

(2022) 03 KL CK 0151
In the High Court Of Kerala
Case No : Writ Appeal No. 154 Of 2022

Registrar

APPELLANT

Vs

Dr. Elizabeth K. Syriac

RESPONDENT

Date of Decision : 17-03-2022

Acts Referred:

Kerala Service Rules, 2008 — Rule 28(A)

Citation : (2022) 03 KL CK 0151

Hon'ble Judges : A.K.Jayasankaran Nambiar, J;Mohammed Nias C.P., J

Bench : Division Bench

Advocate : Robson Paul, K.Jaju Babu, P.V.Jayachandran

Final Decision : Dismissed

Judgement

Mohammed Nias.C.P, J.

1. The Registrar, Kerala Agricultural University and other officials, respondents 1 to 3 in WP(C)No.26611 of 2011 and who were also the review petitioners in RP No.116 of 2021 are the appellants before us. The writ petitioner, the respondent herein was appointed to the post of Junior Assistant Professor in the Kerala Agricultural University ('University' for short) on 02.12.1983 and was promoted as Assistant professor with effect from 23.02.1989. The petitioner acquired Ph.D on 07.11.1998. The Government of Kerala by its order G.O.(P) N.176/90/AD dated 25.06.1991 introduced the scheme of the University Grants Commission (for short 'the UGC') with effect from 01.01.1986, whereby, the petitioner was inducted to the post of Assistant Professor (Senior Scale) with effect from 23.02.1989. Thereafter, by Government Order dated 21.12.1989 the Kerala Government introduced 1996 UGC Scheme in the University with effect from 01.01.1996, whereby, the petitioner was designated as Associate Professor (Senior Scale) with effect from 01.01.1996 and was further granted Career Advancement Promotion to the post of Associate Professor with effect from 07.11.1998 under the conditions of the 1996 UGC Scheme. Thereafter, upon the recommendation of the duly constituted Committee the first respondent was

granted Career Advancement Promotion to the post of Professor in the scale of pay of Rs.16,400-22,400/-with effect from 07.11.2006 under the 1996 UGC Scheme on completion of a total eight years in the post of Associate Professor. Pursuant to this promotion, petitioner's basic pay was fixed as Rs. 17,300/- instead of 13,750/- resulting in a situation of the pay scale in the lower scale despite promotion.

2. The petitioner sent a representation inter alia pointing out that the normal increment from February was denied to the petitioner and after granting two advance increment from 7-11-1998, the same was granted only from November, as is evident from Ext. P1 pay slip. The petitioner contends that the Kerala Service Rules and the Kerala State Subordinate Rules are applicable to the University employees, and therefore, submitted Ext. P2 representation for rectifying the anomalies that crept in Ext. P1, but no action was taken on the representation. In the meantime, 2006 UGC Scheme was introduced by the Government of Kerala in the University by order dated 27.03.2010, but which had effect from 01.01.2006. It is submitted that the petitioner was inducted to the post of Associate Professor with effect from 01.01.2006 and further to the post of Professor with effect from 07.11.2006 and the revised statement of fixation of pay under the 2006 UGC Scheme was produced as Ext.P3. It is pointed out that the fixation of salary is wrong. It is also pointed out that one Dr.L.Girija Devi, who was directly recruited on 16.11.1987 and who had obtained Ph.D in 2006 was granted Career Advancement Promotion to the post of Associate Professor during 2006. The salary fixed under the 2006 UGC Scheme was Rs.60,080/-, whereas, the petitioner who became a Professor with effect from 07.10.2006 was granted pay scale of only Rs.59,280/- resulting in the junior getting a higher scale of pay compared to the petitioner, despite both of them being equally qualified and working in equivalent posts. Thus, relying on the judgment of the Hon'ble Supreme Court in Gurucharan Singh Grewall v. Punjab State Electricity Board [2009 (3) SCC 94] petitioner contends that the anomaly has to be corrected by stepping up her salary to that of the junior.

3. The writ petition came up for hearing before the learned Single Judge and by judgment dated 18.9.2020, the writ petition was allowed recording the submission of both sides holding the matter in issue to be covered by the judgment in Gurucharan Singh Grewall (supra) and the respondents were directed to re-fix the salary of the petitioner on the basis of the salary of the immediate junior and grant the consequential benefits to the petitioner within three months from the date of receipt of a copy of this judgment.

4. The University filed a review petition as RP No.116 of 2021 pointing out that there is no anomaly as such, as Dr.L.Girija Devi happened to get the benefit of the 2006 UGC Regulations, which awarded three advance increments to her as opposed to the writ petitioner who got only two advance increments requiring Ph.D on the basis of the 1996 UGC Regulations, and therefore, the short fall in the pay of the writ petitioner to that of a junior was not a consequence of any

pay fixation or error from the part of the University, and thus the judgment cited above do not apply and the petitioner is not entitled to the relief claimed.

5. The learned Single Judge by the judgment in the review found that the documents produced along with the review also will not apply to the facts of the case and that the University had already accepted the judgment passed by this Court in a similar situation, namely, the judgment dated 26.05.2015 in WP(C)No.16252 of 2012 filed by one Sosamma Cherian against the University claiming similar reliefs as in the writ petition. The learned Single Judge also found that the scope of review petition being limited cannot be treated as an appeal warranting a re-hearing of the entire matter afresh and accordingly dismissed the review petition.

