

(2016) 03 KL CK 0112
In the High Court Of Kerala
Case No : WP(C) No. 25051 of 2015 (F)

P. Nanda Kumar

APPELLANT

Vs

Kerala Agricultural University and Others

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Citation : (2016) 03 KL CK 0112

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : P. Ravindran, Sr. Adv. and M.R. Sabu, Advocate, for the Appellant;
Babu Joseph Kuruvathazha, SC, for the Respondent

Final Decision : Disposed off

Judgement

K. Vinod Chandran, J.—1. An open and shut case elevated unnecessarily to huge dimensions, for reason only of the callous inaction of the Registrar, in complying with the interim orders passed by this Court. Before looking at the actions of the Registrar, this Court would first of all look at the writ petition itself.

2. I have heard Sri. P. Ravindran, learned Senior Counsel appearing for the petitioner and Sri. A.N. Rajan Babu, learned Standing Counsel appearing for the respondent University.

3. The petitioner was working as a faculty under the respondent University and as per order dated 11.07.2012 in Ext. P1, the petitioner was granted Career Advancement Promotion (CAP) and retained as Associate Professor in the post of an Assistant Professor in Mannuthy itself. The petitioner who has acquired Ph.D in Animal Breeding and Genetics was initially appointed to the Kerala Agricultural University, as its Veterinary faculty. On 01.05.2011, the Agricultural University was triplicated, retaining the stream of Agricultural academics with the Agricultural University and forming two separate Universities, one for Veterinary Sciences and the other for Fisheries. As per the statute, which enabled such triplication, the employees and faculties in the erstwhile Agricultural University

could exercise option, on which, the deployment could be made.

4. The petitioner admittedly exercised option to continue in the Kerala Agricultural University at Mannuthy itself and he was posted as the Associate Professor, holding the post of Assistant Professor in the discipline of Animal Sciences at Mannuthy. The petitioner, applied for Leave Without Allowance (LWA) for two years, to work abroad and he was sanctioned the same by Ext. P4. For re-joining on expiry of leave, the petitioner as per the stipulation of three months notice, preferred Ext. P5 application. The petitioner was posted as Professor, Animal Breeding and Genetics at KVK Ambalavayal w.e.f 30.07.2015. The petitioner filed the above writ petition and obtained a stay of Ext. P7 order. The further proceedings, which spiraled into avoidable controversies will be later referred to.

5. The petitioner's contention is that the petitioner has now been asked to report at KVK Ambalavayal, where the discipline is of Poultry Science and the petitioner who has Post Graduation in Animal Breeding and Genetics would be redundant in that post. It is also contended that only post available for the petitioner's particular discipline is available at Mannuthy. The petitioner also contends that the petitioner has only less than two years i.e., 9 months to retire and as per Ext. P6 norms, he is entitled to preference of posting in home station. It is also contended that there is no faculty as such posted in the department of Animal Science at Mannuthy.

6. The petitioner's contention with respect to the specific discipline available at Mannuthy and KVK Ambalavayal are based on Ext. P2. This Court is not convinced that the discipline at KVK Ambalavayal is of Poultry Science looking at Ext. P2. A reading of Ext. P2 would only indicate that the Communication Centre, Farm Advisory Services, Mannuthy, which the petitioner claims, has the discipline of Animal Science and that at KVK Ambalavayal has the discipline of Animal Husbandry. The persons posted therein, were the petitioner and one Dr. A. Radhamma Pillai respectively. It is the respective incumbents' discipline that is shown at column 9 of Ext. P2 and the discipline of the department is at column 3 which is as indicated above. Even going by Ext. P2, it is clear that the disciplines at Mannuthy and KVK Ambalavayal were of Animal Science and Animal Husbandry, respectively, wherein the petitioner cannot be said to be redundant merely because of his specialization in Animal Breeding and Genetics.

7. The next contention is with respect to the petitioner being not an Officer as referred to in Ext. P4. The respondent University would contend that Ext. P4 order, which granted LWA for two years to the petitioner specifically indicated that on expiry of leave sanctioned, the petitioner cannot insist for re-posting in a specific position or station. The petitioner would contend that the term "Officer" used in Ext. P4 does not refer to him, on the basis of the definitions of "Officer" and "Teacher" available in Section 2(13) and Section 2(26) of the Kerala Agricultural University Act, 1971.

8. True, the petitioner would come under the definition of "Teacher" under the Act of 1971, but that cannot lead to a conclusion that the term "Officer" used in Ext. P4 does not refer to the petitioner. Ext. P4 is not a general order and it is issued in sanction of the LWA, applied for by the petitioner, and is a sanction with reference to the particular individual. Any reference to an Officer in the said order should be taken as reference to the person, who had been granted LWA and no reference to the Act is required to decide as to whether the petitioner would be affected by the specific conditions imposed therein. Ext. P4 is the sanction of 2 years LWA granted to the petitioner and the petitioner had been imposed with the conditions as laid down in Ext. P4, which the petitioner cannot seek to wriggle out from. The petitioner also cannot have any lien in the post in which he had been continuing, when the leave applied and availed was on his own volition, that too to take up employment abroad.

9. The further contention with respect to Ext. P6 is also not sustainable, for reason of the petitioner having been on LWA and the petitioner having specifically agreed not to seek a particular posting on rejoining, after the expiry of the leave. Ext. P6 giving a preference to Teachers, who would be superannuated within three years, to get a transfer to the home station is intended at ensuring that teachers, who had been posted away from their home stations, would be permitted to be so posted to arrange their affairs and retire peacefully from employment. In the present case, the petitioner had taken LWA for employment abroad and on rejoining duty, he cannot insist for a preferred posting, as is available in Ext. P6. The norms would have no application in such a case and the preference is only a concession which does not have the character of a right; especially if there are administrative exigencies otherwise.

