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**(1977) 05 KL CK 0004**  
**In the High Court Of Kerala**

K. Ramachandran

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

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**Date of Decision :** 27-05-1977

**Acts Referred:**

Kerala University Act, 1957 — Section 26(e), 27

**Citation :** (1977) 2 ILR (Ker) 350 : (1978) 2 LLJ 127

**Hon'ble Judges :** V.P. Gopalan Nambiar, Acting C.J.; K.K. Narendran, J

**Bench :** Division Bench

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**Judgement**

V.P. Gopalan Nambiar, Ag. C.J.

1. We are satisfied that the learned Judge's judgment was right. The question agitated is one regarding the right to promotion to the post of Assistant Professor and thereafter to the category of Professor ; and also one of inter se seniority as between the petitioner and respondents 3 to 7, The petitioner was appointed provisionally as Lecturer in the Kerala University on 20th July, 1960. The 3rd respondent was so appointed on 9-1-1959 ; the 5th respondent was similarly appointed on 20th July, 1960, The petitioner and respondents 3 to 7 were advised by the Public Service Commission for appointment as Assistant Professor by letter dated 8-10-1960. In the advice list of the Public Service Commission, the petitioner and respondents 3 to 7 were ranked as Nos. 2 to 7 respectively. No. 1 in the said list, some reason or other did not accept the appointment. (Counsel for the respondent stated that he resigned). The dates of promotion of the petitioner and respondents 3 to 7 in chronological order were as follows :

3rd respondent - 27-9-1961    Petitioner - 30-1-1964    4th Respondent - 17-10-1964  
5th respondent - 5-12-1964    6th respondent - 5-2-1965    and 7th respondent - 2-5-1965

These promotions were all provisional promotions. By Ext. P1 dated 15-1-1970 the promotions were regularised assigning somewhat different dates, viz., 3rd respondent 8-12-1963, petitioner and respondents 4 to 6 - 8-10-1965, and the

7th respondent 25-10-1965, Against this adverse affectation of his rank, the petitioner preferred an appeal which was disposed of by Ext. P2 order dated 15-6-1972. The said order was by the Government in the light of the consideration and review by the Departmental Promotion Committee. Exhibit P2 altered the date assigned to the petitioner and respondents 3 to 7 as follows :

3rd respondent - 8-12-1962 4th respondent - 17-10-1964 5th respondent - 6-9-1965 6th respondent - 2- 5-1965 and 7th respondent - 25-10-1965

2. The petitioner's grievance is that there was no ground or reason to deprive him of his legitimate seniority in the cadre of Lecturer and place him below those who were junior to him in that category in the category of Assistant Professor and on that basis to deny him promotion to the category of Professor or to postpone his chances of promotion to the said category. The ground alleged in support of the account taken in placing the petitioner below the rank of some, if not, all of the respondents, is that the petitioner was not qualified to be promoted as Assistant Professor till 20-7-1965. The petitioner would contend that this objection cannot be placed against him as there was no valid prescription of qualifications by the University on the basis of which his claim for seniority and for promotion could be defeated. The question essentially depends upon the validity or otherwise of the Ordinance issued by the University under the provisions of Sections 26(e), 27 and Section 37. : These Sections in so far as they are material are as follows:

Ordinances. - Subject to the provisions of this Act and the Statutes, the Ordinances may provide for all for any of the following matters, namely :

\* \* \* (e) the qualifications of teachers ;

\* \* \* 27. Procedure for making Ordinances-(I) All Ordinances made by the Syndicate shall have effect from such date as the Syndicate may direct ; but every Ordinance so made shall be submitted, as soon as may be, to the Chancellor and the Senate, and shall be considered by the Senate at its next succeeding meeting. The Senate shall have power, by a resolution passed by a majority of not less than two-thirds of the members present at such meeting, to cancel or modify any such Ordinance.

(2) The Chancellor may direct that the operation of any Ordinance shall be suspended until such time as the Senate has had an opportunity of considering the same.

