
(2011) 04 MAD CK 0204
In the Madras High Court
Case No : Writ Petition No. 22478 of 2004

P. Muthukrishnan

APPELLANT

Vs

The Registrar Tamil Nadu Agricultural University

RESPONDENT

Date of Decision : 09-04-2011

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2011) 04 MAD CK 0204

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : V. Chokalingam, for the Appellant; N. Jothi, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—The writ petition challenges the order of the Respondent/ University dated 8.6.2004, by which the Respondent/University, while considering the various demands made by the Petitioner, which includes the grant of basic pay at Rs. 16,200/- as on 1.1.1996, sanction of annual increments from 1.1.1997 to 1.1.2001, grant of arrears of revised salary, grant of 10 months pay as leave salary on retirement based on the revised pay at Rs. 18,300/-, revision of pensionary benefits based on revised pay at Rs. 18,300/-, has rejected the same. The writ petition is also for a further prayer for a direction against the Respondent to grant annual periodical increment with effect from 1.1.1996 till the date of the retirement of the Petitioner in accordance with the revised pay fixation formula as stipulated in G.O. Ms. No. 360, Agriculture (AU) Department, dated 16.8.1999 and also to grant consequential monetary benefits, including the arrears of pay and allowances and also arrears of terminal benefits and pensionary benefits.

2.1. The brief facts of the case relevant for the disposal of this writ petition are that the writ Petitioner, holding M. Sc. Degree in Agricultural Microbiology, was originally appointed as an Instructor in the Respondent/ University on 4.7.1972 and was later transferred and posted as Research Assistant on 1.3.1976, which

post he was holding till 31.5.1977.

2.2. During the said period, the selection was held for direct recruitment to the post of Assistant Professor in Agricultural Microbiology and the Petitioner applied for the same and he was selected and appointed on 1.6.1977. While he was working as Assistant Professor, a selection by direct recruitment for the post of Associate Professor was held in 1980 and the Petitioner was selected and he joined duty as Associate Professor (Agricultural Microbiology) on 27.2.1980 and he worked in the said post till 30.6.2003, on which date he retired on reaching the age of superannuation, after rendering 32 years of service,.

2.3. The Petitioner has registered for a Ph.D. Programme in 1979-1980 as a part-time candidate, but he could not complete it at Coimbatore, since he was transferred to Madurai, where he was not permitted to continue the Ph.D. Programme on part-time basis. Thereafter, the Petitioner sought permission to register with the Madurai Kamaraj University, but it was rejected.

2.4. At the time of implementation of University Grants Commission scale of pay in the year 1979, the Government issued G.O. Ms. No. 62, Agriculture Department, dated 10.1.1979 prescribing revised qualifications for various posts and accordingly, Ph.D. was prescribed as an essential qualification for the post of Associate Professor. However, for the post of Assistant Professor, the qualification of Ph.D. was prescribed only as an alternative to Masters Degree.

2.5. When the Petitioner was appointed as Associate Professor on 23.2.1980, he had only registered for Ph.D. Programme, but still he was selected, since he had five years of research experience as stipulated in G.O. Ms. No. 62, Agriculture Department, dated 10.1.1979. There was no condition imposed in the appointment order dated 23.2.1980, appointing the Petitioner as Associate Professor, prescribing that the appointment is subject to the completion of Ph.D. Programme. From the date of appointment as Associate Professor, viz., from 1980, till 1994, the lack of Ph.D. Degree was not considered as an issue.

2.6. However, after the implementation of the recommendations of the University Grants Commission for revised pay scales in G.O. Ms. No. 208, Agriculture (AU) Department, dated 27.3.1989, the existing incumbents without Ph.D. Degree were granted time to complete Ph.D. Degree. It is stated that the Petitioner has made every effort to continue his part-time programme from Madurai or to register for Ph.D. in Madurai Kamaraj University and in fact, the Professor and Head of Department of Microbiology has recommended to the Respondent to permit the Petitioner to register himself for Ph.D. in Food Fermentation, but that was not accepted and turned down by the Dean in the reply dated 4.12.1989 and therefore, the Petitioner could not complete his Ph.D. Degree.

2.7. It is stated that from 1980 till 1.1.1994, the Petitioner was granted periodical annual increments, however from 1.1.1995 increments were not granted on the ground that the Petitioner has not completed Ph.D. Degree within the stipulated time.

