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**(2016) 03 KL CK 0002**

**In the High Court Of Kerala**

**Case No :** W.P.(C) Nos. 27816 of 2013 (B), 7738 of 2015-N, 25778 of 2015-V, 29311 of 2015-L, 531 of 2016-N, 3445 of 2016-E and 5965 of 2016-U

Sujith S. and Others

APPELLANT

Vs

Calicut University and Others

RESPONDENT

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**Date of Decision :** 01-03-2016

**Acts Referred:**

Constitution of India, 1950 — Article 14, Article 16  
Kerala University Act, 1974 — Section 23, Section 34, Section 36, Section 37, Section 50, Section 50 (1), Section 82, Section 83

**Citation :** (2016) 03 KL CK 0002

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

**Bench :** Single Bench

**Advocate :** P. Ravindran, Senior Advocate and Sreedhar Ravindran, Advocate, for the Appellant; Santhosh Mathew, Standing Counsel, for the Respondent

**Final Decision :** Disposed Off

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## Judgement

K. Vinod Chandran, J.—1. All these writ petitions deal with the administrative services in the Calicut University [hereinafter referred to as "the University"] specifically with reference to the post of Assistants and the promotions thereto and therefrom. The individual writ petitions project various shades of the very same controversy which arose essentially by reason of G.O.(P) No. 3/08/H.Edn. dated 05.01.2008, produced as Exhibit P4 in W.P.(C). No. 531 of 2016. Accepting the 9th Pay Commission recommendations, and allowing it to the University employees, the aforesaid order merged the post of Assistants in the Universities to make it at par with the Assistants in the Secretariat service, on condition that all future appointments to the entry post of Assistants would be by direct recruitment only. Those who were already promoted to the entry level category of Assistant Grade II as it earlier existed as per the Calicut University First Ordinances, 1978 [hereinafter referred to as "First Ordinances"] prior to 01.07.2004 were also conferred with the benefit of merger. Those promoted to the entry post of Assistants later to 01.07.2004 are threatened with reversion.

The Senate of the Calicut University attempted certain amendments to the First Ordinances at the meeting held on 10.02.2012; which is pending assent of the Chancellor, after which only it would be given effect to.

2. As an offshoot there arose other issues, raised in the various writ petitions. In W.P.(C). No. 27816 of 2013; the inter se seniority between those appointed as Assistant Grade II directly and those promoted from Clerical Assistants, to which lower post the incumbents were appointed under the dying-in-harness scheme is the bone of contention. The Clerical Assistants, who have SSLC with five years experience and those who have degree as also Typists without degree, who also constitute the feeder category for promotion to the post of Assistant Grade II, are aggrieved by Exhibit P4 Government Order aforementioned for reason of the implementation in toto of the merger proposed by the Government, prejudicing them insofar as shutting out the promotion possibility for ever, since after the merger only direct recruitment could be made to the post of Assistants. This is the challenge in the other writ petitions.

3. The first issue to be considered is the inter se seniority dispute between the directly recruited Assistants and those appointed as Clerical Assistants on compassionate grounds and then promoted as Assistants, which is the issue projected in W.P.(C) No. 27816 of 2013. The learned Senior Counsel appearing for the petitioners 1 to 15 [petitioners 5 and 7 deleted] contends that, respondents 4 to 25, who were appointed under the compassionate scheme, have been revealed to have been appointed irregularly by an audit conducted for the year 2009-10. Hence, their promotions cannot be substantively relied on to confer a continuance in the substantive posts of Assistants Grade II. Determination of seniority on the basis of such appointment and subsequent promotion, all of which are either ad hoc or provisional, is impermissible, is the argument. The learned Senior Counsel would refer to Exhibit P4 audit report, wherein three specific instances of such appointments given on compassionate grounds were noticed and objected to. This was for reason of the post of Clerical Assistant, to which the appointments were made, was not one to which direct recruitment could be made.

