

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

WA.No. 2018 of 2012 () IN WP(C).24960/2011

AGAINST THE JUDGMENT IN WP(C) 24960/2011 of HIGH COURT OF KERALA
DATED 09-04-2012

APPELLANT/PETITIONER:

DR.TRESA RADHAKRISHNAN
REGISTRAR,
KERALA UNIVERSITY OF FISHERIES AND OCEAN STUDIES
PANANGAD, KOCHI - 682 506.

BY ADVS.SRI.P.RAVINDRAN (SR.)
SRI.S. SHEEJA KUMARY

RESPONDENT(S)/RESPONDENTS 1 TO 3:

1. GOVERNMENT OF KERALA
REP. BY SECRETARY, DEPARTMENT OF FISHERIES AND PORTS
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM 695 001.

2. KERALA UNIVERSITY FOR FISHERIES AND OCEAN STUDIES
PANANGAD, KOCHI - 682 506.

3. DR.DEVIKA PILLAI, ASSOCIATE PROFESSOR,
KERALA UNIVERSITY OF FISHERIES AND OCEAN STUDIES,
PANANGAD, KOCHI - 682 506.

R2 BY ADV. SRI.MILLU DANDAPANI, SC, KUFOS
R BY SRI.S.P.ARAVINDAKSHAN PILLAY
R BY SENIOR GOVERNMENT PLEADER SRI C.S.MANILAL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
06-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ANTONY DOMINIC & P.V ASHA, JJ.

W.A No.2018 of 2012

Dated this the 6th day of October, 2015

JUDGMENT

Asha, J.

Appellant filed the Writ Petition challenging the cancellation of her appointment as the first Registrar of the Kerala University of Fisheries and Ocean Studies ('KUFOS' for short). While working as a Professor and Head of the Department of Aquatic Biology and Fisheries in the University of Kerala, appellant was appointed as the first Registrar of KUFOS on 28.02.2011, as per Ext.P1 notification of Government, for a period of 5 years. Consequent to this, the University of Kerala relieved her as per Ext.P3 order and allowed her to assume charge as Registrar in KUFOS, on deputation basis for a period of 5 years, on usual terms and conditions of deputation. Even though the appointment was for a period of 5 years, the Government cancelled the same even before expiry of 7 months, on 16.09.2011, as per Ext.R1(a) notification. Simultaneously, the 3rd respondent was appointed in the place of the petitioner. The Writ Petition was filed in the above circumstances, challenging

the untimely cancellation of her appointment, alleging the same as contrary to the provisions contained in the Statutes.

2. In the counter affidavit, the Government took the stand that the appellant, who had crossed the age of 55 years, cannot continue in office beyond the age of superannuation. As per sub section 7 of Section 50 of KUFOS Act, the age of retirement fixed for officers of the University is 55 years. Therefore, even if the appointment was stated to be for a period of 5 years, she was not entitled to continue in office, once she crossed the date of superannuation. It was contended that Section 37(9), which provides for appointment of the first Registrar, has to be read along with Section 50(7), which provides for the age of superannuation of the officers of the University. Since the first Registrar is an officer of the University, as defined under Section 2(v) of the Act, she has to retire from service at the age of 55 years.

3. The learned Single Judge, after considering various provisions contained in the KUFOS Act, found that the appellant was not entitled to continue beyond the normal date of superannuation and upheld the cancellation of her appointment. After considering the provisions contained in Chapter IV of the

KUFOS Act, relating to Vice Chancellor, Pro-vice Chancellor and Registrar contained in Sections 33, 35 and 37 respectively and the provisions contained in Section 50, which provides for the retirement age in respect of various officers of the University, it was held that there was nothing in those provisions which supported the claim of the appellant to continue in service beyond 55 years, which is the retirement age of officers in the University other than the Chancellor, Pro Vice Chancellor, Vice Chancellor and the teaching staff , as specified in sub section 7 of Section 50 of the Act.

4. The contention raised by the appellant before the learned Single Judge was that her appointment was a tenure appointment which is not controlled by Section 50(7) of the Act. The learned Single Judge, after analysing the provisions contained in the University Act, found that the statutory scheme, as far as KUFOS is concerned, is totally different and the post of Registrar is not prescribed as a tenure post. It was found that in the case of Vice Chancellor, Pro Vice Chancellor, etc., the Act provides that the term of appointment shall be for a period of 5 years or till they attain the age of 65 years/60 years as provided under Sections 33(6)and 35(2) of the Act. But in the case of the

Registrar coming under Section 37, it does not provide for any tenure or retirement age. Subsection 9 of Section 37, though provides that appointment of first Registrar shall be for a period not exceeding 5 years on such terms and conditions. Therefore it was held that it will not make the post of first Registrar a tenure post. The judgments relied on by the petitioner in **L.P.Agarwal v. Union of India** [AIR 1992 Supreme Court 1872], **P.Venugopal v. Union of India** [(2008) 5 SCC 1], **J.S.Yadav v. State of U.P** [(2011) 6 SCC 570] were found not applicable in the case of the petitioner, as the provisions contained in Section 37(9) will not override the provisions of Section 50. However, the learned Single Judge observed that the petitioner has not challenged Ext.R1(a) order cancelling her appointment, which was produced along with the counter affidavit.

