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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.45999 of 2025
and
W.M.P.Nos.51294 & 51295 of 2025

N.Kandasamy,
Assistant Registrar,
Finance Office,
Periyar University,
Salem – 11,
Salem District. ... Petitioner

-Vs-

1.State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Department of Higher Education,
Fort St.George, Secretariat,
Chennai – 600 009.

2. The Periyar University,
Rep by its Registrar,
University Campus,
Periyar Palkalai Nagar,
Salem – 636 011.

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3.The Regional Joint Director,
Local Fund Audit Department,
Cherry Road, Maravaneri,
Salem – 636 007.

4.The Assistant Director,
Local Fund Audit Department,
Salem Corporation Building Campus,
Salem – 636 001. ... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the impugned order dated 30.03.2023 in P.No.PU/R/R6/00334/23F70662/2023-6 passed by the second respondent and quash the same as being illegal and unsustainable in law, and consequently direct the second respondent to restore original fixation of scale of pay to the petitioner in the post of Section Officer from the date of his appointment as per the proceedings of the second respondent dated 01.04.2010 and pay all consequential service benefits along with arrears forthwith.

For Petitioner : Mr.M.R.Jothimanian

For Respondents : Mr.M.R.Gokulkrishnan
Additional Government Pleader [R1]
Ms.Mary Sowmi Rexi
for M/s.Isaac Chambers [R2]

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ORDER

This Writ Petition has been filed to call for the records of the impugned order, dated 30.03.2023, in P.No.PU/R/R6/00334/23F70662/2023-6, passed by the second respondent and quash the same as being illegal and unsustainable in law and consequently, direct the second respondent to restore original fixation of scale of pay to the petitioner in the post of Section Officer from the date of his appointment as per the proceedings of the second respondent, dated 01.04.2010 and pay all consequential service benefits along with arrears forthwith.

2. The petitioner was appointed as Assistant in the second respondent University, Salem on 03.05.2000 and he was promoted as Superintendent on 31.07.2006, as Section Officer on 27.01.2010 and thereafter as Assistant Registrar on 14.07.2016. He had passed all the

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tests as per the service rules of Periyar University and was promoted to the post of Section Officer in the scale of pay of Rs.15600-39100 with grade pay of Rs.5400, that too with the approval of the syndicate of the second respondent University. While being so, the second respondent issued a show cause notice dated 09.01.2023 calling for explanation from the petitioner in respect of revision of pay in the post of Section Officer. On receipt of the same, he submitted his explanation. However, without considering the explanation submitted by the petitioner, the second respondent vide proceedings dated 30.03.2023, reduced his scale of pay w.e.f. 01.03.2023 in the post of Section Officer, which resulted in reduction of Rs.6,762/- per month. Further, the impugned order was issued based on the objection of "Local Fund Audit". Challenging the order passed by the second respondent, the petitioner has filed the present writ petition before this Court.

3. Heard both sides and perused the materials available on record.

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4. The issue of recovery has already been dealt with by the Hon'ble Apex Court and this Court repeatedly. In this regard, it is relevant to rely upon the decision of the Madurai Bench of this Court in W.P.(MD).No.6635 of 2019, dated 25.09.2013, wherein it is held as follows :-

> *"2. The Government vide Letter (Ms) No.174, dated 25.09.2013 directed the Registrars of all Universities to take suitable action to re-fix pay/reverse wrong promotions/ increments given which were pointed out in the report of the Director of Local Fund Audit. The Registrars were also called upon to recover the excess payment from the individual staff concerned. Challenging the same, the present writ petition came to be filed.*
>
> .....
>
> *8.Section 27 of the Act will not empower the Government to issue a direction of this nature. The Director of Local Fund Audit had gone to the extent of stating that the university*

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has been giving wrong promotions /increments. The job of the Local Fund Audit is to see if the expenditure incurred by the university is in consonance with the policy of the university. As per Section 27 of the Act, the Syndicate has the power to appoint the University Lectures, University staff and fix their emoluments. It is not for the Local Fund Audit to go into the justification of the promotions given by the university. The Government has gone entirely by the report of the Local Fund Audit. It clearly amounts to interference with the internal administration of the university. Section 27 of the Act has been misconstrued by the Government. The impugned communication is without jurisdiction. It is quashed and the writ petition is allowed."

Therefore, insofar as the second respondent University is concerned, the sub section 27 (a) and (b) of the Periyar University Act, the syndicate has the power to appoint the University Lecturers, Readers, Professors, Teachers and the administrative staff along with similar posts and fix their emoluments, if any, define their duties and the conditions of their services and provide for filling up for temporary vacancies.

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5. It is seen that the show cause notice was issued on the objections raised by the Local Fund Audit. The petitioner had passed all tests as per the service rules of the University. That apart, he was promoted with the approval of the syndicate of the second respondent University.

6. In this regard, it is relevant to rely upon the judgment of Hon'ble Supreme Court in the case of ***State of Punjab & Ors. Vs. Rafiq Masih (White Washer) & Ors.*** reported in ***(2015) 4 SCC 334***, in which the Hon'ble Supreme Court has held as follows :-

> *"12. 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 their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*

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(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery. Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iii) 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.

(iv) 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."

Thus, it is clear that recovery shall not be made after a period of five years.

7.Further, as far as the promotions are concerned, the petitioner was no way responsible for the promotions granted by the second respondent. It is the duty of the authorities concerned to verify the records before granting promotions to their employees. It is not the case

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of the second respondent that the petitioner made any false representation or mis-representation in respect of his promotions. Therefore, the fault, if any, committed by the authorities concerned, cannot be foisted as against the petitioner. Further, the show cause notice was issued on the strength of the objections raised by the Audit Department. The audit objections related to the Audit Department cannot interfere with the decision of the second respondent to grant promotions, since it has no power to raise any objections relating to any promotions.

8. In view of the above, the impugned orders passed by the second respondent cannot be sustained and are liable to be quashed and accordingly, stands quashed. The second respondent is directed to restore original fixation of scale of pay to the petitioner in the post of Section Officer from the date of his appointment as per the proceedings of the second respondent, dated 01.04.2010 and pay all consequential service benefits along with arrears forthwith within a period of four (4) weeks

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from the date of receipt of a copy of this order.

9. With the above observations and directions, this writ petition stands allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

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Index : Yes/No
Neutral Citation: Yes/No
Speaking/Non Speaking order
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To

1.State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Department of Higher Education,
Fort St.George, Secretariat,
Chennai – 600 009.

2. The Periyar University,
Rep by its Registrar,
University Campus,
Periyar Palkalai Nagar,
Salem – 636 011.

3.The Regional Joint Director,

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Local Fund Audit Department,
Cherry Road, Maravaneri,
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G.K.ILANTHIRAIYAN. J,

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