4. The post of Clerical Assistants, is a post to which appointments could be made only by promotion from the integrated cadre of Last Grade with SSLC qualification, based on seniority. The scheme for appointment on compassionate grounds is produced at Exhibit P3 [G.O.(P) No. 12/99/P&ARD dated 24.05.1999]. Clause 16 of the aforesaid Government Order is pointed out to contend that appointment under the scheme is restricted to Class-III and Class-IV posts, to which direct recruitment is one of the methods of appointment. Hence, the objection on audit is sustainable and as per the provisions of the University Act, the University has to definitely take a call on the objection raised by the auditors. Section 50 of the University Act, speaking of audit of accounts of the University, specifically refers to the mandate of the University under sub-section (7) to forthwith remedy any defect or irregularity pointed out by the auditors and

report such action taken to the Government. The learned Senior Counsel would specifically contend that the petitioners do not challenge the party respondents' appointments as such; but, however, even if they are continued on ad hoc or provisional basis on the basis of the irregular appointments, then they necessarily cannot be considered to be persons continuing in the cadre and cannot have assigned any position of seniority in the cadre.

5. W.P.(C) No. 29311 of 2015 is also filed by two direct recruits to the post of Assistant Grade II, raising similar contentions as in W.P.(C) No. 27816 of 2013. The 1st petitioner has ceased to be in the party array for reason of the Counsel seeking his name to be deleted as he is a party in the other writ petition. The learned Counsel appearing for the sole petitioner in the writ petition raises a contention that the appointment of the party respondents on compassionate grounds can be deemed to be only in supernumerary posts and they cannot be considered at par with the other persons appointed by a proper selection procedure to substantive vacancies. The learned Counsel also relies on the decisions of the Hon'ble Supreme Court in *Umesh Kumar Nagpal v. State of Haryana* [, (1994) 4 SCC 138] and *Director of Education (Secondary) v. Pushpendra Kumar* [, (1998) 5 SCC 192]. The reliance placed on *Umesh Kumar Nagpal* (supra) is to drive home the general principle that the appointments made on compassionate grounds as a deviation and exception from the general rule, which upholds the principle of equality in public employment.

6. The learned counsel for the party respondents would contend, on the basis of Exhibit R4(a) service details of all the party respondents, that they were all appointed long before the date of advice of the petitioners and almost all of them, after two promotions, were continuing in the post of Selection Grade Assistant before the petitioners were even appointed to the entry post of Assistant Grade II. It is forcefully urged that the audit conducted is of the accounts and not of the appointments as such and the objection raised on audit cannot unsettle the settled position and continuance in employment of the party respondents. The Government Order for appointment under the compassionate scheme is also referred to, to contend that under clause 20 of the aforesaid G.O. the applicants under the scheme were permitted to be appointed to any available vacancy in any of the subordinate services. It is argued that the petitioners have no locus standi to challenge the appointments and if at all, the challenge could only be by those persons who were entitled for promotion to the post of Clerical Assistants; which, at this distance of time, is not permissible. Reliance is also placed on the decision in W.P.(C). No. 9276 of 2013 dated 21.05.2014 [*Sasikala V. & Others v. State of Kerala & Others*] of a learned Single Judge, affirmed by a Division Bench in W.A. No. 1826 of 2014 dated 08.12.2015 [*State of Kerala & another v. Sasikala V. & Others*].

7. The learned Standing Counsel for the University would in deference to the Government Order, ordering merger of the various grades of Assistants, contend that there are amendments proposed to the First Ordinances, which, if assented,

would bring a quietus to the issue. It is also submitted that the Government has been requested to extend the date of exemption to 31.12.2008 as against 01.07.2004 proposed in the Government Order. It is also submitted that the other Universities had made similar request, which has been acceded to by the Government. There is no reason why the Government would not grant exemption to the University, is the submission. Further, it is also contended that the audit objection is suitably answered and it is of some forceful import that the accounts of the University were being subjected to successive audits in the ensuing years and all the party respondents appointed under the compassionate scheme were appointed long back, between 1992 and 2006, and there was no such objection raised at any point of time. The University also had been making appointments in accordance with the First Ordinances and none could pluck holes on such appointments made long prior.

