

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT:
THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

WA.No. 216 of 2010 IN WP(C).28277/2007

AGAINST THE ORDER/JUDGMENT IN WP(C) 28277/2007 of HIGH COURT OF KERALA
DATED 01-10-2009

APPELLANT(S)/PETITIONERS:

1. SURESH K.P., SECTION GRADE ASSISTANT,
FINANCE BRANCH, KANNUR UNIVERSITY.
2. RANJITH P.V., SECTION GRADE ASSISTANT,
PLANNING AND DEVELOPMENT SECTION, KANNUR UNIVERSITY.
3. SMITHA BHASKARAN,
SELECTION GRADE ASSISTANT, ACADEMIC SECTION
KANNUR UNIVERSITY.
4. PREMAN K.P., SELECTION GRADE ASSISTANT,
FINANCE BRANCH, KANNUR UNIVERSITY.

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENT(S)/PETITIONERS:

1. ANIL CHANDRAN,
SELECTION GRADE ASSISTANT, ACADEMIC SECTION
KANNUR UNIVERSITY.
2. SIRAJ K.M., SELECTION GRADE ASSISTANT,
B.TECH SECTION, EXAM BRANCH, KANNUR UNIVERSITY.
3. PRIYA V.O., SECTION GRADE ASSISTANT,
FINANCE BRANCH, KANNUR UNIVERSITY.
4. RAJALEKSHMI V.O., SECTION GR. ASSISTANT,
EXAM BRANCH, KANNUR UNIVERSITY.
5. KANNUR UNIVERSITY,
MANGATTUPARAMBA, KANNUR UNIVERSITY CAMPUS P.O.
REP. BY ITS REGISTRAR.
6. PRABHATH KUMAR K.,
SELECTION GRADE ASSISTANT
DEPARTMENT OF STUDENT SERVICES/NATIONAL SERVICES
SCHEME, ADMINISTRATION, KANNUR UNIVERSITY.

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7. ASHRAF K., SECTION GRADE ASSISTANT,
UNIVERSITY TEACHER EDUCATION CENTRE, MANANTHAWADI.

8. ASWATHY T.P., SECTION GRADE ASSISTANT,
FINANCE BRANCH, KANNUR UNIVERSITY.

9. RAJAN BABU T.V.,
SELECTION GRADE ASSISTANT, ACADEMIC BRANCH
KANNUR UNIVERSITY.

10. DEEPA N., SENIOR GRADE ASSISTANT,
ACADEMIC BRANCH, KANNUR UNIVERSITY.

11. RAHUL B.ASHOK,
SENIOR GRADE ASSISTANT, REVALUATION SECTION
EXAM BRANCH, KANNUR UNIVERSITY.

12. DHANYA RAJ K., SELECTION GRADE ASSISTANT
FINANCE BRANCH, KANNUR UNIVERSITY.

R5 BY ADV. SRI.M.SASEENDRAN,SC,KANNUR UNIVERSITY
R9,11 BY ADV. SRI.N.MANOJ KUMAR
R9,11 BY ADV. SMT.JAYASREE MANOJ
R7,8 & 12 BY ADV. SRI.N.SUGATHAN
R7,8 & 12 BY ADV. SMT.VARSHA BHASKAR
R6 & 10 BY ADV. SRI.N.MANOJ KUMAR
R6 & 10 BY ADV. SMT.JAYASREE MANOJ
BY SRI.GEORGE POONTHOTTAM

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 8-12-2015, THE
COURT ON 22.12.2015 DELIVERED THE FOLLOWING:

**THOTTATHIL B.RADHAKRISHNAN
&
ANU SIVARAMAN, JJ.**

W.A.No.216 of 2010

Dated this the 22nd day of December, 2015

JUDGMENT

Anu Sivaraman, J.

This appeal is preferred against the dismissal of the writ petition preferred by the appellants and others challenging the promotion granted to respondents 2 to 8 with effect from 6.3.2005 to the post of Assistant Grade-I in the Kannur University. The case of the appellants in the writ petition was that the appellants as well as respondents 2 to 8 had been appointed on 6.3.2004 as Assistant Grade-II. On completion of probation, they had been promoted as Assistant Grade-I with effect from 6.3.2005. Going by the provisions of the Ordinances published by the Kannur University on 14.11.2005, which was said to have come into force with effect from 7.6.2002, the qualification of pass in Secretariat Manual Test was mandatory for promotion to the cadre of Assistant Grade-I. It is submitted that the appellants were

fully qualified for the promotion, but the respondents had acquired the said qualification of Secretariat Manual Test only on 5.4.2005 and therefore, their promotion on 17.3.2005 with effect from 6.3.2005 was illegal and invalid. The Kannur University Act had come into force on 9.11.1995. Section 99(2) of the said Act provided that the Calicut University Ordinances in force on the date of the commencement of the Act shall continue to be in force until they are replaced by Ordinances made under the Act. As on 9.11.1995, the qualification prescribed for appointment as Assistant Grade-II, going by the Calicut University Ordinance, did not include pass in Secretariat Manual Test. Therefore, the respondents contended that when the case of the appellants as well as the contesting respondents was taken up for promotion, all of them were qualified to be promoted to the post of Assistant Grade-I. Thereafter, it appears that the Kannur University Ordinance, 1999 was framed. It is contended by the appellants that Section 39 of the Kannur University Act provided that the Syndicate shall

have the power to make Ordinances providing for fixation of scales of pay of various posts in the University and the terms and conditions of service of officers and employees of the University. Sub-section (2) of Section 39 reads as follows:

“39.Ordinance.-(1)...

(2) All Ordinances made under this Act shall have effect from such date as the Syndicate may direct.”

2. Section 43 of the Act provides that every ordinance which involves expenditure shall be made only with prior approval of the Government. It also provides for assent of the Chancellor for Ordinances involving expenditure. Section 44 of the Act provides that all Statutes, Ordinances and Regulations made under this Act shall be published by the University.

3. In the instant case, the University Ordinances were framed in 1999. They were assented to by the Chancellor on 7.6.2002. Going by the said Ordinances, the method of appointment to the post of Assistant Grade-I was by

promotion from among the cadre of Assistant Grade-II having completed the period of probation and passed Account Test Lower/Higher and Secretariat Manual Test and based on seniority.

4. It is contended by the University that all the contesting parties had the qualification of Account Test as well as completion of probation as on the date when they were promoted as Assistant Grade-I. However, the party respondents had acquired the qualification of Secretariat Manual Test only in April, 2005. Since they were fully qualified going by the Ordinance in force as on the date of occurrence of vacancy, they were fully eligible for probation, it is contended.

5. The learned single Judge took note of the contentions raised on all sides and found that the Ordinances had been published only on 14.12.2005, though with retrospective effect from 7.6.2002. Therefore, it was held that the promotions effected on 17.3.2005 as per the provisions of the Calicut University Ordinances, as it stood on 9.11.1995,

which were applicable to the employees of the Kannur University could not, in any manner, be affected by retrospective effect given to the amendment from 7.6.2002. In the above circumstances, it was held that the challenge against the promotions effected by the University must fail and accordingly the writ petition was dismissed. This appeal is preferred by some of the petitioners being aggrieved by the judgment of the learned single Judge.

6. Heard Sri.P.C.Sasidharan, learned counsel for the appellants, Sri.V.A.Mohammed, learned counsel for the first respondent, Sri.S.Prasanth, learned counsel for respondents 3, 4 and 8, Sri.N.Manoj Kumar, learned counsel appearing for respondents 6, 10, 9 and 11 and Sri.M.Saseendran, learned Standing Counsel for the 5th respondent.

7. The contention raised by the appellants is to the effect that sub-section (2) of Section 39 of the Kannur University Act specifically provides that Ordinances made under the Act shall have effect from such date as the Syndicate may direct. The Vice Chancellor, on the

recommendation of the Registrar had given effect to the Ordinances from 7.6.2002. This decision of the Vice Chancellor had been ratified by the Syndicate. In such circumstances, the date of effect of the Ordinances is the date on which the Syndicate directed that it shall come into effect. It is therefore argued that the Ordinances which came into effect on 7.6.2002 have to be followed in the matter of promotions effected on 17.3.2005.

8. The learned counsel for the contesting respondents, on the other hand, submitted that the Kannur University Act having provided for compulsory publication in the Gazette of all Statutes, Ordinances and Regulations, the Ordinances can have effect only from the date of such notification and not before. It is therefore submitted that their promotions were in order. The contention of the University is that the promotions effected on 17.3.2005 were in accordance with the Ordinances in force as on such date.

9. Having considered the arguments advanced on all sides at considerable length, we are of the opinion that the

question whether Ordinances, being delegated legislation, can be amended with retrospective effect, which has been raised by the party respondents, need not be considered in this appeal. The question whether the retrospective effect given to the Ordinances is in order also does not arise for consideration. This is for the simple reason that the learned single Judge has specifically found that the Ordinances in force at the time of the promotion of the appellants and the contesting respondents did not provide for the qualification of pass in Secretariat Manual Test. The publication of the Kannur University Ordinances with retrospective effect from 7.6.2002 cannot affect the accrued rights as well as the promotion already effected in the light of the Ordinance in force at the relevant time. In support of this proposition, the learned single Judge had drawn force from the decision of the Honourable Supreme Court in ***T.R.Kapur v. State of Haryana & others*** (AIR 1987 SC 415). It was in this view of the matter that the appellants were non suited by the learned Single Judge.

10. The Honouable Supreme Court has considered the effect of retrospective amendment of qualifications for promotions and it's impact on the promotions already effected as also to vacancies in existence as on the date of such amendment. It is the consistent view of this Court as well as the Apex Court that an amendment of service conditions with retrospective effect cannot affect the rights which have already vested or accrued in terms of the service rules then in force. In the instant case, the University had effected the promotions on 17.3.2005 in strict compliance with the rules then in force to vacancies in existence as on 6.3.2005. The party respondents had availed the benefit of such promotion as well as further promotions, in some cases.

In the above circumstances, the finding that the promotions would be unaffected by the later publication of the Ordinances, even if it were to have retrospective effect does not require interference. We find no error in the judgment of the learned single Judge which requires

correction in an appeal under Section 5 of the Kerala High Court Act. The writ appeal fails and the same is accordingly dismissed.

**THOTTATHIL B.RADHAKRISHNAN
JUDGE**

**ANU SIVARAMAN
JUDGE**

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