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**(2015) 05 KL CK 0048**

**In the High Court Of Kerala**

**Case No :** Writ Petition (C) Nos. 20077 and 22195 of 2013 (H)

Poornima H.

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

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**Date of Decision :** 21-05-2015

**Acts Referred:**

**Citation :** (2015) 05 KL CK 0048

**Hon'ble Judges :** A.V. Ramakrishna Pillai, J

**Bench :** Single Bench

**Advocate :** M.K. Damodaran, Senior Advocate, P.K. Vijayamohanan, Alan Papali, Gilbert George Correya and Nishil P.S., for the Appellant; Noushad Thottathil, Government Pleader, Advocates for the Respondent

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## Judgement

A.V. Ramakrishna Pillai, J.—The issue raised in these writ petitions relates to the placement of the petitioners in the cadre of Associate Professor under the respondent university.

WP(C) No. 20077/2013

? In this writ petition, the petitioner is challenging Ext.P9 issued by the respondent university notifying the seniority list of Associate Professors.

? The question of law raised in this writ petition is whether the inter se seniority of respondents 4 to 6 based on the rank in the select list could be disturbed by the time of placement in the cadre of Associate Professor under the Career Advancement Scheme (for short, "CAS"). The grievance of the petitioner is that on completion of 12 years of service, respondents 4 to 6, who were junior to the petitioner in the cadre of Lecturer (re-designated as Associate Professor), are assigned seniority over her while placing under the CAS. The petitioner alleges that the settled seniority has been attempted to be unsettled after 15 years. According to the petitioner, it is against the settled legal position as well as the specific provisions under the UGC Regulations and Rule 27(c), Part II of the KS and SSR. The petitioner alleges that the 3rd respondent, in his capacities as the

Member of the Syndicate and the Registrar-in-Charge of the University, deliberately manipulated the records and dominated the Sub Committee of the Syndicate as well as the Syndicate to arrive at a decision that upon placement under the CAS, the incumbent assumes a new seniority. According to the petitioner, the said stand of the University is against the settled propositions of law. It is with this background, the petitioner has come up before this Court.

? In the detailed counter affidavit filed by the respondent university, they would contend that Ext.P1 provisional list is the seniority list of the appointed teachers. According to them, as per the CAS, a teacher, who has a definite period of service and qualification, shall be eligible for placement to the next higher cadre. According to the respondent university, while granting placements, the years of service have to be reckoned and when years of service are reckoned, the date of joining will become relevant. According to the respondent university, respondents 4 to 6 have joined service prior to the petitioner. They would also contend that the petitioner has not challenged the placements granted on the basis of UGC Regulations to respondents 4 to 6 to the post of Lecturer Senior Scale and Reader. Therefore, they justified their stand in issuing Ext.P9.

? The petitioner has filed a reply affidavit controverting the averments in the counter affidavit.

WP(C) No. 22195/2013

? This writ petition is filed by the 5th respondent in WP(C) No. 20077/2013. The writ petitioner in WP(C) No. 20077/2013 is the 3rd respondent in this writ petition. The petitioner alleges that she, who is the Ph.D holder in Sanskrit, joined service as Lecturer in Sanskrit (General) in the "Centre for Sanskrit (General) Studies" in the respondent university on 27.05.1998; and she was promoted to the post of Reader on 27.05.2007 and as Associate Professor on 27.05.2010. She alleges that she is the second senior Associate Professor in the cadre. The formation of Centre for Sanskrit (General) Studies in the main centre at Kalady was headed by her as Coordinator from the formation of the Centre for Sanskrit (General) Studies Main Centre at Kalady in 2006; it is alleged. After completing about 6 years of service as Coordinator, on 13.04.2012, she submitted Ext.P3 representation before the 2nd respondent to relieve her from the duties of Coordinator temporarily. As that request was not considered, on 14.06.2012, she submitted Ext.P4 letter expressing her willingness to continue to work as Coordinator. However, the 2nd respondent appointed Dr. Vijayamohan Pillai, who is the senior Associate Professor in that department, as Coordinator as per Ext.P5 order dated 15.06.2012 and Dr. Vijayamohan Pillai took charge as Coordinator on 23.06.2012. Dr. Vijayamohan Pillai requested the 2nd respondent to relieve him from the duty of Coordinator and to appoint the next senior faculty member in-charge of the Coordinator of Centre for Sanskrit (General) Studies. The petitioner alleges that though she is the next senior most Associate Professor in that centre, ignoring her legitimate claim for the above post, the 2nd respondent appointed the 3rd respondent as Coordinator for the Centre on a

provisional basis as per Ext.P10 order dated 03.08.2012. The petitioner's grievance is that though Ext.P11 representation was filed requesting the University to rectify the above mistake and to appoint the petitioner as Coordinator of the above Centre on a permanent basis, the 3rd respondent is being allowed to continue as Coordinator. According to the petitioner, as per the provisions of the UGC Regulations, 2000, UGC Regulations 2010 and as per the provisions of Ext.P2, she is the legitimate claimant for being appointed as Coordinator of the Department of Sanskrit (General) on a permanent basis in the respondent University. In the writ petition, the petitioner is challenging the inaction of the 1st respondent in not filling up the post of Coordinator of Sanskrit (General) Department in the 1st respondent University in accordance with the UGC Regulations and the provisions of University First Statute, 1997.