8. The petitioners in W.P.(C). No. 27816 of 2013 admittedly were appointed by Exhibit P1 dated 31.08.2009 and Exhibit P2 dated 23.11.2009. The date of advice of petitioners 1 to 12, appointed as per Exhibit P1, is dated 13.03.2009 and that of petitioners 13 to 15, appointed as per Exhibit P2, is dated 23.05.2009. The petitioners contend that the notification issued by the Public Service Commission [for brevity "PSC"] itself was of the year 2000 and it was due to pending litigation that the appointment was delayed and it materialized only in the year 2009. That contention has to be rejected outright, since the delay occasioned cannot confer any claim for a re-determination of their date of appointments. The direct recruits, cannot seek for determination of a seniority from a date prior to their initial advice. The party respondents were all appointed to the post of Clerical Assistants on compassionate grounds long prior to the appointment of the petitioners. The first issue to be considered is whether their appointments suffered any irregularity on the basis of the report on audit.

9. As has been pointed out by the learned counsel for the respondents, the audit is to be conducted of the accounts of the University and the institutions under its management, under Section 50 (1) of the University Act. Under sub-section (4) of Section 50, on completion of audit, a report is to be submitted to the University, which, under sub-section (5) has to specify the cases of irregular, illegal or improper expenditure or of failure to recover moneys or other property due to the University or of any loss or waste of money or other property thereof caused by neglect or misconduct. The thrust, hence, is on any loss caused and in the case of irregular appointments, that could be in the form of the pay and allowances paid to such appointees. In the present case, it is an admitted fact that in the successive years audit was conducted and none of the party respondents' appointments were objected to as an irregular, illegal or improper expenditure. They had continued in their entry posts of Clerical Assistants and had also been promoted to the higher posts. It cannot be said that their vested rights for continuing in the substantive posts, to which they were appointed could be easily interfered with by reason only of an objection raised on the audit of the year 2009-10, the exact date of which is not specified.

10. True, Section 50 speaks of the University proceeding with remedial action on the objection noticed in audit, but the same can only be after the objections are finalized and the Government could also look into the circumstances in which, the appointments now objected to were made, taking into account the purpose for which such appointments were made and the regulations of the University. Even then, on the objection raised in audit, in a year far subsequent and distant, cannot unsettle the appointments made long prior. Taking into account the fact that the respondents 4 to 25 were appointed long prior it cannot be said that they were irregularly appointed or continued on a provisional basis or ad hoc basis.

11. Exhibit P3, scheme for compassionate employment of dependents of Government servants who died in harness, restricts appointments to Class-III and Class-IV posts in the subordinate service, wherein direct recruitment is one of the modes of appointment. No reliance can be placed on clause 20 to contend that the appointment could be made to any available vacancy in any of the subordinate services, since the deviation therein noticed, is from the priority indicated by the applicant in his application form. However, it is to be noticed that the appointment to the post of Assistant Grade II, which also provides for direct recruitment, could only be made from persons having a University degree.

12. The scheme of appointment on compassionate grounds is said to be an exception to the principles of equality in public employment as enshrined in Articles 14 and 16 of the Constitution of India. All the same, it is a scheme introduced to offer succor to the dependent family to tide over the situation, of the sole breadwinner meeting his death. Such succor should be immediate, failing which the spirit of the scheme would be defeated and it has also been held that after a long delay when such appointments are offered, it violates the principles of equality in public employment. The family having survived in the ensuing years indicates there being no dire need for an employment of one of the family members. Hence, the employer cannot wait till the dependent acquires the qualification of a University degree and it would be a conundrum of sorts to expect the family to survive till that happens.

13. The reliance placed on Pushpendra Kumar (supra) to make it appear that the party respondents who were appointed could only be deemed to be continued on supernumerary posts is fallacious. Pushpendra Kumar was a case in which the Government of Uttar Pradesh brought in a provision to afford appointments to dependents of teaching/non-teaching staff of Government recognised aided institutions. The criteria was that any one member of the family of the employee dying in harness, with requisite qualification would be given employment as far as possible in the institution in which the deceased employee worked or in any other institution where vacancy exists. It was provided that the appointments would be to Class IV or Class III posts and in the event of no vacancy in either, supernumerary posts would be created in Class IV, so as to accommodate the dependents of deceased employees. The respondents before the Hon''ble

Supreme Court were persons who were granted such appointments and later approached the Allahabad High Court seeking appropriate direction to give them appointment in the Class III posts itself. The High Court directed such appointments to be made and in the event of no vacancy in Class III posts, directions were also issued to create supernumerary posts in Class III. The Hon"ble Supreme Court set aside the directions of the High Court, finding that the construction placed by the High Court on the Regulations would result in all the vacancies in Class III posts in Government recognised aided institutions being filled up on grounds of compassion, totally excluding the right of other persons who are eligible for being considered to those posts by direct recruitment. The said construction placed was found to be in violation of the right of equality in the matter of employment, in so much as other persons who are eligible for appointment and are more meritorious from amongst the general public, would be deprived of their right for being considered for such appointment. The Regulations were looked into, to find that a dependent of an employee dying in harness could be accommodated in Class III posts and if no vacancies were available, then the dependent could be accommodated only in the Class IV posts. The creation of supernumerary posts in the event of absence of vacancies in both the categories was only in Class IV and not in Class III.

14. This Court is unable to find any such principle to be followed in the present case. There is no ground that any direct recruit was excluded by the appointment under the dying-in-harness scheme. On the contrary there was no direct recruitment provided to such posts. None who were entitled to be so promoted challenged it then nor is it attempted now. The direct recruits even now do not challenge such appointment but seek only seniority. The appointments were also made to the post of Clerical Assistants, which was the feeder category for promotion to the post of Assistant Grade-II in the ratio of 1:2 with direct recruits. There is no ground of violation of the ratio; nor can there be, since the petitioners were appointed far later to the party respondents who were promoted to the higher posts even before the petitioners joined the entry cadre. The delay caused in making the direct appointments was also not due to administrative laxity and was occasioned only by reason of the litigation pending before this Court. The persons who were appointed under compassionate grounds to the post of Clerical Assistants after such appointment in substantive vacancies will get merged in the regular stream of administrative service under the University. They cannot be treated as different from others who got appointments by direct recruitment after being inducted into service. The duties assigned, the incidence of service as also the promotional avenues available would be identical and the mere fact that they came from a different source, which is an exception to the general rule of equality in public employment, cannot stand against them in their further service under the University. The contentions raised by the learned Counsel for the petitioner in W.P.(C) No. 29311 of 2015 also have to be rejected.

15. The special circumstances under which the University granted appointment to the party respondents to the post of Clerical Assistant, justifies it. The

appointments have also been sanctioned by the Syndicate and approved by the Government. The accounts of the University were submitted to successive audits, none of which projected the issue of an irregular, illegal or improper expenditure having been made for reason of such appointments. Leaving open the proceedings on audit initiated, which has to be taken to its logical conclusion, it is declared that the appointments of respondents 4 to 25 cannot at all be interfered with and their respective promotions in the higher cadres would also have to be upheld. The seniority is to be assigned in the present cadre, going by the aforesaid declaration. The submission of the learned counsel for the petitioners that there is no seniority list as of now published is strongly refuted by the University and the University would be entitled to make promotions to the post of Section Officer as per the seniority assigned to the individual persons in the cadre of Assistant Section Officer.

16. The next question is the issue of promotions from the post of Clerical Assistants made to the post of Assistant Grade II before 01.07.2004, which affects respondents 14, 17 to 22 and 24. Respondent No. 24 is the petitioner in W.P.(C) No. 531 of 2016, who had not been promoted to the post of Section Officer for reason of he having not acquired a graduate qualification before the cut-of-date; which he acquired only in the year 2014. The University relies on the proposed amendments and alternatively the exemption sought for from the Government, which has been allowed to other Universities for regularizing the promotions upto 31.12.2008.

