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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

MONDAY, THE 4TH DAY OF APRIL, 2022/ 16TH CHAITHRA, 1944

WA NO. 288 OF 2022

AGAINST THE ORDER/JUDGMENT IN WP(C) 15415/2020 OF HIGH
COURT OF KERALA

APPELLANT/S:

- 1 THE STATE OF KERALA
REPRESENTED BY PRINCIPAL SECRETARY,
DEPARTMENT OF HIGHER EDUCATION,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN -
695001
- 2 THE DIRECTOR OF COLLEGIATE EDUCATION
VIKAS BHAVAN, PMG JUNCTION,
THIRUVANANTHAPURAM, PIN - 695033
- 3 THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION
KOLLAM, PIN - 691001

BY GOVERNMENT PLEADER SRI. BIJOY CHANDRAN

RESPONDENT/S:

- 1 DR. JOHN PANICKER
ASSISTANT PROFESSOR, ST.GREGORIOUS COLLEGE, PULAMON
P.O, KOTTARAKKARA, PIN - 691531
- 2 THE MANAGER
ST GREGORIOS COLLEGE, PULAMON P.O, KOTTARAKKARA,
PIN - 691506
- 3 UNIVERSITY OF KERALA
REPRESENTED BY REGISTRAR,
PALAYAM, THIRUVANANTHAPURAM, PIN - 695001

4 THE SYNDICATE OF UNIVERSITY OF KERALA
REPRESENTED BY THE CHAIRMAN ,
UNIVERSITY OF KERALA, THIRUVANANTHAPURAM, PIN -
695001

BY SR. ADVOCATE SRI. BABU VARGHESE AND
C.V.ALEXANDER
BY ADVOCATE SHRI.THOMAS ABRAHAM, SC,
UNIVERSITY OF KERALA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
24-03-2022, THE COURT ON 4-4-2022 DELIVERED THE FOLLOWING:

"CR"

**A.K.JAYASANKARAN NAMBIAR
&
MOHAMMED NIAS C.P.JJ**

.....

W.A. NO. 288 OF 2022

.....

Dated: 4th April, 2022

JUDGMENT

Mohammed Nias. C.P. J.,

The appeal by the State and its officials are directed against the judgment in W.P. (C) No. 15415 of 2020 which allowed the Writ Petition filed by the first respondent herein by directing the University to give approval for the promotion of the petitioner as Senior Lecturer with effect from 19-8-2000 and to grant all other consequential promotion and benefits to which the petitioner is eligible from time to time.

2. The brief facts necessary for the disposal of the appeal are as follows:

The first respondent/writ petitioner was initially selected as Junior Lecturer as per Ext. P3 order dated 17-8-1996 pursuant to which he joined on 19-8-1996. Petitioner contends that though he was appointed as Junior Lecturer, the notification for selection was for the post of Lecturer in Hindi. By Government Order dated 12-2-1996,

a new cadre of teachers in the Collegiate Education Subordinate Service for teaching pre-degree courses in the State was created indicating the qualifications, method of appointment etc. the designation was "Junior Lecturer (Pre-Degree)". Petitioner also claims to be fully qualified for the appointment of the post of Lecturer even from that time onwards. The petitioner, consequent to the de-linking of the pre-degree courses from the college as part of implementation of the Pre-degree (Abolition) Act 1997, was deployed to the St. Gregorious Higher Secondary School, Kottarakkara, under the same management as per Order dated 4-5-1998. The order deploying the petitioner, the relieving order and the order of the Director of Higher Secondary Education duly approving the same were marked as Exts. P4 to P7 in the Writ Petition. Years thereafter, on the arising of a vacancy, the petitioner was relieved from St. Gregorious Higher Secondary School, Kottarakkara and was re-deployed as Assistant Professor in Hindi in the first respondent college from the forenoon of 1-7-2011 as per Ext. P11 order which the University has duly approved as per Ext. P12.

