
(2022) 06 KL CK 0365
In the High Court Of Kerala
Case No : Writ Appeal No. 581 Of 2021

Cochin University Of Science And Technology Cochin
University P.O

APPELLANT

Vs

Dr. Asaletha.R

RESPONDENT

Date of Decision : 30-06-2022

Acts Referred:

Citation : (2022) 06 KL CK 0365

Hon'ble Judges : P.B.Suresh Kumar, J;C.S.Sudha, J

Bench : Division Bench

Advocate : S.P.Aravindakshan Pillay, M.R.Hariraj, G.P.Aj.Varghese

Final Decision : Dismissed

Judgement

C.S.Sudha, J

1. This intra-court appeal is from the judgment dated 01/02/2021 in W.P.(C) No.35984/2018. The appellants herein are respondents 1 and 2; the 1st respondent and the 2nd respondent are the petitioner and the 3rd respondent respectively in the writ petition. The parties and the documents in this Writ Appeal will be referred to as described in the writ petition.

2. According to the petitioner, she was working as Lecturer in Polymer Chemistry on contract basis in School of Technology and Applied Sciences under the Mahatma Gandhi University for the period from 21/05/1996 to 11/01/2004. While so, she was selected as Lecturer in Chemistry by the 1st respondent. Though vacancies were available, the petitioner was not appointed and hence she moved this Court, which by Ext.P1 judgment dated 05/03/2003, ordered her to be appointed as Lecturer, failing which, as Guest Lecturer and further to be preferred for any regular vacancy that would arise in the future. Pursuant to Ext.P1, she was engaged as Guest Lecturer as per Ext.P2 order dated 11/07/2003. On joining duty as Part-time Lecturer pursuant to Ext.P3, the engagement with the Mahatma Gandhi University was discontinued. The

petitioner was thereafter appointed as Full-time Permanent Lecturer with effect from the date on which she was appointed as Part-time Lecturer in the 1st respondent with all benefits excluding arrears of salary as per Ext.P5 order dated 17/03/2005.

2.1. The service of the petitioner on contract basis is liable to be reckoned as qualifying for promotion as per Ext.P6 order. She was promoted as Lecturer (Senior Scale) with effect from 02/02/2008 by Ext.P7 order dated 17/12/2008. The date of promotion of the petitioner was fixed as 02/02/2008 because that was the date on which she had completed her short-term course. While so, the Government as per Ext.P8 order extended the period for participation in refresher courses in respect of eligible teachers up to 31/12/2013. Based on the extension of time granted by Ext.P8 order and reckoning her contract service prior to the appointment to the University, the petitioner was entitled to be considered for promotion as on 12/01/2004 itself, that is, the date of joining the University. The petitioner's date of promotion as Lecturer (Senior Scale) was accordingly revised to 12/01/2004 as per Ext.P9 order dated 27/08/2014. However, Ext.P9 was not given effect to on the ground that the said order was not in conformity with the decision of the Selection Committee in similar cases and the same was reviewed as per pay revision order of 1996. The date of promotion of the petitioner as Reader was revised as 12/01/2005, limiting the contract service reckonable as qualifying to three years. The petitioner was re-designated as Assistant Professor with AGP of ₹ 7,000/- with effect from 01/01/2006 and Assistant Professor in AGP of ₹ 8,000/- with effect from 12/01/2010. She was re-designated as Associate Professor in AGP of ₹ 9,000/- with effect from 12/01/2013. The re-designation was done as per Ext.P10 order dated 22/01/2016.

2.2. Ext.P6 Order does not restrict the number of years of contract of service in AICTE approved institutions reckonable as qualifying for promotion in the Universities. Hence, as per Ext.P11 judgment dated 07/09/2015, this Court set aside such restriction of three years imposed as per Ext.P6. Without referring to Ext.P11, the 2nd respondent issued Ext.P12 clarification dated 13/04/2016 to the effect that, the prior contract service shall be reckoned to the limit of three years alone for promotion. The petitioner is entitled to have her service from 21/05/1996 to 11/01/2004 reckoned as qualifying for promotion. Accordingly, she is entitled to be granted appointment as Lecturer (Senior Scale) on 12/01/2004. On completion of the requisite service of nine years and as she has a Ph.D. degree, she is entitled to be promoted as Reader/Lecturer (Selection Grade) with effect from 21/05/2005. A reader is to be re-designated as Assistant Professor in the pay-band of ₹ 36,400/- - ₹ 67,000/- with AGP ₹ 8,000/- with effect from 01/01/2006, which the petitioner is entitled to. On completion of three years as Assistant Professor in AGP ₹ 8,000/-, the petitioner ought to have been appointed as Associate Professor with effect from 21/05/2008, i.e., on completion of three years as per para.6.1.12 of G.O.(P)No.389/10/H. Edn. dated 07/12/2010. An Associate Professor is to be placed in AGP ₹ 9,000/- and a

person with three years of experience as Associate Professor in that level has to be re-designated as Professor. As per para 6.1.15, the service of a person who has Ph.D. degree in the cadre of Assistant Professor is eligible to be reckoned as the experience at the level of Associate Professor. The petitioner has Ph.D. from 1997 onwards. Therefore, the entire service of the petitioner as Assistant Professor is liable to be reckoned as 'experience' at the level of Associate Professor and so the petitioner is entitled to be re-designated as Professor on 21/05/2008 itself. However, the same was refused to her as per Ext.P12 order.