17. The First Ordinance at it exists now and the amendment proposed are extracted hereunder:

Existing

Proposal

18. The learned Senior Counsel appearing for the petitioners would urge that even the amendment proposed has not come into effect for reason of the assent of the Chancellor having not been received and contends that the assent even if received, the amendment suffers from the fundamental defect that no person could be appointed directly to the post of Clerical Assistant. The contention seems to be that the amendments have been attempted to regularize the promotions made of Clerical Assistants who were appointed/promoted to the post of Clerical Assistants on or before 31.12.2008. Direct appointment not being available as per the First Ordinances as it existed then, this would not cure the defect in the appointments made at the initial stage, is the argument. The said contention no longer survives for reason of this Court having found the appointments under the dying-in-harness scheme to be justified. It is an admitted fact that the amendments have not been made effective, since it is pending assent before the Chancellor. The learned Standing Counsel for the University also submits that even de hors the amendment, the University has sought exemption from the Government and further the assent is pending only

since these writ petitions are pending before this Court.

19. Be that as it may, the learned Counsel for the petitioner in W.P.(C) No. 531 of 2016 has a contention that the orders issued by the Government on pay revision would have no consequence on the appointments or promotions made by the University and that the incidence of service is regulated by the First Ordinances made under Section 82 of the Act. The petitioner therein had qualified to be promoted to the post of Section Officer only in 2014. The petitioner was appointed as Clerical Assistant on 04.10.1999 and promoted to the post of Assistant Grade II on 27.10.2004, after the cut of date of 01.07.2004 prescribed in Exhibit P4 order produced therein. The learned Counsel for the additional respondent contends that no challenge has been made to Exhibit P4 and Exhibit P4 having recognised only promotion to the post of Assistant Grade II prior to 01.07.2004, the petitioner would have to be reverted to the post of Clerical Assistant. Further, subsequent to 01.07.2004, there could only be direct recruitments to the post of Assistants, which has been merged by the aforesaid Government Order, is the contention.

20. Here again, the efficacy of the Government Order which implemented the recommendations of the Pay Commission and the authority to order merger of posts contrary to the provisions in the First Ordinances and to set at naught the promotions made in accordance with the First Ordinances assumes relevance. Apposite would be reference to the decision of the Hon'ble Supreme Court in All Kerala Private College Teachers Association v. Nair Service Society and others [, AIR 1995 SC 2407]. The First Statutes of the Calicut University was under consideration before the Hon'ble Supreme Court along with the First Statutes of the other Universities. The Government was found to have only one time power to frame the First Statutes and after the Senate becomes functional, there was no power on the Government to either frame First States or make amendments to the already framed First Statutes.

21. Reference can be usefully made to paragraphs 2, 3, 10 and 11 of the said judgment:

"2. We may briefly examine the relevant provisions of the Two Acts. The primary object, of establishing a university by an Act of the State Legislature, is to make the institution an independent autonomous authority with a view to minimise the outside interference in its functioning. Dr. S. Radhakrishnan, in the University Education Commission's Report 1950 observed as under:--

"...We must resist, in the interest of our democracy, the trend towards the Governmental domination of the educational process.... Higher education is undoubtedly an obligation of the State but State aid is not to be confused with State control over academic policy and practices. Our Universities should be released from the control of politics...."

3. The avowed object with which the Two Acts and the Gandhi Act have been enacted by the Kerala Legislature, is to leave the pursuit of higher education

under the control and management of various academic bodies of the Universities. Even the framing of the statutes and the ordinances - which have the force of law - are left to the Senate and the Syndicate of the respective universities.

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10. We have given our thoughtful consideration to the rival contentions raised by the parties. We are inclined to agree with the contentions raised by the learned counsel for respondent 1. The universities were incorporated and brought into existence on the date the Two Acts were enforced, but the Senate and other bodies of the universities were yet to be constituted. The provisions of the Two Acts are not exhaustive. The fields which are left to be covered by the statutes have been enumerated under Section 34 of the Two Acts. The universities could not have started functioning unless there were statutes in existence immediately after the enforcement of the Two Acts providing for the constitution of the Senate other bodies of the universities and other regulatory provisions necessary for the functioning of the universities. To meet this eventuality, the legislature has given one time power to the State Government to frame the "First Statute" under Section 83 of the Two Acts. When the Senate is constituted and becomes functional then it is the only authority under the Two Acts to frame the statutes. We fail to understand how the State Government can frame the statutes when the Senate is functioning. There cannot be two parallel authorities to make subordinate legislation on the same subject-matter. In view of the scheme of the Two Act it is not possible to contend that the Senate has no power to make statutes on a subject for the first time. We do not agree with the learned counsel for the appellant that the State Government has the power to keep on making "First Statutes" till it exhausts all the subject/topics on which statutes could be framed under the Two Acts. This argument goes contrary to the very object and purposes of the Two Acts.

11. We, therefore, hold that the State Government has only one time power to frame "First Statutes" under Section 83 of the Two Acts. The statutes framed by the State Government may be in respect of one subject or various subjects but once the State Government has framed the statutes its power under Section 83 gets exhausted and it cannot frame the statutes for the second time. We make it clear that the interpretation given by us to Section 83 of the Two Acts is prospective, except in relation to the impugned statutes, and will be operative from the date of this judgment".

When the State Government does not have power to frame First Statutes, necessarily there could be no power to make amendments to the First Statutes and not at all to issue executive instructions in contravention of the provisions of the First Statutes. Exhibit P4 Government Order, produced in W.P.(C). No. 531 of 2016, has to be considered in that perspective.

22. In this context, the decisions relied on by the respondents also assume

significance. W.P.(C). No. 9276 of 2013 was filed by certain Section Officers who entered the service of the University as Typists. The First Ordinances provided for a promotion from the post of Section Officer to the post of Pool Officer; the method of appointment being on the basis of seniority and merit. The post of Pool Officer was created in the University of Kerala by the Syndicate and received the assent of the Chancellor. The very same pay revision, which is the bone of contention here, was the subject of concern in that case also. The 9th Pay Revision Commission approved the demand of employees for parity with the Secretariat service and the scales of pay; but, however, recommended that the promotions from the post of Office Superintendent to Section Officer, Section Officer (Higher Grade) and Pool Officer should be discontinued. On the directions of the Government, the Syndicate resolved to accept only the posts and scales of pay as permitted by the Government and the employees of the University submitted a representation before the Chief Minister for protection of their promotion prospects and filed the writ petition, which was considered in the aforecited judgment. The contention was that the post of Pool Officer being one provided in the Ordinances without an amendment thereat, the promotion prospects cannot be taken away.

23. The learned Single Judge has relied on a decision in *S.N. College v. N. Raveendran* [, 2001 (3) KLT 938] and found that since necessary amendments are not incorporated in the University Statutes, the management of affiliated colleges are not bound to follow the same. Therein also, the First Ordinances having not been suitably amended, it was held that the Government cannot direct that the posts available in the Ordinances should be filled up for reason only of the acceptance of the recommendations of the Pay Revision Commission. Section 37 of the Kerala University Act was referred to, for the purpose of noticing the manner in which amendments are to be effected to the First Ordinances. It was also noticed that the University also did not have a case that they were intending to amend the Ordinances to conform to the decision of the Government. The petitioners were held to be entitled to be considered for promotion to the Pool Officer despite the recommendation of the Pay Revision Commission accepted by the Government being against continuance of such posts.

24. The Division Bench held so, affirming the judgment of the learned Single Judge:

"6. Having considered the rival submissions made at the Bar, we are inclined to agree with the learned senior counsel for respondents 1 to 4. As rightly found by the learned single Judge, the procedure for making Ordinances is contained in section 37 of the Kerala University Act, 1974. Section 23 of the Act empowers the Syndicate of the University to make Ordinances and to amend or repeal the same. Similarly, section 36 of the Act stipulates that Ordinances framed by the Syndicate shall provide for fixation of scales of pay of various posts and the terms and conditions of service of officers of the University. It was in exercise of

the powers conferred under the various sections of the Kerala University Act, the Kerala University First Ordinances, 1978 was framed by the Syndicate. Therefore, the hierarchy of posts and the pay structure and other terms and conditions that are attached thereto, are to be made part and parcel of the Ordinances that are statutorily framed by the Syndicate. Once an Ordinance is so framed, the University is entitled to make appointments and promotions to the posts which are included in the Ordinances. Such a statutory duty of the University cannot be affected in any manner by orders issued by the Government in the nature of Ext. P4. In so far as this case is concerned, even as of now, nobody has a case that the University has amended its Ordinances and therefore, the posts including that of Pool Officer is part of the hierarchy of posts in the University and it that be so, the University is entitled to make promotions to that post, as found by the learned single Judge. Therefore, that conclusion of the learned single Judge does not merit interference".