(3) The procedure to be followed in making, amending or repealing Ordinance in so far as these are not provided in this section shall be prescribed by the Statutes.

37. Miscellaneous - (3) The Statutes, Ordinances, rules and bye-laws passed in accordance with the provisions of this Act shall be published in the Gazette.

The only objection pressed before the learned Judge and before us against the

validity of the Ordinance issued by the University prescribing qualifications for the post of Assistant Professor is that the Ordinance had not been published as required by Sub-section (3) of Section 37 extracted above.

3. We are of the opinion that there is no force in the objection. The question has been considered by one of us in the decision in *Venkiteswaran and Ors. v. State of Kerala* (1968) KLT 468. It was observed :

5. Section 27 of the Kerala University Act which details the procedure for making Ordinances only requires that every Ordinance so made shall be subjected as soon as may be, to the Chancellor and the Senate, and shall be considered by the Senate, at its next meeting. The requirement of consideration by the Senate, at its " next meeting" would seem to place that as the outer limit of time for submission to the Senate. But even such or a similar provision has been held to be only directory and not mandatory (vide *Jan Mohammad Noor Mohammad Begban Vs. State of Gujarat and Another*, . Besides, Section 27(1) enacts that in Ordinance is to have effect from such date as the Syndicate may direct, and this is in no way qualified by any requirement as to publication or otherwise. Indeed, the indication available from the provision in Sub-section 2 of Section 27 authorising the Chancellor to suspend the operation of an Ordinance till the Senate has had an opportunity of considering the same, is that neither publication nor submission to the Senate is required to give vitality to the Ordinance. Nor does the proposition stated by Bose, J., of the Supreme Court in *Harla Vs. The State of Rajasthan*, , as I understand it in anyway run the counter to the conclusion in the instant case. The statutory provisions of Section 3(b) of the Jaipur Laws Act, there considered, required that a regulation, before it can be regarded as law, should be " passed from time to time by the State, and published in the Official Gazette. On the terms of the section, therefore, publication in the Gazette was an integral process of the law-making, and a regulation which had not gone, through the process could not be regarded as law. Bose, J, also took care to add the rider that it is only "in the absence of any special law or custom" that a law cannot come into being without promulgation or publication of some reasonable sort. The provisions of the Kerala University Act are materially different. Publication is not an integral process of Ordinance-making under the Kerala Universities" Act, and the provisions in Section 27(1) read with Section 27(2) of the Act indicate that an Ordinance springs into effect on the date appointed by the Syndicate. I am of the opinion that having regard to the provisions of the Kerala University Act, the Ordinance in question was effective from 5-11-1966, the date fixed by the Syndicate, and that the requirement as to the submission to the Senate contained in Section 27(1), and as to the publication contained in Section 27(3) of the Act are only directory the non-compliance with which, would not render the Ordinance invalid. My learned brother Govindan Nair, J. in the judgment in O.P No. 1926 and 1927 of 1963 also took the view that the requirement of publication in Section 37(3) of the Act is only directory and not mandatory. I am in respectful agreement with the said conclusion. The recent decision of the Supreme Court in *Raja Bahadur Giriwar*

Prasad Narain Singh Vs. Dukhu Lal Das and Others, , does not sound a different note. The statutory provisions of Section 3 and 4 of the Bifiar Land Reforms Act ordaining publication of the notification, and the consequences flowing from the same, were materially different.

In the light of the above decision, we are in agreement with the learned Judge that the objection to the validity of the prescription of qualifications by the University is devoid of force and merit.

4. We are also satisfied that the second ground of objection by the learned Judge is correct and must be upheld. The post of Assistant Professor is a selection post selection and appointment to which are on considerations of merit and ability. The petitioner's name was considered and he was ruled out on the ground that he was not qualified on a ground which we have upheld in agreement with the learned Judge. In this view, again, the petitioner can have no grievance. We uphold the judgment of the learned Judge and dismiss the appeal. We make no order as to costs.