
(2014) 08 KL CK 0107
In the High Court Of Kerala
Case No : WP(C). No. 15978 of 2014(V)

Mary Linsa K.S.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 27-08-2014

Acts Referred:

Citation : (2014) 08 KL CK 0107

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : K. Jaju Babu (Sr.), M.U. Vijayalakshmi and Brijesh Mohan, Advocate for the Appellant; Rafeek. V.K., Government Pleader, Bechu Kurian Thomas, Enoch David Simon, P.C. Sasidharan and Sasikala, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J

1. The petitioner, who is a post graduate in Physics, was appointed as Assistant Professor (Physics) at the St. Teresa's College, Ernakulam with effect from 20.09.2010. The said appointment was approved by the Mahatma Gandhi University to which the said College was affiliated. Thereafter, the petitioner secured appointment as an Assistant Professor (Physics) at St. Joseph's College for Women, Alappuzha by Ext. P2 order dated 30.06.2012. The appointment was made effective from 4.7.2012 and the said appointment was also approved by the 3rd respondent University by Ext. P3 order dated 8.11.2012. The petitioner continued in the said post till 16.8.2013, on which date she was relieved from the 4th respondent College for taking up an appointment as Assistant Professor in the Government Polytechnic College, Kottayam. The grievance of the petitioner in the writ petition is with regard to the non-disbursal of salary due to her for the period from 4.7.2012 to 16.8.2013 when she was working as an Assistant Professor of Physics at the 4th respondent College in a post, the appointment to which had been approved by the 3rd respondent University by Ext. P3 order. The non-disbursal of salary to the petitioner is stated to be on account of the fact that the 2nd respondent raised an objection that the workload available in the

College justified the retention of only 8 teachers during the period in question and the petitioner was functioning in the 4th respondent College as the 9th teacher.

2. A counter affidavit has been filed on behalf of the 4th respondent. Therein, reference is made to Ext. R4(a) order issued by the 3rd respondent University which indicates that the University had assessed the workload in the 4th respondent College for the academic year 2011-12 and found that the workload justified the retention of nine teachers in the subject of Physics. The workload was determined as 138 hours for the said period. Ext. R4(b) communication dated 14.3.2011 of the 2nd respondent is also relied upon to show that, even prior to the assessment of the workload by the 3rd respondent University by Ext. R4(a) order, the 2nd respondent itself had accepted that there was a workload of 138 hours for the subject Physics at the 4th respondent's College. In the statement filed on behalf of the 2nd respondent, reference is made to Annexure R2(a) order whereby the 4th respondent was directed to ensure compliance with the applicable Government Orders while filling up one post of Assistant Professor in Physics. Reliance on the said document is placed to indicate that the 2nd respondent had assessed the workload in the 4th respondent College as justifying only the retention of one teacher in the post of Physics and not two as found by the University. It is pointed out that the appointment of two teachers including the petitioner by the 4th respondent College was irregular and the clarifications were sought from the 3rd respondent University with regard to the actual workload that was applicable for the subject of Physics in the 4th respondent College during the academic year in question.

3. I have heard Adv. Sri. Brijesh Mohan, learned counsel appearing on behalf of the petitioner, Sri. Rafeek. V.K., learned Government Pleader appearing on behalf of respondents 1 and 2, Adv. Sri. Enoch David Simon, learned counsel appearing on behalf of the 3rd respondent and also Adv. Smt. Sasikala, learned counsel appearing on behalf of the 4th respondent.

4. After considering the facts and circumstances of the case as also the submissions made across the bar, I feel that the writ petition must succeed. This is a case where the petitioner seeks a payment of salary for the period from 4.7.2012 to 16.8.2013 when she was working as Assistant Professor at the 4th respondent College pursuant to an appointment to the said post which was approved by the 3rd respondent University. Ext. R4(a) order of the 3rd respondent University would unambiguously indicate that there was an assessment of the workload at the 4th respondent College that was done by the 3rd respondent University and that, pursuant to such assessment, it was found that there was a requirement of nine teachers in the subject Physics for the academic year 2011-12. The said assessment of workload, and the sanctioning of post of teachers corresponding thereto, has not been varied or modified by the 3rd respondent University. It is the case of the 2nd respondent that on its assessment of the workload, the number of teachers that can be appointed in the

subject Physics during the academic year in question was only eight and not nine as assessed by the 3rd respondent University. I would think that in the context of the Kerala University (Conditions of Service of Teachers and Members of Non-Teaching Staff) First Statutes 1979, it is for the University to assess the workload and determine the staff strength in any subject in a College affiliated to the said University. If the State Government, as the person responsible for paying salary to the teachers, has any doubts with regard to the assessment of workload and consequent fixation of staff strength done by the University, it is for the Government to take up the matter with the University and obtain suitable clarifications. If the University maintains, as it does in this case, that there is nothing to be varied or modified in the order already passed by it assessing the workload and fixing the staff strength, then the Government really has no further role to play in the matter and must necessarily make the payment of salary in accordance with the workload assessed and the staff strength fixed by the University. This position in law has been noticed by a Division Bench of this Court in the decision reported in *Shalini Rachel v. Manager, Christian College* [2007 [3] KLT 355], wherein, at paragraph 9, it is stated as follows:

9. We are of the view, above mentioned provisions of the University Act, Statutes and Ordinances would clearly indicate that it is for the University to sanction the post as per clause (3) of Statute 14 of the Kerala University (Conditions of Service of Teachers and Members of Non-teaching Staff) First Statutes, 1979 in the case of private colleges coming under the Direct Payment Scheme, depending upon the work load and staff pattern fixed by the University. Once University accords sanction of a post and grants approval depending upon the work load and staff pattern, the Deputy Director of Collegiate Education shall verify before making direct payment of salaries as to whether the post for which payment is claimed is in accordance with the staff pattern and workload fixed by the University. If the University grants approval noticing that it is in accordance with the staff pattern and work load fixed by it, the Director of Collegiate Education or the officers concerned are obliged to make payment of salary as per the direct payment scheme.

5. In the instant case, as already noted, by Ext. R4(a) order, the 3rd respondent University has already assessed the workload and fixed the staff strength applicable to the subject Physics in the 4th respondent College. On a query made to counsel for the 3rd respondent University, it is submitted that although the State Government had vide a letter dated 24.4.2014, sought a further clarification from the University as regards the workload already assessed at the 4th respondent College, the respondent University had by a communication dated 31.5.2014 intimated the 2nd respondent that there was no change in the stand already taken and that it was reiterating its earlier stand in Ext. R4(a) order already issued by it. No doubt, the learned Government Pleader would point out that the said communication stated to have been sent by the University has not been received by the 2nd respondent. This, in my opinion, would be of no consequence since the specific stand of the 3rd respondent University in this

case is that it adheres to the stand already taken in Ext. R4(a) order. In that view of the matter, the objections of the 2nd respondent cannot be a reason to justify the denial of salary to the petitioner for the period from 4.7.2012 to 16.8.2013 when she was working as an Assistant Professor in the 4th respondent College. The denial of salary to the petitioner for the above period must be seen as legally unsustainable. Accordingly, I allow the writ petition by directing the 2nd respondent to disburse the salary due to the petitioner for the period between 4.7.2012 and 16.8.2013 as expeditiously as possible, and at any rate, within a period of two months from the date of receipt of a copy of this judgment. No costs.