5. We heard the learned counsel for the appellant, the learned Senior Government Pleader as well as the learned Standing Counsel for the KUFOS.

6. The learned Counsel for the appellant, pointed out that the observation of the learned Single Judge, that the appellant has not challenged the orders cancelling her appointment, is factually incorrect and that Ext.R1(a) notification was challenged

by amending the Writ Petition. The learned Government Pleader does not dispute this. We also find from the pleadings that the cancellation was challenged. Therefore we notice that the observation of the learned Single Judge on that aspect, is not factually correct.

7. The issue to be examined is whether the post of first Registrar in KUFOS is a tenure post and whether the petitioner was liable to be sent out before the expiry of 5 years, on the ground that she attained the age of superannuation. In Ext.P1 order, it is specifically stated that, her term of appointment shall be for a period of 5 years from the date on which she entered upon the office. In Ext.R1(a) order, canceling her appointment, no reason is stated. It only cancels Ext.P1-the notification appointing her. The contentions regarding retirement and age of superannuation are raised in the counter affidavit.

8. The appointment of first Registrar in the University is governed by sub section 9 of Section 37 of the Act. Going by Section 2(v), the 1st Registrar is an officer of the University. In this context, it is necessary to examine the provisions in the University Act relating to the appointment of first Vice Chancellor, 1st Pro-Vice Chancellor also along with that of 1st

Registrar. It is also necessary to refer to provisions relating to the appointment of officers of the University. Section 2(v) reads as follows:

“2. Definitions: (a) xxxx xxxxxxxx xxxxxxxx xxxxxx
xxxxxx xxxxxxxx xxxxxxxx xxxxxxxx
(v) “Officer” means an officer of the University specified in this Act or a person in the employment of the University designated as an officer by the Statutes.”

Sections 33(5) and 35(5) deal with appointment of first Vice Chancellor and Pro-Vice Chancellor, which read as follows:

“33. The Vice-Chancellor:- (1) xxxx xxxxxx xxxxxxx
xxxxxx xxxxxxx xxxxxxx xxxxx

(5) Notwithstanding anything contained in sub-section (2), the first Vice-Chancellor shall be appointed by the Government for a period not exceeding five years on such terms and conditions.

xxxxxx xxxxxxx xxxxxxx xxxxxx xxxxxxx”

“35.-The Pro-Vice-Chancellor:- (1) xxxx xxxxxx xxxxxxx
xxxxxx xxxxxxx xxxxxxx xxxxx

(5) Notwithstanding anything contained in sub-clause (1), the first Pro-Vice-Chancellor shall be appointed by the Government for a period not exceeding five years on such terms and conditions.

xxxxxx xxxxxxx xxxxxxx xxxxxx xxxxxxx”

The appointment of first registrar is governed by Section 37(9) of the Act, which reads as follows:

“37. The Registrar:- (1) xxxxxxxx xxxxxxxx xxxxxxx
xxxxxx xxxxxxx xxxxxxx xxxxxx

(9) Notwithstanding anything contained in sub clause
(1) the first Registrar shall be appointed for a period not
exceeding 5 years on such terms and conditions.

xxxx xxxxxxxx xxxxxxxx xxxxxxxx”

9. The appointment of the appellant under Section 37(9) of the Act was as per Ext.P1. But, either at the time of her appointment or thereafter, no terms and conditions were fixed, as provided in Section 37(9) of the Act. It is pertinent to note that in the case of Registrar, the age of superannuation is not specified as in the case of Vice Chancellor or Pro-Vice Chancellor. At the same time, the maximum tenure of appointment is fixed as 5 years. The claim of the appellant to continue for a period of 5 years is to be considered in the light of the order appointing her, with reference to the relevant provisions contained in the Act.

10. However, it is seen from Ext.P3 order, that the University of Kerala relieved her w.e.f 28.02.2011 on deputation basis for a period of 5 years, on usual terms and conditions of deputation. Now it is seen that consequent to the cancellation as per Ext.R1(a), she was allowed to rejoin duty as Professor and Head of the Department in the Kerala University. It is also seen that there is no considerable difference in the monetary benefits.

The age of her retirement in the University is 60 years and she is continuing in service. Though an interpretation of the provisions contained in Section 37(9) would have been necessary, in the light of the contentions raised as to the nature of her appointment in Ext.P1, we do not think it necessary to go into all those aspects at this stage, since the appointment of the appellant was treated as one on deputation by the Kerala University, as can be seen from Ext.P3 and also from the fact that she was allowed to rejoin duty in that University.

11. In view of the peculiar circumstances arising in this case, as stated above, we are of the view that it is not necessary to go into the merits of the case further, as it would only be an academic exercise.

In the above circumstances, we do not think it necessary to interfere with the judgment of the learned Single Judge. Hence we dismiss the Writ Appeal.

Sd/-
ANTONY DOMINIC
Judge
Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge