
(2021) 01 KL CK 0588

In the High Court Of Kerala

Case No : Writ Petition (C) No. 31711 Of 2018

Munesh K.G And Ors

APPELLANT

Vs

Mahatma Gandhi University And Ors

RESPONDENT

Date of Decision : 27-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 01 KL CK 0588

Hon'ble Judges : Amit Rawal, J

Bench : Single Bench

Advocate : S. Easwaran, P. Muraleedharan, M.A. Augustine, P. Sreekumar, Soumya James, Asok M. Cherian

Final Decision : Allowed

Judgement

1. Petitioners, five (5) in number, through the amended writ petition have laid challenge to Ext.P5 dated 5.10.2018, whereby the representation Ext.P4

for granting t revised pay scale after the promotion to the post of Assistant Grade II in terms of the order of the Supreme Court dated 25.8.2015, has been rejected.

2. The facts in brief are that they were directly recruited as a unskilled Laboratory Assistants as per the order dated 20.10.2001. The qualification for the said post was SSLC with experience in handling laboratory equipments in a Science Laboratory. Certain Laboratory Attenders and Class IV

employees approached this Court by filing various Original Petitions which was disposed of by this Court vide a common judgment dated 11.2.1997.

This Court granted the benefits to the aforementioned persons. In the common seniority list all promoted Class IV employees were placed below the

petitioners. Learned counsel appearing on behalf of the petitioners submitted

that the stand of the University in the aforementioned O.Ps was that the directly recruited Lab Assistants and promotee Lab Assistants were separate streams and therefore the directly appointed Assistants could not be granted promotion. Aggrieved of the same, petitioners preferred a writ petition in this Court W.P.(C) No.27498 of 2007. The aforementioned writ petition was dismissed by judgment dated 26.3.2007. Against the aforementioned judgment a W.A No.884 of 2007 was preferred which also resulted into dismissal vide judgment dated 6.7.2009.

3. Aggrieved of the aforementioned judgments, petitioners preferred a special leave petition before the Supreme Court. Supreme Court in Civil Appeal No.6582 of 2015 arising out of S.L.P (c) No.33378 of 2009 vide order dated 25.8.2015 allowed the appeal and directed the University to consider the case of the petitioners/appellants (therein) from the date on which the respondents (therein) were promoted to the post of Assistant Grade

4. It was also noticed that the respondents therein had been functioning for more than six years and there was no clear picture whether they were absorbed in the cadre of Laboratory Assistant or not, the appellants (therein) shall rank below the private respondents in the seniority list in case of their eventual promotion to Assistant Grade II. It was also ordered that the University shall consider the cases on similar parameters as that of the respondents, who did not have degree.

5. Learned counsel for the petitioners submits that in terms of the order of the Supreme Court, the University vide Ext.P3 dated 12.5.2016 promoted the petitioners to the post of Assistant Grade II in the pre-revised pay scale of Rs.4000-6090 with effect from 13.9.2005 FN. Aggrieved of granting pre-revised scale then the revised scale of 7990-12930, which was being already granted to the respondents in the civil appeal before the Supreme Court as well as to a junior person Smt. Vijayalakshmi as evidenced from Ext.P6, a detailed representation, Ext.P4 was submitted. But the respondent vide impugned order Ext.P5 in a most cursory and derelictory manner rejected the request by relying upon the order of the administrative department dated 3.2.2017, which has not seen in the light of the day. In other words, the said order ought to have been communicated to the petitioners for understanding the rejection. Before concluding his argument, it was also

submitted that no opportunity of hearing was given to understand the controversy with regard to the claim of revised pay scale.

6. Per contra, learned counsel appearing on behalf of the University submitted that the claim of the petitioners has been considered in letter and spirit of the judgment of the Supreme Court as respondents therein were already drawing the revised pay scale. The grievance of the petitioners of claiming revised pay scale with effect from 2004 cannot be accepted in view of the direction of the Supreme Court as the petitioners were ordered to be placed below the respondents in the civil appeal. As regards the veracity of the impugned order, he submits that there should have been a detailed discussion, particularly, with regard to alleged discrimination being pointed out by according benefit to the junior person namely Vijayalakshmi, whereby the University granted the benefit of revised pay scale with effect from the same date ie., 13.9.2005.

7. I have heard the learned counsel for the parties and appraised the paper book. The facts, particularly, regarding the seniority of the petitioners culminated into the decision of the Supreme Court, Ext.P1 are not in dispute. The question which is to be seen by this Court is whether the University can accept the claim of revised pay scale of Rs. 7990-12930 of the petitioners with effect from 2004 or 13.9.2005. Order Ext.P6, pertains to granting benefit of revised pay scale to one Smt.Vijayalakshmi. Representation Ext.P4 clearly pointed out that the said employee was junior to all the petitioners. However, the impugned order Ext.P5 is not only evasive but contumacious as it did not specifically dealt with such assertions of petitioners.

8. On plain and simple reading of Ext.P5, it is discernible that Smt.Vijayalakshmi was given the benefit of revised pay scale with effect from 13.9.2005 ie., the effective date of petitioners promotion. University cannot adopt such discriminatory approach. In my view, the order Ext.P5 cannot withstand the scrutiny of this Court while exercising the power under Article 226, being fully unreasonable and non speaking.

Accordingly Ext.P5 is quashed. Writ petition is allowed. Respondent University is directed to reconsider the case of the petitioners as culled out in the representation or any subsequent document or prayer, petitioners intend to place on record in accordance with law ie., by affording an opportunity to

the petitioners and also take into consideration order Ext.P5 whereby a person junior to the petitioners have been granted the benefit as has been sought with effect from 13.9.2005. Let this exercise be undertaken within a period of one month from the date of receipt of the certified copy of this judgment. In case the University finds that the petitioners are entitled to all the benefits; the same may be granted to the petitioners within a period of another one month thereafter.