3. Petitioner submits that as per the UGC Scheme which had by then been implemented in the State, those teachers who completed six years of service are entitled to be promoted as "Senior Scale Lecturers" and according to him, since he is qualified, he is

entitled to get promotion as Senior Scale Lecturer with effect from 19-8-2000, on completion of four years of service and also entitled to get a further promotion as Senior Selection Grade Lecturer with effect from 5-09-2005. The petitioner was promoted as Lecturer, Senior Scale with effect from 18-8-2000 vide order dated 7-12-2015. The petitioner submits that as per Clause 6.25 of the UGC Scheme dated 21-12-1999, Ext. P14, a Lecturer is eligible to be placed in Senior Scale if he has completed six years of service after a regular appointment and as per Clause 10 of the said Scheme, even part-time teachers will be entitled to the Career Advanced Scheme (for short "CAS") from Lecturer to Senior Scale and Selection Grade Lecturer. He further relies on Ext. P15 a Government Order dated 1-6-2010 to contend that those teachers who were appointed in the pre-degree vacancies would also be eligible for placement under CAS. The petitioner also cites several instances of teachers similarly situated being granted the said benefit. The petitioner contends that he is discriminated which forced him to file W.P.C. 3367/2019 wherein the Government was directed to consider the matter adverting to the relevant Government Orders. No action was taken within the time granted by this Court which led to the filing of Contempt of Court Proceedings.

4. In the meantime, it is submitted that the earlier Government orders granting benefits to the similarly placed was cancelled as per Ext. P24. The petitioner's claim was rejected by Ext. P25 order dated 20-3-2020 holding that the conditions in the V and the VI UGC Scheme do not provide any provision to reckon the service rendered as Junior Lecturers for placement in the CAS. Writ Petition was filed challenging Ext. P25 order and also for a declaration that the petitioner was entitled to placement/promotion as Senior/Selection Grade Lecturer/Associate Professor under the CAS as per Ext. P14 UGC Scheme.

5. The University filed a counter supporting the reasons given in Ext. P25 that the appointment of the petitioner as Junior Lecturer (Pe-degree) is exclusively for handling of classes of pre-degree, having a different selection process/qualifications and scale of pay and also that the approval has been granted by the Deputy DCE, he re-entered into the Collegiate Service only on 1-7-2011. The University further states that the petitioner was in the roll of school service till 1-7-2011. His claim for promotion on 19-8-2000 as Senior School Lecturer and as Selection Grade Lecturer with effect from 5-09-2005 cannot be considered as he was not even in the Collegiate Service. The University has also contended that the

petitioner cannot claim parity to those similarly placed as their illegal promotions were all directed to be cancelled. Since there is no provision in the V and VI UGC Scheme to reckon the service rendered as Junior Lecturers, it was urged that the writ petition be dismissed.

6. The learned Single Judge who heard the matter found that the petitioner was entitled to be promoted under the CAS on completion of four years of service in terms of UGC qualification and by dispensing the two years service since the petitioner had Ph.D, four years service from 1996 added to the four years in 2010, the petitioner was entitled to get promotion from 19-8-2000. The learned Single Judge also found that the Government was discriminating the petitioner when it promoted several persons similarly placed, after 4-6 years of service as it is evident from Exts. P27 to P29. The learned Single Judge also found that the University cannot play hide and seek or act in a discriminatory manner. The learned single Judge also was of the view that as per Ext. P14 Government Order dated 1-7-2009 which dealt with the re-appointment and re-deployment of Lecturers who were posted in Higher Secondary Schools due to the de-linking of pre-degree course since there was a stipulation to give appointment in the respective space in the

present and future vacancies by giving preference, the Lecturers who were re-deployed ought to be given promotion, more so, when the petitioner was qualified. In that view of the matter, the Writ Petition was allowed as aforesaid.

7. The State and its officials are in appeal impugning the said judgment.

8. Heard Sri. Bijoy Chandran, the learned Government Pleader, Senior Counsel Sri. Babu Varghese instructed by Adv. Sri. C.V.Alexander and the Senior Counsel Sri. Thomas Abraham, Standing Counsel for the University.

9. It is the contention of the learned Senior Government Pleader Sri. Bijoy Chandran that as per Clause 7 of Ext. P14 Government Order, several conditions are to be fulfilled so as to reckon a persons past service for placement as Lecturers and that the post of Junior Lecturer (Pre-degree) would not satisfy the conditions stipulated there as the post of Junior lecturers is not an equivalent grade/scale of pay as the post of Lecturer and evidently the qualifications for the post of Junior Lecturer was lower than the qualifications prescribed by the UGC for the post of Lecturer. It is

also his contention that the conditions in the V and VI UGC Scheme did not provide any provision to reckon the service rendered as junior Lecturer for placement under CAS. It is also argued that the Government had already withdrew the promotions effected by the Government letter dated 20-09-2017 with retrospective effect and the Director of Collegiate Education and Universities were directed to review the prior service for placement/promotion given to teachers, if any, on the basis of Government Letter dated 20-09-2017 and it also cancelled the same with retrospective effect.