2.8. In the meantime, the Government passed G.O. Ms. No. 360, Agriculture (AU) Department, dated 16.8.1999 granting revised scales of pay with effect from 1.1.1996, in which the Assistant Professors (Selection Grade) and Associate Professors were granted scale of pay of Rs. 12,000-420-18,300/- and it was directed to be fixed at the stage of Rs. 14,940/- in the said scale. However, the benefit that has been conferred by the said G.O. Ms. No. 360, Agriculture AU Department, dated 16.8.1999 has not been conferred to the Petitioner till the date of his retirement, viz., 30.6.2003.

2.9. On 4.6.2003, the Deputy Director, Local Fund Audit, issued an order granting the Petitioner pay fixation with effect from 1.1.1996 and while granting pay fixation, the Deputy Director, taking note of the fact that the Petitioner does not possess Ph.D. Degree, has recommended that the Petitioner should be awarded scale of pay of Assistant Professor (Selection Grade), so that the pay fixation is in accordance with the recommendations of the University Grants Commission and by the said fixation, the Petitioner is not put to any loss, since the scale of pay of the post of Assistant Professor (Selection Grade) was the same as that of the post of Associate Professor. The pay of the Petitioner was fixed from 1.1.1996 at Rs. 14,940/- in the scale of pay of Rs. 12,000-420-18,300/-.

2.10. However, as annual increments were not sanctioned to the Petitioner on the ground that he did not possess Ph.D. Degree, he made series of representations on 1.11.2003, 1.12.2003, 1.1.2004, 1.2.2004, 26.2.2004, 2.4.2004, 9.4.2004 and 24.5.2004. In response to one of the representations sent to the Chief Minister's Grievance Cell, the Respondent sent a reply on 8.6.2004, rejecting the claim made by the Petitioner on the ground that he did not possess Ph.D. Degree as prescribed under G.O. Ms. No. 62, Agriculture Department, dated 10.1.1979 and that he did not acquire the requisite qualification within the stipulated time. Aggrieved by the said order dated 8.6.2004, the present writ petition is filed for the relief stated supra.

2.11. The order impugned in this writ petition dated 8.6.2004 is challenged on various grounds, including that:

(i) even though G.O. Ms. No. 62, Agriculture Department, dated 10.1.1979 prescribes the qualification of Ph.D. Degree with five years of experience in teaching/research for appointment to the post of Associate Professor, the government order stipulates the qualification of a Ph.D. Degree or M. Sc. Degree with three years experience for appointment to the post of Assistant Professor and therefore, by virtue of the said government order, the Petitioner is entitled to be appointed as Assistant Professor and it is only on that basis, the Deputy Director, Local Fund Audit has recommended the pay fixation of the Petitioner as that of Assistant Professor (Selection Grade), so that it would be in accordance with the recommendations of the University Grants Commission and would not cause any loss to the Petitioner and therefore, the order of the Respondent refusing to grant annual increments is not in accordance with the

recommendation of the Deputy Director, Local Audit Fund and hence, the same is illegal;

(ii) neither G.O. Ms. No. 62, Agriculture Department, dated 10.1.1979, nor G.O. Ms. No. 208, Agriculture (AU) Department, dated 27.3.1989 or G.O. Ms. No. 360, Agriculture (AU) Department, dated 16.8.1999 stipulate that persons who did not acquire Ph.D. Degree were not entitled to annual increments and therefore, it is not open to the Respondent to deny the annual increments, while upholding the appointment of the Petitioner in the said post;

(iii) while appointing the Petitioner as Associate Professor by order dated 23.2.1980, the government order in G.O. Ms. No. 62, Agriculture Department, dated 10.1.1979 was in force, and despite the same, the appointment order did not stipulate that Ph.D. Degree is a condition precedent for such appointment and in any event, it is not open to the Respondent to impose such a condition at this late point of time and moreover, the Petitioner was granted annual increments from 1980 till 1994 and therefore, the order impugned is contrary to law and is liable to be set aside;

(iv) even though the Petitioner registered himself for a part-time Ph.D. Programme with the Respondent/ University, he could not continue the course as he was transferred to Madurai and his request for continuation of the Ph.D. Programme from Madurai or in the alternative to register his name for a Ph.D. Programme in the Madurai Kamaraj University were turned down by the Respondent and therefore, he could not complete the Ph.D. Programme and the refusal to grant annual increments is unjustified;

