

(1994) 02 KL CK 0011
In the High Court Of Kerala
Case No : O.P. No. 8608 of 1990

Nirmala Kumari

APPELLANT

Vs

University of Kerala and Others

RESPONDENT

Date of Decision : 24-02-1994

Acts Referred:

Calicut University Act, 1975 — Section 57(6)
Kerala Education Rules, 1959 — Rule 43, 49, 51(A), 52
Kerala University Act, 1974 — Section 51A, 57, 57(1), 57(10), 57(4)
University Laws Amendment Act, 1989 — Section 57(6)

Citation : (1994) 02 KL CK 0011

Hon'ble Judges : K.J. Joseph, J

Bench : Single Bench

Advocate : N. Govindan Nair, for the Appellant; S. Gopakumaran Nair, for Respondent 1 and Babu Varghese, for Respondents 2 and 3, for the Respondent

Judgement

K.J. Joseph, J.—Petitioner was appointed as a Junior Lecturer in Mathematics in Bishop Moore College, Mavelikkara, of which the 2nd Respondent is the Manager and the 3rd Respondent the Principal, as per an order dated 22nd September 1981 of the 2nd Respondent. The said appointment was for a period from 23rd September 1981 to 22nd December 1982. The first Respondent University as per its order dated 24th March 1983 approved the said appointment. In the meantime, the 2nd Respondent, Manager, shifted the said appointment of the Petitioner to Anr. vacancy as per his order dated 29th December 1982 for the period from 3rd February 1982 to 30th November 1983. The first Respondent University as per its order dated 5th September 1983 approved the said appointment. The Petitioner was paid her salary and allowances during the said period. Thereafter, as per Ext. P-1 order dated 14th October 1983 of the 2nd Respondent Manager of the college, the probation of the Petitioner in the post of Lecturer had been declared to have satisfactorily completed in the cadre of Junior Lecturer from the afternoon of 22nd September 1982. It is the case of the Petitioner that under statute 23(2) of the Kerala University First Statute, she has

a preferential claim for appointment in the future vacancies in the college. It is her case that on 23rd December 1985, 3rd Respondent Principal had asked her willingness to accept an appointment in a vacancy that may arise in January, 1986 and the Petitioner had expressed her willingness to accept the said appointment as per her letter dated 28th December 1985. Since no appointment was made, the Petitioner filed a representation before the Registrar of first Respondent University on 10th July 1987 praying for issuance of necessary direction to the 2nd Respondent to consider her claim for appointment in the vacancy. But the Manager has invited applications for the said post on 18th July 1987 by paper publication. Immediately, the Petitioner as per Ext. P-2 representation dated 20th July 1987 requested the Manager to appoint her as Junior Lecturer in Mathematics in the existing vacancy taking into consideration her preferential claim for appointment to the said vacancy in the light of statute 23(2) of the Kerala University First Statute, 1979. She also filed a representation to the Registrar of the first Respondent University on 10th July 1987 praying for issuance of necessary direction to the 2nd Respondent to appoint her in the vacancy. Her request was considered by the Standing Committee of the Syndicate in its meeting held on 13th October 1987 on teaching and non-teaching staff of private colleges and they have decided to direct the management to consider her application for appointment in the vacancy which arose in the department as per the Rules of the University in that regard. The said decision of the Standing Committee of the Syndicate dated 13th October 1987 was intimated to the management by the University as per its letter dated 22nd October 1987. Thereafter, the above facts were duly communicated to the Petitioner by the University as per Ext. P-3 communication dated 27th January 1988.

2. The Petitioner was awaiting appointment in the light of the directions issued by the University. But she was not favoured with any appointment. Therefore, she filed Ext. P-4 representation dated 10th February 1988 before the 2nd Respondent and requested him to issue necessary orders appointing her as Lecturer in Mathematics in the existing vacancy in the Bishop Moore College, Mavelikkara.

3. Since no action was taken by the manager to appoint the Petitioner, the Petitioner had approached this Court in O.P. No. 2861/88 for appropriate reliefs. But on 5th April 1988, this Court dismissed the said original petition on the ground that the Petitioner's claim would not come under statute 23(2) of the Kerala University First Statute of 1979. Thereafter, as per Ext. P-5 representation, the Petitioner again requested the Vice-Chancellor of the University to issue necessary direction to the 2nd Respondent Manager to appoint her in the existing vacancy in the light of University Laws (Amendment) Act, 1989 wherein Section 57(6)(b) was introduced giving preferential right for future appointment to relieved teachers. It appears that on 30th October 1989, the University again issued directions to the 2nd Respondent to consider the claims of the Petitioner for appointment to the post of Lecturer. But the Petitioner

was not favoured with an order of appointment. Thereafter, the Registrar of the first Respondent University as per Ext. P-6 communication dated 5th January 1990 directed the Manager to inform him whether the Petitioner was appointed as a Junior Lecturer in the college. But the Petitioner was not favoured with any appointment order by the 2nd Respondent and therefore, she filed Ext. P-7 representation dated 2nd August 1990 before the Vice-Chancellor requesting the Vice-Chancellor to interfere in this matter and issue necessary directions to the Manager to appoint her in the vacancy. Instead of taking steps to appoint her in the vacancy, the Manager has invited applications for appointment to the post of Junior Lecturer in Physics and History as per Ext. P-8 notification dated 25th November 1990. Since the Petitioner was not favoured with any order of appointment, she approached this Court praying for issuance of a writ of mandamus or other appropriate writ, direction or order directing Respondents 2 and 3 to issue an order of appointment to the Petitioner to the post of Junior Lecturer in Mathematics and also a further direction directing the first Respondent to take action for implementing. Exts. P-3 and P-6 directions issued by the University directing appointment of the Petitioner in the college.

4. On receipt of notice from this Court, Respondents 2 and 3 entered appearance and on behalf of the 3rd Respondent, a counter affidavit also has been filed. In the said counter affidavit, it is stated that the Petitioner was appointed on 22nd September 1981 and thereafter on 29th December 1982 as a Junior Lecturer in the college and those appointments were approved. But in January, 1986, the expected leave vacancy did not arise and so also in respect of the vacancy that arose on 18th July 1987. Therefore, the Petitioner could not be appointed in those anticipated vacancies. It is the case of the 3rd Respondent that the Petitioner had moved this Court in O.P. No. 2861/88 and this Court dismissed her claim under statute 23(2) of the First Statute of the Kerala University. It is also stated in the counter affidavit that the preferential right for appointment is not available under statute 23(2) of the First Statute to those teachers who were appointed on leave vacancies, as such persons cannot be regarded as persons discharged from service on the leave vacancies ceasing. It is also the further case of the 3rd Respondent that u/s 57(6)(b) of the Kerala University Act, there is only a preferential claim for future appointment and the same is not a re-appointment without following the selection procedure. According to the 3rd Respondent, those persons also have certainly to undergo a process of selection to safeguard the upkeep of academic excellence in institutions of learning. It is also stated in the counter affidavit that in the wake of the introduction of U.G.C. Scheme in private affiliated colleges, the Government issued an order dated 29th May 1990 wherein it is directed that pending finalisation of amendments to Special Rules, as well as University Statutes and Ordinances and pending identification of the posts under the U.G.C. Schemes, vacancies of teaching posts in colleges will not ordinarily be filled until further orders- It is also stated that the Government had stated that in private and Government colleges existing vacancies will be filled up only if it is found that not less than seven periods of

work in a week will be left without staff. In paragraph 16 of the counter affidavit of the 3rd Respondent, it is also stated that if a vacancy arises and the Petitioner applies, there will be preferential treatment as, envisaged under Clause (b) of Sub-section 6 of Section 57 of the Kerala University Act. It is further averred that when the appointment is made, if the Petitioner has any grievance, she can seek statutory remedy provided under Sub-section 10 of Section 57 of the Kerala University Act.

5. The Petitioner has filed a reply affidavit to the said counter affidavit wherein she has stated that a person having a preferential claim need not be subjected to any selection process. Such a procedure will be negation of the right conferred by Section 57(6)(b) of the Act and will render illusory and ineffective provision itself. She has also stated that her probation had already been declared. It is her further case that no select list is necessary where preferential claim is involved. She further states that the statutory preference given cannot be allowed to be ignored by the Manager in considering the claims of the preferentially qualified person who were having approved service under the management. She also justifies the appointment of a Lecturer in Mathematics Department taking into consideration the workload for the said subject in the college.

6. I heard the learned Counsel for Petitioner as well as learned Counsel for the Respondents 2 and 3. The main question that arises for consideration is regarding the nature of the right of a teacher who was relieved from the college on the cessation of the period for which she was appointed as guaranteed u/s 57(6)(b) of the Kerala University Act. Section 57(6)(b) of the Act is extracted below:

57(6) Notwithstanding anything contained in this Act, the statutes, ordinances and regulations made thereunder-

(a)

(b) a teacher relieved from a private college on or after the 14th day of March, 1974, due to the abolition of a course of study in that private college or the cessation of the period for which he was appointed or for any other reason except disciplinary action against him shall be given preference in the matter of future appointments in the private college or, as the case may be, any of the private colleges under the management of the educational agency within the University area.

7. Admittedly, the Petitioner's claim will come u/s 57(6)(b) of the Act. She was a teacher working in the Bishop Moore College at Mavelikkana appointed after 14th March, 1974 and relieved from the service on the cessation of the period for which she was appointed. Admittedly, her services stands automatically terminated after the expiry of the vacancy to which she was appointed viz. on 30th November 1983.

8. Before the introduction of Section 57(6)(a) and (b) of the Act, the relevant

statutory provision dealing with giving preference in the matter of future appointment in the private colleges is incorporated under the Kerala University First Statute Chapter 2 statute 23(2). The said statute reads as follows:

a teacher duly appointed on probation for a specified period if thrown out of service for reasons other than disciplinary action, shall be given preference in the matter of future appointments in the private college or, as the case may be, of any other private college under the management of the educational agency within the University area.

9. It is thereafter Section 57(6) of the Act was incorporated in the University Act, which reads as follows:

Notwithstanding anything contained in Sub-sections (1) and (4), a teacher discharged from a private college on or after the 14th day of March, 1974, due to abolition of a course of study in that college or for any other reason except disciplinary action against him shall be given preference in the matter of future appointments in the private college or, as the case may be, or any of the private colleges under the management of the educational agency within the University area.

The preference contemplated u/s 57(6) referred to above has come up for consideration before this Court in the decision reported in *Mother Anasthasia v. University Appellate Tribunal* 1980 KLT 666, wherein this Court has held that:

When a teacher works in a temporary leave vacancy he or she has to go out of service on the expiry of the term for which he or she was appointed and there is nothing further that has to be done by the appointing authority for termination of this appointment. No order of discharge or relief is necessary in such cases. A person appointed in a temporary vacancy knows that her term will run out on a particular day and it is with this knowledge that he or she enters service. In other words, in all cases of temporary service for a particular period, what is to happen on the expiry of that period is known.

This Court again held that:

Termination of vacancy after the expiry of the period will never be discharge for a reason. It is the death of the service on affluxion of time. The words used in the section are not "for any reason" or "for any reason whatsoever".

Thus, this Court held that a person who was out of service on the expiry of a period for which he/she was appointed, cannot claim protection of this section because in such cases, there is no discharge from service for any reason. Thereafter, a Division Bench of this Court in the decision reported *Mother Anasthasia v. University Appellate Tribunal* 1980 KLT 666, considered the scope of Section 57(6) before its amendment and the University First Statute 23(2) and held that:

Sub-section (6) of Section 57 makes it clear that the said clause applies only

when the teacher by positive action taken by the management of the private college is discharged from Service. It is therefore obvious that the said clause will not apply to the case Where the appointment is made in a leave vacancy, in Which case the appointment gets terminated automatically without the management being required to make any positive order Of discharge.

Though statute 23(2) speaks of persons thrown out of service for reasons other than disciplinary action, it has to be read along with the provisions of Section 57(6) of the Act which deals with the same topic of thrown out teachers. If it is harmoniously read, it follows that statute 23(2) deals with the same categories of persons for whom benefit has been conferred by Sub-section (6) of Section 57 of the Act. If it is not so harmoniously construed, statute 23(2) shall be rendered void as being inconsistent with the express provisions contained in Sub-section (6) of Section 57 of the Act. In other words, statute 23(2) of Chapter II takes colour from Section 57(6) of the Act. Hence the same should be understood as conveying that preference, in the matter of appointment is not available by the operation of statute 23(2) of Chapter II to those teachers who are appointed on leave vacancies, as such persons cannot be regarded as persons who can be regarded as discharged from service on the leave vacancy ceasing.

10. It is thereafter Section 57(6) was amended by the University Laws Amendment Act which came into force on 6th May 1989 wherein Section 57(6) (a) and (b) and (c) have been introduced in the Kerala University Act. The" amended provision is extracted below:

Section 57(6): Notwithstanding anything contained in this Act, the statutes, ordinances and regulations made thereunder-

(a) a person appointed as teacher in a private college in a temporary vacancy on or after the 14th day of March, 1974 and continuing as such shall be appointed as teacher in any permanent vacancy or any temporary vacancy of longer duration that may arise, after such appointment in the temporary vacancy, in the private college or, as the case may be, any of the private colleges under the management of the educational agency within the University area;

(b) a teacher relieved from a private college on or after the 14th day of March, 1974, due to the abolition of a course of Study in that private college or the cessation of the period for which he was appointed or for any other reason except disciplinary action against him, shall be given preference in the matter of future appointments in the private college or, as the case may be, any of the private colleges under the management of the education agency within the University area;

(c) any dispute arising or pending between the management of a private college and the teacher of that college, in respect of any matter coming under Clause (a) or (b), shall be decided in accordance with the provisions of this Act and statutes made thereunder.

11. As held earlier, a teacher relieved from a private college on or after 14th day of March, 1974, due to the cessation of the period for which he was appointed shall be given preference in the matter of future appointments in the private college or as the case may be any of the private colleges under the same management of the educational agency within the University area. Therefore, the only question that has to be decided in this case is whether the Petitioner shall be given preference in the matter of future appointment in the 2nd Respondent's college in respect of future vacancies u/s 57(6)(b) of the Kerala University Act. The section itself begins with a non-obstante clause wherein it is specifically stated that notwithstanding anything contained in this Act, statute, ordinances and regulations made thereunder, a teacher relieved from a private college due to cessation of the period for which she was appointed. She shall be given preference in the matter of future appointments. Admittedly the Petitioner was appointed in the 2nd Respondent's college and her appointment ceased to exist with the vacancy to which she was appointed. Therefore, she is entitled to get preference in the matter of future appointment in the 2nd Respondent's college, notwithstanding anything contained in any other provisions in the University Act, statute, ordinances and the regulations. Section 57(1) provides that the appointment to the last grade of teachers in each department of private college shall be made by the educational agency, by direct recruitment on the basis of merit and Sub-section (5) of Section 57 provides that for making appointment under this section by direct recruitment, the post shall be advertised in such manner as may be prescribed by the statute. Even though the object of the above statutory provisions contained in Sub-Sections 1 and 5 of Section 57 and other Sub-sections thereon has to be ensured that the posts of last grade teachers in private colleges which are to be filled by direct recruitment should be on the basis of merit after due advertising and giving an opportunity to eligible persons of offering themselves as candidates, such a procedure is unnecessary or found to be not imperative in respect of appointment of persons who have preferential claim in the matter of future appointment u/s 57(6)(b) of the Act. The manner prescribed by the statute for inviting application for direct recruitment and the appointment to the lowest grade of teachers are contemplated in Sub-sections 5 and (1) of Section 57 of the Act. But by virtue of the non-obstante clause in Sub-section (6) of Section 57, I am of the opinion, that none of the Sub-section in Section 57 or any of the provisions of the Kerala University Act, statute, ordinances and regulations are applicable in respect of persons claiming preference under Sub-section 6(b) of Section 57 of the Act. Obviously, the intention of the legislature is to give a preference to those teachers who were relieved from the service in a private college on the cessation of the period of their appointment. Such persons are given a right for future appointment without undergoing the process of selection in the manner prescribed in any other law including Section 57 of the Act. Obviously, such a preference is perfectly justified since those teachers appointed by the Manager in earlier vacancies are experienced and they continued in service till the vacancy in which they were appointed ceased to exist. But for the cessation of the period for