10. The learned Senior Counsel for the first respondent contended that going by Clause 6.2 onwards he is entitled to be considered for promotion. Since the issue revolves around the interpretation of the clauses in Ext. P14 Government Order, it would be beneficial to extract the same.

CAREER ADVANCEMENT

6.2 Minimum length of service for eligibility to move into the grade of lecturer (Senior Scale) would be four years for those with Ph.D., five years for those with M.Phil, and six years for others at the level of Lecturer, and for eligibility to move into the Grade of Lecturer (Selection Grade/Reader, the minimum length of service as Lecturer (Senior Scale) shall be uniformly five years.

6.21 For movement into grades of Reader and above, the minimum

eligibility criterion would be Ph.D. Those without Ph.D can go up to the level of Lecturer (Selection Grade)

6.22 A reader with a minimum of eight years of service in that grade will be eligible to be considered for appointment as a Professor

6.23 The Selection Committees for Career Advancement shall be the same as those for Direct Recruitment for each category

6.24 The existing scheme of Career Advancement for non academic staff namely, Assistant Director of Physical Education, Assistant Registrar, Assistant Librarian would continue.

LECTURER (SENIOR SCALE)

6.25 A Lecturer will be eligible for placement in a senior scale though a procedure of selection, if she/ he has:

(i) Completed 6 years of service after regular appointment with relaxation of one year and two years, respectively, for those with M.Phil and Ph.D.

(ii) Participated in one orientation course and one refresher course of approved duration, or engaged in other appropriate continuing education programmes of comparable quality as may be specified or approved by the University Grants Commission. (Those with Ph.D degree would be exempted from one refresher course)

iii) Consistently satisfactory performance appraisal reports.

Lecturer (Selection Grade)

6.26 Lecturers in the Senior Scale who do not have a Ph.D. Degree or equivalent published work, and who do not meet the scholarship and research standards, but fulfill the other criteria given above for the post of Reader, and have a good record in teaching and, preferably, have contributed in various ways

such as to the corporate life of the institution, examination work, or through extension activities, will be placed in the Selection Grade, subject to the recommendations of the Selection Committee which is the same as for promotion to the post of Reader. They will be designated as Lecturers in the Selection Grade. They could offer themselves for fresh assessment after obtaining Ph.D. and/or fulfilling other requirements for promotion as Reader and, if found suitable, could be given the designation of Reader”.

7.1 COUNTING OF PAST SERVICE

Previous service, without any break as a Lecturer or equivalent, in a University, College, national laboratory or other scientific organization e.g. CSIR, ICAR, DRDO, UGC, ICSSR, ICHR and as a UGC Research Scientist, should be counted for placement of lecturer in Senior Scale/Selection Grade provided that :

- 7.2 The post was in an equivalent grade/scale of Pay as the post of Lecturer
- 7.3 The qualifications for the post were not lower than the qualifications prescribed by the UGC for the post of Lecturer,
- 7.4 The Candidates who apply for direct recruitment should apply through proper channel;
- 7.5 The concerned Lecturers possessed the minimum qualifications prescribed by the UGC for appointment as Lecturers;
- 7.6 The post was filled in accordance with the prescribed selection procedure as laid down by the University/State Government/Central Government/Institution's regulations
- 7.7 The appointment was not ad-hoc or in a leave vacancy of less than one year duration. Ad-hoc service of more than one year duration can be counted provided.
 - (a) the adhoc service was of more than one year duration;
 - (b) the incumbent was appointed on the recommendation of duly constituted Selection Committee; and
 - (c) The incumbent was selected to the permanent post in continuation to the ad hoc service, without any break.

11. A reading of Clause 6.20 would clearly show that the minimum length of service for eligibility to move into the grade of Lecturer (Senior Scale) would be four years for those with Ph.D, 5 years for those with M.Phil and six years for others **at the level of Lecturer** and for eligibility to move into the Grade of Lecturer (Selection Grade/Reader), the minimum length of service as Lecturer (Senior Scale) shall be uniformly five years. In the instant case, the petitioner was appointed as Lecturer only on 1-7-2011. The argument of the writ petitioner, that his service even when he was deployed as Higher Secondary School teacher, also should be reckoned for his promotion cannot be accepted at all in view of the express provision in 6.20 under the head CAS as he had not been a Lecturer till 1-7-2011. The learned Senior counsel for the writ petitioner also argues that as per Clause 3.3 and 3.4 of Ext. P14 Government Order the teachers would automatically become eligible for Senior Scale on completion of six years service.