? In the counter affidavit filed by the 3rd respondent, she had asserted her stand taken by her in WP(C) No. 20077/2013.

2. I have heard Mr. M.K. Damodaran, the learned senior counsel for the petitioner in WP(C) No. 20077/2013; Mr. Arun B. Varghese, the learned Standing Counsel for the respondent university; Smt. Seemanthini, the learned senior counsel and Mr. M.R. Anison, the learned counsel appearing for the petitioner in WP(C) No. 22195/2013 as well as Mr. Noushad Thottathil, the learned Government Pleader.

3. For convenience of discussion, the parties can be referred to as they are arrayed in WP(C) No. 20077/2013.

4. The petitioner as well as respondents 4 to 6 are directly recruited to the cadre of Lecturer, which was subsequently re-designated as Assistant Professor. The Rules and Regulations of the respective Central/State Government shall apply for determination of seniority in such cases. The learned senior counsel for the petitioner heavily relied on Rule 27(c), Part II of the KS and SSR, which holds that the seniority of a person appointed to a class, category or grade in a service on the advice of the Commission shall, unless he has been reduced to a lower rank as punishment, be determined by the date of first effective advice made for his appointment to such class, category or grade and when two or more persons included in the same list of candidates advised, their relative seniority shall be fixed according to the order, in which their names are arranged in the advice list.

5. Admittedly, Ext.P1 seniority list of Teachers is published and the same was finalized based on the ranking in the select list and that seniority cannot be disturbed without any valid reason and without the incumbent is put on notice as to the reason for alteration of the seniority. This view is supported by the decision of the apex court in H.S. Vankani and Others Vs. State of Gujarat and Others, AIR 2010 SC 1714 : (2010) 126 FLR 558 : (2010) 3 JT 109 : (2010) 2 SCALE 136 : (2010) 4 SCC 301 : (2010) 1 SCC(L&S) 1012 : (2010) 4 SCR 485 : (2011) AIRSCW 341 . Para 25 of the said decision reads as follows;

"25. Seniority is a civil right which has an important and vital role to play in

one's service career. Future promotion of a Government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instills confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the Government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and Government. Driving the parties to acute penury. It is well known that salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further it also consumes lot of judicial time from the lowest court to the highest resulting in constant bitterness among parties at the cost of sound administration affecting public interest."

The decision of a Division Bench of this Court in *Ambikakutty Vs. Kerala Co-operative Tribunal*, (2003) 1 ILR (Ker) 391 : (2003) 1 KLT 153 is also relevant in this context. It was observed as under;

"Even if Rule 27(c) is not strictly applicable, the principle embodied therein must certainly be followed by all persons acting fairly and reasonably. Accepting the contra position would result in unreasonable and perverse results. It would facilitate actions with oblique motives. If two persons ranked on merit were appointed by the same order and the more meritorious were posted to a farther and more distant place, the less meritorious would steal a march over his colleague by joining duty at a nearer place. Managements will thus be able to tinker with the merit ranking by manipulating the place of initial posting. Such an approach would be unjust, irrational and perverse. That would lead to injustice and inequity."

6. The learned senior counsel for the petitioner would point out that as per Section 2(t) of the Sree Sankaracharya University of Sanskrit Act, 1994, "Teacher" means a Professor, Reader or such other person appointed or recognized by the university for the purpose of imparting instruction or conducting and guiding research in the university. There are various cadre of posts of Teachers in the university as Assistant Professor, Associate Professor, Professor etc. The placement of Assistant Professors as Associate Professors under the CAS is a personal promotion to the incumbent teacher holding a substantive sanctioned post. The learned senior counsel would argue that on superannuation of the individual incumbent, the said post shall revert back to its

original cadre; and therefore, the placement in the cadre of Associate Professor would never change the category of the Teacher. The Teacher continues in the same class of Teacher of the university and never enters a different category to claim a revised seniority commencing from the date of placement in the promoted cadre; so submitted the learned senior counsel. I see valid force in the said submission.