(v) if the acquisition of a qualification is not prescribed as a condition precedent either for regularisation of services or for the grant of increments, it is not open to the Respondent to make his own interpretation of the government orders in refusing to grant the benefit of pay fixation, as was held by this Court in the order dated 19.3.2004 made in W.P. No. 18942 of 2000; and

(vi) while another person employed in the Respondent/ University, who also does not possess Ph.D. Degree, has been granted pay fixation as well as periodical increments under the government orders, the refusal to grant annual increments to the Petitioner is discriminatory and violative of Article 14 of the Constitution of India.

3.1. In the counter affidavit filed by the Respondent, it is stated that even though the Deputy Director of Local Fund Audit has recommended to designate the Petitioner as Assistant Professor (Selection Grade), the said recommendation was negated by the Respondent as there was no specific order of the University or the Government to re-designate an Associate Professor as Assistant Professor (Selection Grade), especially when the Petitioner was promoted as Associate Professor under regular stream during 1980 under the provisions of G.O. Ms. No. 62, Agriculture Department, dated 10.1.1979, when the post of Assistant Professor (Selection Grade) was not in existence and was only introduced by

G.O. Ms. No. 208, Agriculture (AU) Department, dated 27.3.1989.

3.2. It is further stated that the grievance of the Petitioner cannot be redressed by the Respondent and he ought to have imp led the Deputy Director of Local Audit Fund, and he should have challenged the government orders in G.O. Ms. No. 62, Agriculture Department, dated 10.1.1979 and G.O. Ms. No. 208, Agriculture (AU) Department, dated 27.3.1989 by imp leading the Government in the above writ petition.

3.3 It is further stated that the ratio laid down in the order of this Court dated 19.3.2004 made in W.P. No. 18942 of 2000 is not applicable to the cadre of the Petitioner and the same has been misquoted. It is also stated that the writ petition suffers from laches. Thus, the Respondent prayed for dismissal of the writ petition.

4.1 In the reply affidavit filed by the Petitioner, while reiterating the stand taken by the Petitioner in the writ petition, it is stated that on the passing of the impugned order dated 8.6.2004, in the month of July, 2004 itself this writ petition has been filed and therefore, there is no delay on the part of the Petitioner in approaching this Court.

4.2. It is further stated that the appointment of the Petitioner as Associate Professor was by direct recruitment and not by promotion and that too without any condition that he should acquire Ph.D. qualification within a stipulated time and as such, there is no question of reduction in rank of the Petitioner as Assistant Professor (Selection Grade) introduced by G.O. Ms. No. 208, Agriculture (AU) Department, dated 27.3.1989 or such re-designation being made applicable to the Petitioner.

4.3. With regard to the non-impleading of Deputy Director of Local Audit Fund and non challenging of the government orders, it is stated that the Respondent/ University is an autonomous body under a Special Act represented by its Registrar and the Local Fund Audit is only a part of such University and audit objection, if any, could be valid only if it is in accordance with the relevant Rules. It is also stated that the Registrar alone is the proper party and authority for appointment and implementation of all the policies of the Government and the recommendations of the University Grants Commission made from time to time in respect of the teaching staff and as such, the Respondent is the authority who has to confer the benefits to the Petitioner.

4.4. It is further stated that the order of this Court dated 19.3.2004 made in W.P. No. 18942 of 2000 is squarely applicable to the facts of the case and the issue involved in that case is also as to whether an Associate Professor, irrespective of the faculty they belong, is entitled to increments, revised scale of pay as per the recommendations of the University Grants Commission and therefore, there is no misquoting of the order of this Court.

5. The issue to be decided in this case is as to whether the Petitioner, who was

appointed as an Associate Professor admittedly without Ph.D. Degree on 23.2.1980, is entitled to revision of pay made by the Government in G.O. Ms. No. 360, Agriculture (AU) Department, dated 16.8.1999 and all other consequential benefits.