12. Likewise, the relevant clauses under the head of counting of past service namely 7.1 also speaks about previous service, without any break as a lecturer or equivalent and further that the post should be an equivalent grade/scale of pay as the post of Lecturer. It cannot be disputed by the writ petitioner that he was not

a Lecturer or in any equivalent grade with a scale of pay of the post of lecturer till 1-7-2011 and on a conjoint reading of clauses 7.1 and 7.2, it is evident that the petitioner did not meet the stipulations in Ext. P14 Government Order. It is also worthwhile to note that Ext. P14 Government Order clearly mentions about the UGC Scheme 1998 to be restricted to those categories of staff only who were brought under the UGC Scheme 1986.

13. In as much as the clauses in Ext. P14 Government Order, extracted above admits of no doubt and the petitioner does not meet the criteria prescribed therein, no benefit can be claimed by the petitioner for a promotion under the CAS. The Senior counsel for the writ petitioner relies on the judgment in **Manager, St.Thomas College, Palai and Others v. State of Kerala and Others (MANU/KE/0517/2022)** to contend that his case is squarely covered by the said Judgment. It may straightaway be noted that this Court by the judgment only upheld the right of a teacher therein to get re-deployment in terms of the Government Order which was wrongly refused by the management and the issues arising in this Writ Appeal has no bearing, to the said decision. The learned Senior Counsel also argues that several teachers were granted the benefits which he is seeking now and relying on the judgments in **G. Sadasivan Nair**

v. Cochin University of Science and Technology represented by its Registrar and Others [MANU/SC/1173/2021], The State of Kerala, represented by its Principal Secretary, Department of Higher Education v. N. Aravindakshan [W.A. No. 2579/2009] and State of Mizoram and Ors. v. Mizoram Engineering Service Association and Another [(2004) 6 SCC 218], it is argued that the writ petitioner cannot be discriminated as the similarly situated teachers were given the benefit and by Ext. P24 only one such instance was cancelled. It may be noted that since we have held that the petitioner is not entitled under Ext. P14 Government Order, we cannot countenance the argument that the promotions given in violation of Ext. P14 should be followed in the case of petitioner as well. We cannot perpetuate such illegalities and if done, it will be nothing but a case of negative equality which is not contemplated under law. We also note the fact that the Government by passing Ext. P24 recognizes that the promotions given in violation of Ext. P14 order were wrong and they have taken steps to review such promotions. Taking a cue from the Full Bench in the decision reported in **State of Kerala and Others v. M.M. Thomas and Others [2015 (1) KHC 502]** that there is a purpose behind granting increments or additional benefits and therefore, the Scheme was to attain academic excellence, we are of the view that the

stipulation in Ext. P14 government Order has to be construed strictly with the objective in mind namely to improve the quality of education and to provide incentives towards the said purpose. In view of our finding on the basis of Clause 7.1 of Ext. P14 order about the dis-entitlement of the petitioner, the argument based on Clause 3.3 and 3.4 of the said Government Order has no relevance as it has no application at all to the facts of the case,

14. We also note that the V and VI UGC Scheme did not provide any provision to reckon the service rendered as Junior Lecturer for placement under the CAS. By no stretch of imagination can the prior service of the petitioner as HSST be treated as equivalent to a Lecturer. In the light of the above, we cannot approve of the stand or reasoning taken by the learned Single Judge while allowing the Writ Petition. We, therefore, allow the appeal by setting aside the judgment of the learned Single Judge and dismissing the Writ Petition preferred by the first respondent.

15. Even as we accept the contentions on the part of the Government and allow its appeal, we find it disturbing that the Government had treated similarly situated persons differently. The power of the Government to make laws determining the service

conditions of its employees or amend such laws cannot confer them the power to apply such laws differently to similarly situated persons. Allowing the Government to do so would be violative of all canons of equality enshrined in the Constitution of India. The Government is as much bound by the rule of law as any other with an additional responsibility of being fair and just in all their actions both in governance as well as in litigation. Accordingly, the Director of Collegiate Education, Thiruvananthapuram and all the Universities in Kerala, are directed to implement the directions in Ext. P24 Government Order (Rt) No. 452/2020/HEDN dated 17-3-2020 and to take it to its logical conclusion in respect of all cases where placement/promotion has been granted contrary to the terms of Ext. P14 Government Order, without delay.

This Writ Appeal is allowed as above.

Sd/-A.K. JAYASANKARAN NAMBIAR, Judge

Sd/-MOHAMMED NIAS C.P , Judge

ani/4-03-2022

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P.S. To Judge