
(2011) 08 KL CK 0010

In the High Court Of Kerala

Case No : Writ Petition No. 25672 of 2009

Dr. Mathew V. and Another

APPELLANT

Vs

University of Kerala and Others

RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:

Citation : (2012) 3 SLJ 41

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : S. Muhammed Haneeff, for the Government Pleader and Mr. Sudesh Raja, for the Appellant; M. Rajagopalan Nair and Sr. Kerala Uty ., Govt. Pleader, for the Respondent

Judgement

T.R. Ramachandran Nair, J.—In W.P. (C) No. 25672/2009 two Lecturers of St. Michael's College, Cherthala, have approached this Court seeking to quash Exts. P3 and P4 and to direct the second respondent to sanction and disburse salary due to the petitioners in the Selection Grade with effect from 21.12.2004 and 10.10.2001 respectively. As per Ext. P3 the Deputy Director of Collegiate Education informed that there is no sufficient workload and the same reason is stated in Ext. P4 also. The case of the petitioners is that by Exts. P1 and P2 the University has granted approval for promotion/ placement to Selection Grade. W.P. (C) No. 20834/2010 is filed by the State of Kerala challenging the orders granting approval by the University. Since Exts. P1 and P2 produced in the writ petition filed by the Lecturers, are under challenge in W.P. (C) No. 20834/2010, first I will consider the contentions raised therein.

2. The petitioners in W.P. (C) No. 25672/2009 are arrayed as respondents 1 and 2 in W.P. (C) No. 20834/2010. They were appointed as per Exts. P1 and P2 orders. The appointments were approved by the University also. The plea raised in the said writ petition is that in 1990 U.G.C. Scheme was implemented in the State as per G.O. (MS) No. 66/90/H.Edn. dated 13.3.1990 with effect from 1.1.1986. While implementing the same, the Government of India stipulated that

the same could not be implemented as against the teachers who were engaging classes for Pre-degree section. The said Government Order has been produced as Ext. P3. It will show that the college teachers were bifurcated as 52% as coming under the U.G.C. Scheme and 48% as not coming under the Scheme. Thus 52% alone will be eligible for U.G.C. Scheme, whereas 48% will be eligible only for State scale of pay. Other guidelines are also prescribed. The revised U.G.C. Scheme was implemented as per Ext. P4 order dated 21.12.1999. It is pointed out that respondents 1 and 2 were in the State scale of pay and therefore they were not eligible for being granted the U.G.C. Scale of pay. Various averments have been made in the writ petition with regard to the workload also.

3. Reliance is placed on Ext. P5 circular, clarifying that those Lecturers who were appointed since 1.4.1990 against pre-degree vacancies and were continuing without any workload would not be eligible for placement in the senior scale and selection grade under the Career Advancement Scheme of the U.G.C. Exts. P6 and P7 are the orders passed by the University approving the placement in Selection Grade to respondents 1 and 2.

4. Mr. Sandesh Raja, learned Government Pleader appearing for the State invited my attention to Ext. P3 order dated 23.3.1990. Therein, with regard to the second category coming under 48%, it is specified in Clause 2(ii) that "those College teachers who have completed 8 years of service will be given the U.G.C. Scale of Pay and those who have more than 8 years of service will be eligible for increments in the U.G.C. scale of pay." It is therefore pointed out that the U.G.C. Scheme as such was not implemented fully in respect of the 48% category. My attention was invited to Paragraphs 3.2 to 3.4 of Ext. P4. Para 3.2 reiterates the position reflected in 1986 Scheme covered by Ext. P3 Government Order. In Para 3.3 it is stated that "the present categorisation of college teachers into 52% and 48% will be dispensed with." Since the interpretation of Clause 3.4 is sought to be put against respondents I and 2, the same is extracted below:

As per the earlier scheme itself the teachers were given UGC scales on completion of 8 years of service. Only those at the entry level coming under 48% category were given the State scale. Such teachers would automatically become eligible for the senior scale of UGC on completion of six years service as per the revised UGC scheme. All teachers coming under 48% category at present will be brought under the UGC scheme on completion 6 years service as and when they become eligible for placement in the senior scale. In future requirement will be restricted to UGC scheme posts only and teachers with UGC qualification will be directly recruited and they will be eligible for normal UGC scale of lecturers.