6. In the order of the Respondent/University dated 23.2.1980 appointing the Petitioner as Associate Professor, there is no condition imposed against the Petitioner that he should complete Ph.D. Degree, even though there is a clause that "he will be governed by the Act, Statutes, Regulations and Rules of the University". It is also not in dispute that the Petitioner was allowed to continue as Associate Professor till the date of his superannuation, viz., 30.6.2003.

7. As per the clause in the G.O. Ms. No. 360, Agriculture (AU) Department, dated 16.8.1999, the pay of Assistant Professor (Selection Grade) and Associate Professor as on 1.1.1996, as fixed for the Petitioner, are one and the same, which is as follows:

(iii) The fixation of Pay of Assistant Professors (Selection Grade) / Associate Professors in the pre-revised Scale of Pay of Rs. 3700-125-4950-150-5700 who were selected strictly in accordance with the Rules and Regulations of the Tamil Nadu Agricultural University and who were in position as Assistant Professors (Selection Grade) / Associate Professors as on 1.1.1996 shall be made in the manner that they get their Pay fixed at the minimum of Rs. 14940/- in the revised UGC Scale of Pay of Rs. 12000-420-18300 as and when they complete five years of service in the cadre of Assistant Professor (Selection Grade) / Associate Professor.

8. The Deputy Director of Local Audit Fund, admittedly, has recommended that the Petitioner should be awarded scale of pay of Assistant Professor (Selection Grade) and accordingly, the pay of the Petitioner was fixed from 1.1.1996 at Rs. 14,940/- in the scale of pay of Rs. 12,000-420-18,300/-. However, he has not granted annual increments due to the Petitioner on the ground that the Petitioner was not having Ph.D. Degree.

9. Even as per Appendix-I to the G.O. Ms. No. 360, Agriculture (AU) Department, dated 16.8.1999, the category of Assistant Professor (Selection Grade) is equivalent to Associate Professor for the existing scale of pay of Rs. 3700-125-4950-150-5700/- and the revised scale of pay of Rs. 12000-420-18300/- and the pay of those with five years service as on 1.1.1996 was to be fixed minimum at Rs. 14,940/-. Admittedly, the Petitioner's pay was fixed at Rs. 14,940/- in the scale of pay of Rs. 12000-420-18300/-.

10. As far as the claim of the Petitioner for annual increments from 1.1.1997 to 1.1.2001 is concerned, the same has been rejected by the impugned order on the basis of G.O. Ms. No. 62, Agriculture Department, dated 10.1.1979. The said government order, which again is implementation of the University Grants Commission's scale of pay, contemplates revised qualifications as follows:

a.

Professor: Ph.D. Degree with ten years of experience in teaching/research in the subjects concerned

b.

Associate Professor: Ph.D. Degree with five years of experience in teaching/research in the subjects concerned

c.

Assistant Professor: Ph.D. Degree or Masters Degree with three years experience.

11. The said government order in Clause (6) gives five years period for acquiring Ph.D. qualification, but states that if any higher post arises by advertisement for recruitment, the existing regular candidates of the University may apply irrespective of their qualifications. The said clause is as follows:

6. The Government also consider that teachers now in service aged 50 years and above on the date of issue of this order will be exempted from acquiring Ph.D. Degree. Others should require Ph.D. qualification within five years from the date of issue of this order. During the interim period of five years, any higher posts are advertised for recruitment, the existing regular candidates of the University may apply for such posts irrespective of their qualifications for selections will be made after taking into account their experience and competence.

12. It was only after G.O. Ms. No. 62, Agriculture Department, dated 10.1.1979 came into effect, by which time the Petitioner was holding the post of Assistant Professor, when vacancies of Associate Professor arose in the Respondent/University by advertisement, the Petitioner was appointed as Associate Professor on 23.2.1980, which is in accordance with paragraph (6) of the said government order. The said government order has nothing to do with the payment of annual increments.