7. The University Act and the Statute are silent as to the determination of seniority of the Teachers. Clause 16.3 of the UGC Regulations, 2010 is determinative of the inter se seniority of a direct recruit and teachers promoted under the CAS. The Regulations never cover an issue of settlement of the inter se seniority among direct recruits or inter se seniority among CAS promotees. The Regulations further state that the Rules and Regulation of the respective Central/State Government shall apply for all other matters of seniority. Therefore, Rule 27(c), Part II of the KS and SSR is applicable to determine the inter se seniority of the petitioner and respondents 4 to 6, who are direct recruits to the post of Teachers in the service of the university. Ext.P1 seniority list is prepared on the basis of Rule 27(c) and that cannot be unsettled. Merely because of the reason that respondents 4 to 6 have joined duty a few days prior to the date of joining duty by the petitioner, they cannot claim seniority above the petitioner in the cadre of Associate Professor upon placement under CAS.

8. It is true that the placement in the cadre of Associate Professor is based on the recommendation of the Screening and Evaluation Committee constituted for the purpose. However, the said Committee can only recommend the suitability for the promotion of the candidates under the CAS. This Court had occasion to consider the issue of the Departmental Promotion Committee deciding on the rank of a person in the Select List for promotion in *Ajith Vs. Secretary, P.W.D.*, (2006) 4 ILR (Ker) 872 : (2007) 1 KLT 74 , wherein it was held that the competence of the Departmental Promotion Committee is only to decide the suitability of a person to be included in the Select List. The rank in the Select List is to be solely based on the seniority in the feeder category.

9. It is crucial to note that the placement under the UGC Regulations is not based on merit selection from all the eligible candidates. On the other hand, it is based on completion of the stipulated number of years of service. Therefore, the placement would never confer a new seniority. The inter se seniority between the teachers selected and appointed to the post of Lectures in Sanskrit would remain unchanged in the post of Associate Professors consequent to the placement under the UGC Regulations. Though the respondent university rely on Ext.R2(b), i.e., the letter issued by the Government, stating that the university has no power to dilute the scheme for quality enhancement envisaged by the UGC, it is on the qualification of the teachers and not on the fixation of seniority. It can be seen from Ext.P11 notification dated 24.10.2005 issued by the university to the Government that the university has resolved as early as on 17.02.2000 to follow the rules specified in the Kerala Service Rules, Kerala State and Subordinate

Service Rules, Kerala Treasury Code and Kerala Financial Code for regulating the service condition of the teaching staff of the university in the absence of specific provisions in the University Act/Statute.

10. There cannot be any doubt that seniority must have its base on the entry post and no fresh seniority would commence upon placement in a higher cadre. The seniority once fixed as per the ranked list can never be reduced in the absence of any punitive action. The university had conveniently forgotten the last limb of Clause 16.3 of the UGC Regulations, 2010, which reads that the Rules and Regulations of the respective Central/State Government shall apply for all other matters of seniority. Going by the resolution adopted by the university as admitted in Ext.P11, the inter se seniority has to be fixed based on Rule 27(c), Part II of the KS and SSR. The seniority of the petitioner was confirmed following Ext.P1 order and though it is subsequently altered by Ext.P2, the petitioner has challenged the same. Therefore, there is no meaning in the contention that the petitioner has no right to challenge the seniority at a particular stage after several stages of promotions. On the other hand, there is no challenge to the seniority assigned to the petitioner in Ext.P1. The date of joining is not at all relevant for determining the seniority. Had the candidate joined duty within the time limit allowed without seeking any extension of time or before expiry of the time allowed to join duty, there cannot be any loss of seniority. Therefore, on a consideration of the entire materials now placed on board, this Court is of the view that the petitioner in WP(C) No. 20077/2013 is entitled to succeed.

11. In WP(C) No. 22195/2013, as already pointed out, the petitioner, who is the 5th respondent in the other writ petition, is aggrieved by Ext.P10 order of the 1st respondent, by which the 3rd respondent, who is the petitioner in WP(C) No. 20077/2013, was appointed as Coordinator of the Centre for Sanskrit (General) on a provisional basis. As I have already found, the 3rd respondent, who is the writ petitioner in WP(C) No. 20077/2013, is entitled to get her seniority in the cadre of Associate Professor refixed on the basis of her ranked list and consequently, she is entitled to continue in the post of Coordinator on a permanent basis.

In the result, WP(C) No. 20077/2013 is allowed. Ext.P9 is quashed. The 2nd respondent is directed to maintain the inter se seniority among the petitioner and respondents 4 to 6 as laid down in Ext.P1 and to treat the petitioner as senior most in the cadre of Associate Professor, Sanskrit-General in the service of the university.

WP(C) No. 22195/2013 is disposed of directing respondents 1 and 2 to appoint the 3rd respondent therein as Coordinator of Sanskrit (General) Department on permanent basis.

Formal orders in compliance with the aforesaid directions shall be issued by the respondent university within a period of one month from the date of receipt of a copy of this judgment.