

(1991) 01 KL CK 0011
In the High Court Of Kerala
Case No : O. P. No. 168 of 1991

Dr. G. Abraham Varkey

APPELLANT

Vs

Kerala Agrl. University and another

RESPONDENT

Date of Decision : 15-01-1991

Acts Referred:

Kerala Agricultural University Act, 1971 — Section 42(5)

Citation : (1991) 2 KLJ 102

Hon'ble Judges : K. Srebdharan, J

Bench : Single Bench

Advocate : Mathews P. Mathew, for the Appellant; B. S. Krishnan and P. V. Mohanan (Govt. Pleader), for the Respondent

Final Decision : Dismissed

Judgement

K. Srebdharan, J.—Petitioner is working as Associate Professor in the Department of Surgery, College of Veterinary and Animal Sciences under the Kerala Agricultural University. He got promotion as Associate Professor on 5-11-1982. According to him, in view of the stagnation of Associate Professors in that cadre due to lack of promotional opportunity to the next cadre University had a scheme whereby Associate Professors are promoted as Professors on assessment of their performance. As such in all departments under the first respondent Associate Professors who have put in a minimum of 22 years of service have been promoted as Professors. In the normal course of events petitioner, it is claimed, would have been promoted as Professor under this scheme in the year 1984. However his case was not considered because of the interpretation given by the University to the Kerala Agricultural University Statutes (Professors, Associate Professors and Assistant Professors) regarding the required minimum length of service for promotion. Representation made in this behalf was not entertained. By circular dated 9-1-90 the University clarified that those employees whose services have transferred permanently from Government to the University and absorbed by the University shall be considered eligible to apply for up gradation,

if their respective total services including their services transferred from the department satisfies the prescribed minimum. Petitioner made an application to the second respondent for up gradation of his post on assessment of eligibility. First respondent did not take any action for up gradation. The University informed the petitioner that his request for up gradation cannot be considered order due to the implementation of the U. G. C. scheme. As the said scheme stipulates that no promotions such as on assessment, norms and non cadre promotions shall be effected from the date of U. G. C. order, petitioner has been directed to apply a fresh as and when called for. Petitioner completes the age of 55 on 18-3-91. He will have to retire from service on 31-3-91. It is contended that, the amended provision of Section 42 enables him to continue till the age of 60 years. On this basis he has prayed for the issuance of a declaration that the age of retirement for University teachers in all cadres of professors including associate professors is 60 and as such petitioner is entitled to continue in service till he attains the age of 60 years.

2. A copy of this petition was served, on the standing counsel representing the Kerala Agricultural University. He was also heard.

3. Petitioner is now holding the post of Associate Professor in the Department of Surgery." He claims that since he has put in more than 22 years of service he is entitled to be designated as professor on assessment of his merit. Till date he has not been promoted to the cadre of Professor. Nor was there any assessment of his merit for being promoted as professor According to the University since the implementation of the U. G. C. scheme is in the offing, Associate Professors are not to be promoted to the cadre of professor on assessment of merit. Petitioner has no legal right to be promoted to the cadre of professor. So as on today he is only an Associate Professor.

4. Can an Associate Professor continue in service till he completes the age of 60 years? Learned Counsel representing the petitioner would contend that the "word Professor or would take within its ambit Associate Professor and Assistant Professor. Since the petitioner is holding the post of Associate Professor, it is argued that he must be taken as a Professor and consequently must be treated as one falling within the purview of Clause (4) of section 42 of the Kerala Agricultural University Act, hereinafter referred to as the Act.

5. Clause (4) of Section 42 of the Act before its amendment in 1936 was in the following terms:-

With the exception of the Chancellor, the Pro-Chancellor and the Vice-Chancellor, the normal retirement age of officers and teachers of the University shall be fifty-five years.

This provision made it abundantly clear that all the members of the staff of the University are to retire on completing the age of 55 years. While the provision stood like that, it was amended by Act 27 of 1986. Clause (4) was completely changed and Clause (5) was added to Section 42. The amended Clause (4) and

the new Clause (5) are in the following terms:-

(4) The normal retirement age of the Deans of Faculties, the Director of Research, the Director of Extension, the Director of Veterinary Research and Education, the Director of Post Graduate Studies and the Professors of the University shall be sixty years.

(5) The normal retirement age of Officers of the University other than the Chancellor, the Pro-Chancellor, the Vice-Chancellor and those specified in sub-section (4), shall be fifty-five years.

Amended Clause 4 states that the age of retirement of Deans of Faculties, the Director of Research, the Director of Extension, the Director of Veterinary Research and Education, the Director of Post Graduate Studies and the professors of the University shall be sixty years. The subsequent Clause (5) states that the normal retirement age of officers of the University other than those specified in Clause (4) and the Chancellor, Pro-Chancellor and Vice Chancellor shall be fifty five years. By this amendment, according to me. the normal retirement age of the members of the staff of the Agricultural University continue to be fifty five years except those holding posts which are mentioned in Clause (4). Clause (4) does not take within its ambit Associate Professors and Assistant Professors. Only Professors fall within the ambit of that clause. Persons holding posts other than those mentioned in Clause (4) are not getting the benefit of that clause namely to continue till they complete the age of sixty years. Learned counsel representing the petitioner raised a contention that in the unamended clause (4) the retirement age of teachers was also mentioned as 55 years of age. While amending that provision the "word" teachers has been omitted. On account of this omission it is contended that teachers of University are entitled to continue till they complete the age of 60 years. I find it difficult to accept this argument. Clauses (4) and (5) of Section 42 makes it clear that except the categories of officers mentioned in Clause (4) of Section 42 all others are to retire from service at the age of 55 years.

In view of what has been stated above, petitioner is not entitled to any of the relief asked for.

The original petition fails. It is dismissed.