10. With respect to the contention that there is no other person posted, or available in Mannuthy, the specific contention of the learned Standing Counsel for the University is that one Dr. Ani Das, Assistant Professor is holding the post of Assistant Professor at Mannuthy, who is also a qualified Veterinarian. The discipline available in KVK Ambalavayal is undoubtedly Animal Husbandry. The petitioner's posting to KVK Ambalavayal is also said to be justified on the ground that the Professor, who was holding the post at KVK Ambalavayal had retired. The administrative necessity pointed out in the rejoinder, specifically indicates that the unit at KVK Ambalavayal is funded by the Indian Council of Agricultural Research (ICAR) and for disbursement of such funds, the existence of a Scientist in the discipline of Animal Husbandry is essential. The petitioner's service is said to be essential in KVK Ambalavayal, for reason of the existence of a farm and breeding up-gradation project at the veterinary clinic at KVK Ambalavayal. In such circumstance, this Court cannot interfere with the posting of the petitioner at KVK Ambalavayal.

11. This does not settle the issue, since the petitioner who had obtained an interim order on 18.08.2015, had not been posted in Mannuthy till 06.11.2015 and has also not been paid the salary till today. The facts leading to this

unfortunate situation is only by reason of the recalcitrant attitude of the Registrar, showing scant respect to the orders passed by this Court.

12. The petitioner having been issued with the posting order to KVK Ambalavayal by Ext. P7 dated 29.07.2015 applied for medical leave for one month from 30.07.2015. The rejoinder indicates that the medical leave was not sanctioned for reason of the petitioner having not re-joined duty after the expiry of leave. In any event, presumably, aware of the refusal to sanction leave, the petitioner was before this Court with the above writ petition. On 18.08.2015, this Court had passed an interim order in the following manner:-

"There will be a stay as prayed for, for a period of one month"

13. The interim order passed on 18.08.2015 was obviously not complied with. The respondent University through the Registrar has taken up a contention, at that point and also in the counter affidavit filed later, that there was no post of Professor, available in Mannuthy. However, it is to be noticed that even as per Exts.P1 and P2, the petitioner, who was an Associate Professor was posted in the post available of an Assistant Professor. The designations as per the CAP does not necessarily postulate the availability of such a sanctioned post and the career advancement made is only as per the UGC norms, which enables better remuneration even without any change in duties.

14. Be that as it may, it is now admitted that there is one post of Assistant Professor, which is occupied by one Dr. Ani Das. If the University had such a contention, it was incumbent upon the University to have filed a clarification petition before this Court. A petition to vacate the interim order was filed only on 12.10.2015, after about two months from the interim order, during which period, the petitioner was kept out of service. On 16.10.2015, this Court heard the learned Senior Counsel for the petitioner and the learned Standing Counsel, appearing for the University, on the application to vacate the interim order. Noticing that the petition itself was filed after two months it was specifically directed that the petitioner be posted in Mannuthy itself, in compliance of the interim order. The order dated 16.10.2015 was challenged in appeal.

15. The Division Bench by Ext. P13 judgment dated 30.10.2015, affirmed the interim order passed. The petitioner was then posted on 06.11.2015 at Mannuthy itself. That too after filing a Contempt of Court Case numbered as COC No. 1466 of 2015. The petitioner submits that even now, the petitioner has not been paid the salary after the posting on 06.11.2015. This Court cannot but record that the action of the University, through its Registrar is clearly contemptuous and the petitioner was denied posting between 18.09.2015 and 16.11.2015, only by reason of the callous indifference of the Registrar, in complying with the orders of this Court.

16. The rejoinder filed by the Registrar has attempted an explanation on the lines that there were two parts to the relief prayed for by the petitioner, being stay of Ext. P7 and a further direction to permit the petitioner to join duty at Mannuthy

itself. Ext. P7 alone having been stayed, it is contended that the University was under the impression that the petitioner need not be posted at Mannuthy. The petitioner had requested for a posting on expiry of his leave, within the time stipulated and the petitioner has also raised specific contentions in the writ petition as to his right to be posted only in Mannuthy itself. When, Ext. P2 order was issued, it cannot be taken that the Court merely intended that the petitioner's transfer be stayed and he be kept out of service. Definitely, when the re-joining at Ambalavayal is stayed the petitioner ought to have been posted at Mannuthy.

17. The petitioner having been kept out of service between 18.08.2015 and 06.11.2015 illegally, the pay and allowances due to the petitioner though would have to be initially paid by the University, would have to be recovered from the Registrar; from the incumbent in that office, who is personally made so liable. With respect to the period between 30.07.2015 and 18.08.2015, the petitioner had already filed a leave application, for which the petitioner would produce the medical certificate, in which event, the same would be considered as eligible leave on medical grounds. The arrears would be paid immediately, within two months from the date of receipt of a certified copy of this judgment by the University. The salary due from 07.11.2015, along with future salary shall be disbursed immediately. The petitioner however would have to join duty at KVK Ambalavayal, for which the Registrar would be entitled to pass orders, within one week from today and the petitioner would be entitled to normal joining time, if it is eligible.

The writ petition would stand disposed of, with the above observations.