5. A reading of the same shows that there is a stipulation to the effect that "all teachers coming under 48% category at present will be brought under the UGC scheme on completion of 6 years service as and when they become eligible for placement in the senior scale." The argument raised by the learned Government Pleader is that for getting the U.G.C. scale of pay, they will have to complete six more years of service after they become eligible for placement in the senior

scale. This contention is opposed by the learned Counsel for the petitioners and learned Standing Counsel for the University. The relevant clause prescribed under Ext. P4 for grant of Senior Scale is para 6.25 which reads as follows:

6.25. A Lecturer will be eligible for placement in a senior scale through 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.

Going by the same, a Lecturer will get placement in Senior Scale on completion of six years of service after regular appointment. Relaxation is allowable for one year and two years respectively for those who are having M.Phil, and Ph.D.

6. The question is whether the interpretation sought to be placed by the learned Government Pleader on Para 3.4 will be in tune with the provision contained in Para 6.25. Evidently, what is indicated in Paragraphs 3.2 to 3.4 is the dispensing with of the categorisation of college teachers into 52% and 48%. Therefore, what is attempted is a unification of the categories by granting the benefit of Senior Scale for the Lecturers who were continuing under 48% category. The contention of the learned Government Pleader, as noted, is that in Para 3.4 what is provided is that U.G.C. Scheme will be implemented in the case of Lecturers coming under 48% category on completion of six years of service and as and when they become eligible for placement in Senior Scale. Therefore, we will have to proceed to Para 6.25 to find out how the eligibility is fixed therein for the purpose of granting Senior Scale. Evidently, the provision is to the effect that on completion of six years of service after regular appointment, a Lecturer will get Senior Scale. Therefore, the contention that they will have to complete six more years of service after the initial period of six years, cannot be accepted. This will defeat the purpose of the Scheme itself. Apart from that, going by Ext. P3 order under para 2.2 the completion of 8 years of service will enable a Lecturer coming under 48% category to get U.G.C. Scale of pay and if the interpretation sought to be placed is accepted, then para 3.4 will be of much disadvantage to such Lecturers, which is never intended. In that view of the matter also, the only interpretation that can be adopted is as indicated above, that Para 3.4 has to be read together with Para 6.25,

7. These aspects have been explained in the counter affidavit of respondents 1 and 2 as well as in the counter affidavit filed by the University. It is pointed out in Para 5 of the counter affidavit filed by the University that as per Ext. P3 order a

Lecturer included in the entry level under 48% category and drawing salary in the State scale of pay was eligible for placement in the U.G.C. scale on completion of six years of service, i.e. on placement/promotion to Lecturer Senior Scale. This is in the case of a Lecturer who do not possess a Ph.D. or M.Phil. degree. As per the provisions in the 1996 U.G.C. Scheme as implemented in the State vide G.O. (P) No. 171/H.Edn./99 dated 21.12.1999, Ph.D. and M.Phil holders are eligible for a relaxation of 2 and 1 years respectively for placement/promotion to Lecturer senior scale. As such the first petitioner was eligible for 2 years relaxation on his moving to senior scale. The University approved the placements/promotions in respect of respondents 1 and 2 as they have fully satisfied the conditions laid down in the Government Order cited above, for placement/promotion under career advancement scheme. The stand taken therein purely justifies the orders granting approval by the University.

8. The question whether, for granting placement in the U.G.C. Scheme, the workload has to be satisfied, is covered in favour of respondents 1 and 2 by the judgment of this Court in W.P. (C) No. 34582/2008. Hence, the contention raised on that score also fails. Learned Counsel for respondents 1 and 2 has also relied upon the decision of this Court in *Annie George v. State of Kerala*, 2011 (1) KLT SN 21, wherein it was held that "Government cannot sit in appeal over decision taken by University regarding number of teachers appointed as well as approval granted." In the light of the legal position as explained above, the approval granted by the University cannot be said to be irregular or illegal for any reason.

Therefore, W.P. (C) No. 20834/2010 is dismissed. In W.P. (C) No. 25672/2009 the petitioners are challenging Exts. P3 and P4 communications issued by the Deputy Director of Collegiate Education. In view of the dismissal of W.P. (C) No. 20834/2010, W.P. (C) No. 25672/2009 is allowed and Exts. P3 and P4 are quashed. There will be a direction to the second respondent to countersign the bills forwarded by the Principal and disburse the eligible salary along with arrears, within a period of two months from the date of receipt of a copy of this judgment. No costs.