which the Petitioner was appointed, she would have continued in the service of the 2nd Respondent. The intention of the legislature is very clear that such person shall not be subjected to any further screening or process of selection. The services of those teachers were allowed to continue till the expiry of the period to which they were appointed by the Manager. If their services are not satisfactory, it is" perfectly open for the Manager to terminate the service of those teachers on the ground of proved inefficiency. In so long as that has not been done by the Manager who is the appointing authority, those teachers who were allowed to continue till the expiry of the term of their period of appointment, are certainly entitled to get a preference for future appointment to future permanent or temporary vacancies without undergoing any process of selection or screening by the selection board constituted under the University Act or the statuses framed thereunder. This is clear from the non-obstante clause contained in Section 57(6) of the Act. In the light of the mandate in Section 57(6), those teachers who were relieved on account of cessation of the period of their appointment, have preference for future appointment. Such a preference contemplated u/s 57(6)(b) in the matter of future appointments can only be referred to all types of vacancies including regular or temporary vacancies of longer duration. Such a preference cannot be restricted to future temporary vacancies or to make provisional appointment to be made by the manager. There is absolutely no justification to find that Sub-sections 1 and 5 of Section 57 would become otios in case a preference is being given to those teachers who are relieved from the college on cessation of their period of appointment in the matter of future appointment and such appointment is made by the manager, obviously because such a process of selection and appointment under Sub-sections (1) and (5) of Section 57 are specifically excluded by the non-obstante clause in Section 57(6) of the Act. It is only by virtue of Sub-section 5 of Section 57, the management is obliged to make advertisement inviting application as prescribed by the statute for direct recruitment and thereafter make appointment u/s 57(1). But all those provisions which obliged the manager to invite applications and thus make selection and appointment are taken away by virtue of the non-obstante clause in Section 57(6)(a) and (b) of the Act wherein, the legislature has been purposefully introduced in the said non-obstante clause in Section 57(6) of the Act. The intention of the legislature is very clear in that aspect. The teachers appointed in temporary vacancies were, dealt with under Sub-section (6) of section 57 are not obliged to go through the process of selection as contemplated by Sub-section (1) and (5) of Section 57 of the Act. It cannot legally be said that such appointment are permissible only as a stopgap arrangement for any short period. The statutory preference contemplated u/s 57(b) is not confined to any temporary vacancies by way of any stopgap arrangement. Preference is given to such teachers to all the future vacancies irrespective of the fact whether vacancies are permanent or temporary or for a shorter or longer duration. The section does not make any difference in the matter of giving preference in appointment to any particular type of vacancies. In the absence of any such stipulation in Section 57(6)(b), it shall not be held, that

teachers relieved from private colleges on or 14th March 1974 due to cessation of the period for which they were appointed, shall be given preference in the matter of future appointments in private colleges in permanent or temporary vacancies that may arise in that college as a stopgap arrangement. There is absolutely no justification to limit the statutory preference only for appointment to a future temporary vacancy by way of stopgap arrangement. Section 57(6) of the Act is not obliged for such a narrow interpretation.

12. It is also very relevant to note that the non-obstante clause in Section 57(6) before its amendment in 1989. In Section 57(6) before amendment, what is stated is notwithstanding anything contained in Sub-sections 1 and 4, a teacher discharged from private college shall be given preference in the matter of future appointments in private colleges. Therefore, the non-obstante clauses were in respect of Sub-clauses 1 and 4 and not in respect of Sub-clause 5 which deals with the method of appointment and advertisement for the post as prescribed by the statute.