2.3. Aggrieved by Ext.P12 order, W.P.(C) No. 23918/2016 was filed for setting aside Ext.P12 order and for directing the respondents to reckon the entire period of contract service as qualifying for promotion. Ext.P12 was set aside by Ext.P13 judgment dated 23/01/2018. Thereafter, the 1st respondent issued Ext.P14 order advancing the date of placement of the petitioner as Lecturer (Senior Scale) to 12/01/2004. However, she was not granted appointment to the grade of Reader/Lecturer (Selection Grade) with effect from 21/05/2005 and consequential further promotions and placements. It is only the petitioner who has been denied this benefit, whereas the same has been granted to others as per Exts.P17 to P20 orders. The petitioner being a Ph.D. holder, is entitled to be promoted as Reader/Lecturer (Selection Grade) with effect from 21/05/2005, i.e., the date of completion of nine years of service. Hence the writ petition. The learned Single Judge allowed the writ petition. Aggrieved by the same, the respondents have come up in appeal.

3. Heard Sri. S.P.Aravindakshan Pillay, the learned counsel for the Appellants, Sri M.R.Hariraj, the learned counsel for the 1st respondent and Sri.A.J.Varghese, the learned Senior Government Pleader for the 2nd respondent.

4. The stand of the respondents as is revealed from the appeal memorandum seems to be that the claim of the petitioner for promotion as Professor on completion of only four years of service in the University on the strength of having contract service in a self-financing institution is preposterous, because normally it would take 15 years for a lecturer with Ph.D. who joins the University to be promoted as Professor. That is certainly no ground to reject the claim as long as the respondents have no case that the petitioner does not satisfy or does not have the qualifications required or prescribed for the post. Further, the fact that the petitioner had worked as a Lecturer on contract basis in the M.G. University from 21/05/1996 to 11/01/2004 is not disputed. As per Ext.P6 G.O. dated 05/06/1999, the provisional/contract service of teachers in Engineering Colleges/Polytechnics is also to be counted as qualifying service for placement as Lecturers in Engineering Colleges. Admittedly, the petitioner has been placed as Lecturer (Senior Scale) from 12/01/2004, the date of her initial appointment with the 1st respondent. The dispute starts from the post of Reader/Lecturer (Senior Scale). According to the petitioner, she ought to have been given promotion as Reader/Lecturer (Selection Scale) from 21/05/2005 as she had total service of nine years and a Ph.D. This fact is also not disputed. Ext.P16 is the minutes of

the meeting of Syndicate Sub Committee held on 28/12/2013 to study the issues relating to promotion under AICTE Scheme, the relevant portion of which reads-

" 2. The committee noted the order of extending the applicability of the Clause 6.32. of the Government Order to the AICTE Scheme as per the U.O.No.Ad.D2/31158/85 VI dated 06.12.2006. The Clause 6.32 of the G.O(P)No.171/99/H.Edn dated 21.12.1999 read as "if the number of years required in a feeder Cadre are less than those stipulated in this Notification, thus entailing hardship to those who have completed more than the total number of years in their entire service for eligibility in the Cadre, may be placed in the next higher Cadre after adjusting the total number of years. Thus situation is likely to arise as, in the earlier scheme, the number of years required in a feeder Cadre where much more than those envisaged under this Notification". The Committee recommends to extend this Clause to 1996 AICTE Scheme Career Advancement Scheme and accordingly, the total length of service required for the placement as Lecturer (Selection Grade)/ Reader is 11 years for a B.Tech /M.Sc holder, 10 years for a M.tech/M.Phil holder and 9 years for a Ph.D holder irrespective of number of years in the Lecturer Senior Scale." (Emphasis supplied)

If that be so, the petitioner's claim is justified and she is entitled to be promoted from 21/05/2005 as she satisfies the qualifications prescribed. Accordingly, the re-designation pursuant to AICTE Scheme and the dates of granting the respective Grade Pays will have to change as claimed by the petitioner. Respondents 1 and 2 have been unable to substantiate the illegality or irregularity in granting the reliefs claimed for by the petitioner. This is especially so, when it is admitted that candidates similarly placed have been given this benefit as per Exts.P17 to P20 orders. As opined by the learned Single Judge, it appears that the respondents are adopting a pick and choose policy and granting the benefits according to their whims and fancies. We find no infirmity in the impugned judgment calling for an interference by this Court.

In the result, the Appeal is found to be without any merits and hence the same is dismissed.