25. As was noticed, the First Ordinances provides for promotion to the post of Assistants Grade II from the post of Clerical Assistants. When merger is effected of the various posts in the different cadre of Assistants, the Government has prescribed that only direct recruitment could be effected. This is in conflict with the provision, which permits promotion to the post of Assistant Grade-II from direct recruits and Clerical Assistants in the ratio of 2:1 and from other feeder categories, of Typists with and without degree. In this context, it is also to be noticed that the Government has by G.O.(P) No. 65/2011/GAD dated 28.02.2011, produced as Exhibit P14 in W.P(C) No. 7738 of 2015, made amendments to the Special Rules for the Kerala Secretariat Subordinate Service, wherein appointment to the post of Assistants in Departments other than the Governor's Secretariat, is to be made by (i) direct recruitment, (ii) by transfer from Low Paid Employees of the Secretariat and (iii) by transfer from Typists and confidential Assistants of Secretariat. Hence, after Exhibit P13 produced in the said writ petition, the Assistants in Secretariat Service, to which post parity was granted to the Assistants in the University, has a specific provision for appointment by promotion. Reference can also be usefully made to Exhibit P16 series produced by the petitioners in W.P (C) No. 7738 of 2015 to indicate that the other Universities had also carried out promotions and "by transfer" appointments to the post of Assistants. The reference to the said documents is only to emphasize the fact that the Government has been blowing hot and cold with respect to the manner in which the post of Assistants are to be filled up.

26. This Court would not venture into the ground of discrimination, because the Government Order to the extent it restricts appointment to the post of Assistant Grade-II by direct recruitment subsequent to 01.07.2004 is against the provisions of the First Ordinances and is liable to be held so. The contention that there is no challenge to G.O.(P) No. 3/08/H.Edn. dated 05.01.2008 cannot be countenanced and if a challenge is made to the said Government Order, then the recommendations therein would also have to be challenged. What the petitioners contend is that, to the extent a restriction is made to promotions to the post of

Assistant Grade-II subsequent to 01.07.2004 and also consequent to the merger of the various cadres would be against the provisions of the First Ordinances. The said contention has to be accepted and it is found that, to that extent the University is not bound by the order of the Government. As to the pay fixation on merger, the same would have to be thrashed out by the Government and the University, to which end this Court would not make any observations pre-empting such consideration.

27. The other writ petitions also essentially challenge the Government Order and restriction made to appointments to the post of Assistant Grade-II. W.P.(C) No. 3445 of 2016 projects the case of a Clerical Assistant appointed on 17.09.2008 under the dying-in-harness scheme, who seeks promotion to the post of Assistant. W.P.(C) Nos. 7738 of 2015 and 5969 of 2016 are also filed by Typists/ Computer Assistants having graduate qualification seeking promotion to the post of Assistants. The same would have to be considered as per the ratio prescribed; where applicable, subject, however, to the First Statutes existing or subject to the amendments as proposed by the University; if assented by the Chancellor.

28. On the above reasoning, the persons who are appointed as Clerical Assistants and promoted to the higher cadres and now eligible to be promoted to the post of Section Officer or continuing in the post of Section Officer are found to be properly appointed and promoted and any seniority list prescribed in the different cadres under the administrative service would place them in the appropriate position in accordance with their appointments and the date of their promotions, subject only to any Rules and Regulations for assignment of such seniority. The Government Order, G.O.(P) No. 3/08/H.Edn. dated 05.01.2008, insofar as it is in conflict with the First Ordinances is found to be not binding on the University and the University would have to move in accordance with the First Ordinances, again subject to any amendments being assented to by the Chancellor.

W.P.(C) Nos. 27816 of 2013 and 29311 of 2015 are dismissed. W.P.(C) Nos. 7738 of 2015, 25778 of 2015, 531 of 2016, 3445 of 2016 and 5965 of 2016 are allowed. Parties are left to suffer their respective costs.