13. Under similar circumstances, when in the same University a person holding only Masters Degree and not Ph.D. Degree was appointed as Associate Professor in Soil Water Conservation Engineering, Water Technology Centre, Tamil Nadu Agricultural University, and when an order was passed directing the increments paid, stated to have been made by mistake, to be realised from him, on the basis that he was not having Ph.D. qualification, by referring to G.O. Ms. No. 208, Agriculture Department, dated 27.3.1989, P.K. Misra,J., as he then was, in the order dated 19.3.2004 made in V. Balasubramanian v. Tamil Nadu Agricultural University, rep. by its Registrar, Coimbatore and Anr. W.P. No. 18942 of 2000 held as follows:

8. Reference to G.O. Ms. No. 208, dated 27.3.1989 by the Audit Department as well as in the subsequent impugned orders appears to be misconceived. Paragraph XVIII of such Government Order refers to Associate Professor and lays down that such Associate Professor in the grade of Rs. 1200-1900 would be

placed at the appropriate stage in the revised scale of Rs. 3700-5700. It is further indicated that they would also be entitled to relaxation of service by three years if they hold Ph.D. degree as mentioned in sub-para (xiii). There is no provision that those Associate Professors were otherwise qualified at the time of their initial appointment shall not be entitled to increments if they do not have Ph.D. degree. On the other hand, paragraph-xix makes it clear that an Associate Professor shall be eligible for appointment to the post of Professor if he has completed 5 years service as Associate Professor and has obtained Ph.D. degree. In other words, acquisition of Ph.D. degree may be a requirement for being appointed as Professor as per G.O. Ms. No. 208, but there is no provision which lays down that an existing Associate Professor, having been selected on the basis of qualification prescribed at the relevant time, would not be entitled to any further increments unless he acquires Ph.D. degree. On the other hand, the explanation to the effect that existing incumbents, who are not Ph.D. degree holders, will also be eligible for pay fixation in the University Grants Commission scale of pay appropriately, makes it clear that such persons are to be also given the benefit of UGC pay scale.

9. It is thus apparent from the above analysis that the impugned orders, so far as they relate to the present Petitioner is concerned, are based on misconception and misreading of G.O. Ms. No. 62, dated 10.1.1979, G.O. Ms. No. 1633, dated 23.8.1984 and G.O. Ms. No. 208, dated 27.3.1989. Such impugned orders are hereby quashed and it is hereby directed that recovery, if any, made from the Petitioner should be refunded and the Petitioner shall be entitled to all the benefits for the post of Associate Professor till his retirement notwithstanding the fact that he had not acquired Ph.D. degree. However, it is made clear that the Petitioner shall not be eligible to be promoted as Professor." especially holding that even under the G.O. Ms. No. 208, Agriculture (AU) Department, dated 27.3.1989, there is no bar for an existing Associate Professor appointed in accordance with the then existing qualification from getting annual increments and therefore, they are entitled to annual increments. It is apt to extract the relevant clause in the G.O. Ms. No. 208, Agriculture (AU) Department, dated 27.3.1989, relied upon in the above said order, which is as follows:

(XIX) Every Associate Professor shall be eligible for appointment to the post of Professor in the scale of Rs. 4500-7300, if he/she has

- a. completed five years of service as Associate Professor, and
- b. obtained Ph.D. Degree.

Explanation:

The existing incumbents who are not Ph.D. Degree holders will also be eligible for pay fixation in the new University Grants Commission scale of pay appropriately.

14. In such view of the matter, the contention of the learned Counsel for the Respondent/University that the Petitioner having not acquired Ph.D. Degree is

not entitled to increment has no legal basis. His submission that the order of this Court relied upon by the learned Counsel for the Petitioner, as stated above, is related to recovery of excess amount paid and that cannot be made applicable to the case on hand, has no meaning. The ratio laid down in the said case squarely applies to the facts of the present case and it is stated that the said order has become final.

15. Even if the Respondent takes a stand that there is no specific order of the University or the Government to re-designate an Associate Professor as Assistant Professor (Selection Grade), the same is not tenable in law for the reason that the category Assistant Professor (Selection Grade) is equivalent to that of Associate Professor in respect of the salary.

16. Under such circumstances, I am of the view that the denial of the right of the Petitioner to have annual increments earned for the period of service rendered by him, especially in the light of the order of this Court, is not valid in law. Accordingly, the writ petition stands allowed and the impugned order stands set aside and the matter is remanded to the Respondent with a direction to pass appropriate orders by granting annual increments to the Petitioner in accordance with the order passed by this Court dated 19.3.2004 in V. Balasubramanian v. Tamil Nadu Agricultural University, rep. by its Registrar, Coimbatore and Anr. W.P. No. 18942 of 2000 and such order shall be passed by the Respondent within eight weeks from the date of receipt of a copy of this order. No costs.