13. But after the University Laws Amendment Act, 1989, the non-obstante clause is not confined to either Sub-section (1) and (4) or (5), but in respect of the entire sections in the University Act, statutes, regulations and orders issued thereunder. This legislative change itself would positively show the intention of the legislature was dehors of the provisions regarding the method of process of selection specified in other provisions u/s 57, teachers who are relieved on the cessation of the period for which they were appointed shall be given preference for future appointments in private colleges. It is also pertinent to note that cessation of the period of appointment was not included in the unamended Section 57(6) of the University Act. But now after the amendment, cessation of service of a teacher after the period of appointment has also given a preference in the matter of future appointment. Such a preference to throw out teachers whose services were ceased to exist will not in any way affect the excellence in the institution. Those teachers are fully qualified and experienced in teaching. Their re-appointment without undergoing any process of selection will not in any way effect the interests of the students or the management. Their appointment will definitely keep up the excellence of the institution since they have experience in the same college and they will be normally superior to persons who did not have any experience in teaching.

14. Moreover, in the case of the Petitioner, her probation also had been declared by the management as per Ext. P-3 order dated 27th January 1988. A teacher whose probation has already been declared as satisfactorily completed, has every right to get an appointment in any of the future vacancy that may arise in the college. It is to protect the interest of teachers like the Petitioner, Sub-section 6(b) of Section 57 was incorporated by the Amendment Act, 1989.

15. A similar provision regarding giving preference for future appointment is incorporated in the Kerala Education Rules, 1959. Rule 51(A) of Chapter XIVA of Kerala Education Rules gives preference to teachers who are relieved as per Rule

49 or 52 of the above Rules or on account of termination of vacancies, a preference in future appointment to future vacancies. The relevant rule is extracted below:

Section 51A: Qualified teachers who are relieved as per Rule 49 or 52 or on account of termination of vacancies shall have preference for appointment to future vacancies in schools under the same educational agency, provided they have not been appointed in permanent vacancies in schools under any other educational agency.

Interpreting the said provision, this Court in the decision reported in *Mother Anasthasia v. University Appellate Tribunal* 1980 KLT 666, held that:

7. It will be useful to contrast the section in question with Rule 51A of Chapter XIV(A) of the Kerala Education Rules, which reads as follows:

Qualified teachers who are relieved as per Rule 43 or 52 or on account of termination of vacancies shall have preference for appointment to future vacancies in schools under the same educational agency, provided they have not been appointed in permanent vacancies in schools under any other Educational Agency.

The object of the rule is clear and unambiguous. The words used are "who are relieved.... on account of termination of vacancies". These words admit of no doubt as to their intent. It is clear that teachers relieved on account of termination of vacancies are intended to be benefited and protected by this rule. The contrast between Section 57(6) of the Act and Rule 51A of Chapter XIV(A) of the K.E.R. is clear and tested in the light of the language used in Rule 51A, it becomes apparent that Section 57(6) of the Act does not contemplate teachers who have to go out of service on account of termination of vacancies. The use of the word "relieved" in the rule in contradistinction to the word "discharge" in Section 57(6) is not without significance. More useful will be to contrast the present section with its predecessor provision in the Kerala University First Statutes, 1972, Chapter XLIX Clause 4, which reads:

Claim of thrown outs.- A teacher appointed on probation or for a specified period shall have the claim for appointment to the first vacancy within three years if he was thrown out of service for want of vacancy.

A reading of this clause brings out how Section 57(6) of the Act has departed from its predecessor. While the above clause uses the word thrown out, Section 57(6) of the Act uses the word discharge, again a significant and deliberate phraseology. We have no hesitation to hold that a person who goes out of service on the expiry of the period for which he/she was appointed cannot claim protection of this section because in such cases there is no discharge from service for any reason.