6. The University is in appeal before us impugning the judgment dated 18.09.2020 in WP(C)No.26611 of 2011 as well as the order in RP No.116 of 2021 dated 29.03.2021.

7. We have heard the learned senior counsel Sri.Jaju Babu, instructed by Sri.Robson Paul, the learned Standing Counsel for the University as well as Sri.P.V.Jayachandran, the learned counsel appearing for the respondent.

8. Before us, the learned senior counsel Sri.Jaju Babu submits that the teachers were awarded advance increments on the basis of the then existing schemes and policies and the writ petitioner cannot contend that there is an anomaly to be corrected. The anomaly can arise only when there is a fixation of pay resulting in a situation stipulated as per Rule 28(A) Part I KSR. To put it differently, the anomaly should have arisen due to a pay fixation and not due an advance increment granted to the junior on the basis of the scheme in vogue at the relevant time. It is further contended that the Career Advancement Promotions and the acquisition of superior qualification are all purely personal and not seniority based. Benefits prescribed by the UGC may vary from time to time and that the promotion to teachers are not cadre based promotions i.e. from a lower post to a higher post and the designation of an Assistant Professor, Associate Professor and Professor are positions given to a teacher based on their personal qualification and not based on any vacancy or seniority. In such cases a junior teacher / scientist under the UGC drawing more pay than his senior is not an anomaly and that the decision in Gurucharan Singh (supra) is clearly distinguishable, more so, when the UGC is well aware of the disparity in granting the number of advance increments and thus no relief could be granted to the writ petitioner on the ground of anomaly, and thus prayed for dismissing the writ petition and allowing the writ appeal.

9. The learned counsel for the respondent submits that the writ petitioner as well as Dr.L.Girija Devi are similarly placed having the same educational qualifications and also working in equivalent posts namely, as Professors and thus, the principles of Gurucharan Singh (supra) is squarely applicable and in such cases the junior cannot be drawing higher salary than the senior. He also relies on the

judgment in Director, NIT Calicut and Others v. Dr.Muraleedharan C. and others (2020 SCC Online Kerala 1755). We find on going through the judgment in the Director, NIT Calicut and Others (supra), that the issue is covered on all fours in favour of the writ petitioner and against the University by the judgment cited (supra) that was also a case where the faculty members who had acquired Ph.D Degree prior to 01.01.2006 got lesser salary than those who had acquired Ph.D degree after 01.01.2006, in spite of both sets of faculty members having been in the same pay scale prior to 01.01.2006. It was also noticed that the faculty members who benefited by 2006 UGC Scheme did not possess any extra qualifications for making them eligible for additional pay over the similarly placed batch mates. That was also a case where the 5th Central Pay Commission (CPC) had recommended two advance increments for Lecturers as and when they acquire Ph.D Degree in their service Career, whereas, the 6th CPC recommended three advance increments to those faculty members who had acquired the Ph.D after 01.01.2006. Similar contention was raised in the said case also to the effect that the writ petitioner therein had already received the advance increments based on the 5th CPC recommendation and therefore cannot complain about the grant of three advance increments to the faculty members who had acquired Ph.D after 01.01.2006. The Division Bench after considering the decision in Gurucharan Singh (supra) held that when the junior had acquired a qualification which the senior had acquired much earlier and therefore under no circumstance can it can be treated as an acquisition of the qualification higher than that of the senior and repelled the contention that the disparity in incremental benefits being the reason for anomaly, a claim for the parity cannot be entertained. The qualifications acquired by both the faculty members were the same and that there was no difference in the nature of work discharged by them and therefore a classification of such persons into two categories was not accepted by the Division Bench. Thus, the Bench found that the implementation of the subsequent Scheme shall not result in a situation where their juniors are permitted to draw more salary than respondents 1 to 5 and that if such a situation is created, it is only appropriate that the said anomaly is corrected by having the pay of the seniors stepped up to that of the juniors.

10. Though, it is true that Rule 28(A) of Part I KSR would apply only in cases where the anomaly arises out of fixation of pay pursuant to a pay revision order and that it does not apply to an anomaly arising as a result of time bound higher grade promotions and that as the anomaly is not as a result of a fixation of pay, seniors salary will not be stepped up to that of the juniors, it is also true that it is not a universal principal that the senior in a cadre must always draw higher scale than his junior and that on valid grounds the junior may draw higher scale than senior. The instant case is clearly covered by the judgment in Director, NIT Calicut and Others (supra), that was rendered on considerations of equity and fairness and we do not find any reason to depart from the same. The directions of the learned Judge in the judgment dated 18-08-2020 do not warrant any interference in the facts and circumstances of the case, more so when there will

be no prejudice caused to others in service who are admittedly junior to the petitioner.

11. The appellants are directed to comply with the directions of the learned Single Judge dated 18.08.2020 within a period of two months from the date of receipt of a copy of this judgment

The writ appeal fails, and is accordingly dismissed.