the petitioner should be brought under the old pension scheme was discussed in a Syndicate meeting. However, after obtaining due legal opinion, it has been resolved to bring the petitioner under the old pension scheme.

4. The learned counsel appearing for the respondent submitted that the audit has raised an objection, stating that the petitioner was brought under the regular time scale of pay only with effect from 20.11.2006 and hence, he would fall under the new pension scheme. It was further submitted that the petitioner is not entitled to the benefits of the Government Order issued in G.O.Ms.No.408, Finance (Pension) Department, dated 25.08.2009 as his absorption, into a regular appointment did not take effect before the cut off date “01.04.2003”.

5. On perusal of the award dated 12.06.2003, passed by the Labour Court in I.D.No.162 of 1996, it is seen that the Labour Court has granted the



petitioner the following benefits:-

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“10.In the result, an award is passed holding that the non-employment of the petitioner is not justified and the petitioner is entitled to the relief of reinstatement with backwages, continuity of service and all other attendant benefits.”

6. The above relief which includes reinstatement along with back wages, continuity of service and all other attendant benefits, the award of the Labour Court has not been challenged by the respondent and has thus attained the finality.

7. In the said order, the Labour Court observed that the petitioner had served continuously for more than 480 days and therefore, was entitled to be absorbed with continuity of service. Admittedly, the petitioner has been working in the respondent/University since 25.06.1992. In some communications between the petitioner and the respondent University, the respondent conveyed that the petitioner could not be brought under the regular time scale of pay with effect from 01.06.2006. This was due to the fact that even from 01.06.2006, the petitioner had not withdrawn the pending



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writ petition in W.P.No.7212 of 2004.

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8. It is learnt that the petitioner in W.P.No.7212 of 2004, sought a direction to implement the award of the Labour Court. As the respondent/University insisted that the petitioner to withdraw the writ petition, assuring him that they would regularize his service, the petitioner complied and withdrew the writ petition.

9. In the absence of any proceedings filed by the respondent/University challenging the award of the Labour Court, it can be inferred that the petitioner is entitled to regularization on completing 480 days of continuous service from the date of his initial appointment. Therefore, the award of the Labour Court, which granted for continuity of service and back wages, implies that the petitioner is deemed to have been in continuous service from the date of his initial appointment. For the reasons best known to the respondent, the grant of a regular time scale of pay to the petitioner was postponed. The petitioner repeatedly submitted representations and even filed writ petition before this Court.

10. The reluctance on the part of the respondent or the anxious



action taken by the petitioner to implement the award of the Labour Court does not dilute its enforceability or binding nature, as long as the award remains unchallenged and has not been set aside. Just because the respondent at their own discretion, eventually granted the petitioner a regular time scale of pay on 20.11.2006 does not alter the nature of his employment status. The petitioner ought to have been treated as regular employee as per the award of the Labour Court, immediately after his completion of 480 days continuous service from his initial appointment and that will fall well before the cutoff date 01.04.2003.

11. The petitioner ought to have been brought under the old pension scheme by granting him deemed regularization from the date he became eligible, as per the award of the Labour Court. Irrespective of the fact of granting the regular time scale of pay to the petitioner any time later than the actual eligibility, the fact remains that the Syndicate meeting of the University has taken a decision to consider the petitioner as a person covered under the old pension scheme.

12. The petitioner's termination on 01.11.1995 did not put him in



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any adverse situations because his continuity of service has been protected by the award of the Labour Court. Instead of giving explanation to the audit objection in the light of the above award of the Labour Court, the respondent/University has taken a meager action of cancelling the order allowing the petitioner to be brought under the old pension scheme. Consequent order issued to the petitioner to bring him under the new contributory pension scheme is illegal and arbitrary and has completely in conflict in the award of the Labour Court. Any order passed contrary to the award of the Labour Court would amount to contempt of Court and hence it is no doubt illegal and liable to be set aside.

13. In view of the reasons stated above, the impugned official communication bearing No. No.F.I(B)/Estt./2018/162 dated 18.04.018 is hereby set aside. It is learnt from the submission of the learned counsel for the petitioner that during the pendency of the writ petition, the respondent credited Rs.10,00,000/- to the petitioner's account towards benefit under the new contributory pension scheme, which the petitioner has not accepted. It is up to the petitioner to either return the amount or for the respondent to



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recover it after issuing due notice to the petitioner. The respondent/University shall comply with the directions issued in this order and pass appropriate orders within six weeks from the date of receipt of a copy of this order.

14. With the above directions, this Writ Petition stands disposed of.

There shall be no order as to costs.

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rpl

Index : Yes/No

Speaking Order : Yes/No

To:

The Registrar,
University of Madras,
University Building,
Chepauk, Chennai-600 005



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R.N.MANJULA,J.

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