16. Even though in the said decision, preference is claimed by a teacher under the unamended Section 57(6) of the Act, this Court negated the said claim on

the ground that the intention of the legislature in giving such preference 4s not clear from Section 57(6). In Section 57(6) of unamended rule, this Court has found that Section 57(6) of the Act does not contemplate teachers who have to go out of service on account of termination of vacancies. Now the section itself had been amended wherein teachers who are relieved on account of cessation of the vacancies are given preference in the matter of appointment in future vacancies in the college under the management. The word that has been used in Section 51A of Chapter XIVA of the Kerala Education Rules is qualified teachers who are relieved on account of termination of vacancy shall have preference for future vacancies. The wording in the amended provision in Section 57(6)(b) of the Act is teachers relieved on the cessation of the period of appointment shall be given preference in the matter of future appointment. Therefore, if teachers relieved on account of termination of vacancies are entitled to get appointment under Rule 51A of Chapter XIVA Kerala Education Rules in private aided schools, I see no justification for not granting such a benefit to teachers relieved from private college on the cessation of the period for which they were appointed. I also see no justification for directing those teachers to undergo any process of selection as contemplated under the other provisions of the Kerala University Act and the statutes which are not made applicable in the case of those teachers coming u/s 57(6)(b) of the Act. The right conferred under this section is a right to preference for future appointment to future vacancies. The only condition is that the claimant should be qualified for future vacancy also. As stated by this Court in the decision reported in *Easwari Amma v. Assistant Educational Officer* 1973 KLT 20, there, is no provision either in the Act or in the rules whereby, the teacher who gets the benefits under Rule 51A of Chapter XIVA of the Kerala Education Rules has to apply to the concerned Manager within a specified time the same principle is equally applicable in the case of teachers relieved after cessation of the period of their appointment coming u/s 57(6)(b) of the Kerala University Act.

17. Learned Counsel appearing on behalf of the 3rd Respondent has brought to my notice a decision of this Court reported in *Rajendran v. Kerala Ayurvedic Studies and Research Society* 1990 (1) KLT 245, wherein this Court has held that persons appointed provisionally as teachers and continuing in the college are not entitled to get any preference for future appointment in the regular vacancy u/s 57(6)(a) of the Calicut University Act, 1975. The said decision is in respect of provisional hands continuing in the service of the private college appointed as a temporary and stopgap arrangement till regular hands join in the service. Their appointment itself is specific viz. till regular hands are appointed. Accepting the said condition, they joined service and continuing. Their claim for regular appointment u/s 57(6)(a) of the Calicut University Act was negated by this Court. The said decision has no application in the present case where petitioner was relieved on cessation of the period of her appointment and that too, after declaring her probation satisfactorily completed. Her case comes u/s 57(6)(b) of the Act. Moreover, the finding in the said decision that those provisional

employees also will have to undergo a process of selection as contemplated under Sub-sections (1) and (5) of Section 57 of the Calicut University Act was arrived at without reference to the? non-obstante clause in Section 57(6) of the Act wherein all the other sections in the University Act are not made applicable in respect of the claim of a teacher who was relieved on cessation of the period of her appointment. Therefore, the 3rd Respondent is not justified in placing any reliance on the said decision for the purpose of denying the claim of the petitioner for future appointment raised in this case.

18. The 3rd Respondent in the counter affidavit has stated that there is a ban imposed by the Government in making appointment to the vacancies in the college due to the introduction of U.G.C. Scheme in the college. The Petitioner can get re-appointment to future vacancies only if she is qualified for holding the post at the time when the vacancies are filled up in the light of the qualifications prescribed at the time of filling up the vacancy. Therefore, the claim of the Petitioner for reappointment in the college can be effected only if she is qualified for holding the post to which she is now claiming appointment.

19. Subject to the above condition, it is declared that the Petitioner is entitled to get an appointment in the 2nd Respondent's college as a Junior Lecturer in Mathematics in the next arising vacancy in the college, without undergoing any process of selection in case the Petitioner is having the required qualification for holding such post. Respondents 2 and 3 are further directed to appoint the Petitioner in One of such vacancies that may arise in the colleges without insisting the Petitioner to undergo any process of selection provided she is having the prescribed qualification for holding the post of Junior Lecturer in Mathematics.

Original petition is allowed. But, there will be no order as to costs.