

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

WA.No. 128 of 2015 () IN WP(C).29005/2011

AGAINST THE JUDGMENT IN WP(C) 29005/2011 of HIGH COURT OF KERALA
DATED 25.11.2014

APPELLANT(S)/PETITIONER:

PROF. DR. LIZY PAUL
C.M.C MARY MATHA PROVINCIAL HOUSE, VENGOOR P.O.
PIRAROOR, KALADY - 683 574.

BY ADVS. SRI. MATHAI M. PAIKADAY (SR.)
SRI. JOSE THOMAS (PALA)

RESPONDENT(S)/RESPONDENTS:

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1. SREE SANKARACHARYA UNIVERSITY OF SANSKRIT
REPRESENTED BY ITS REGISTRAR, KALADY - 683 574.
 2. THE VICE CHANCELLOR
SREE SANKARACHARYA UNIVERSITY OF SANSKRIT
KALADY - 683 574.
 3. THE STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT
HIGHER EDUCATION (B) DEPARTMENT
THIRUVANANTHAPURAM - 695 001.
 4. DIRECTOR OF COLLEGIATE EDUCATION
THIRUVANANTHAPURAM - 695 001.

R1-R2 BY ADV. SRI. ARUN B. VARGHESE, SC, SREE SANKARACHARYA UTY.
R3, R4 BY SPL GOVERNMENT PLEADER SRI. C. S. MANILAL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 18-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & SHAJI P. CHALY, JJ.

W.A.No.128 of 2015

Dated this the 18th day of June, 2015

JUDGMENT

Antony Dominic, J.

1.The appellant filed w.P(C).29005/11, praying to direct the respondents to fix her pay from 1.5.1996 up to her superannuation and to regularise her service. She also sought for a declaration that she is deemed to be in service as a duly appointed Professor in the University with effect from 1.5.1996, apart from a direction requiring the respondents to disburse arrears of pay and pension, taking into account her service in the University as a Professor in the Department of Education. By the judgment under appeal rendered on 25.11.2014, learned single Judge dismissed the writ petition. It is this judgment which is challenged before us.

2.We heard learned senior counsel for the appellant, standing counsel for respondents 1 and 2 and the Government Pleader appearing for respondents 3 and 4.

3.Briefly stated facts of the case are that the appellant was a Professor in the St.Joseph's Training

College for women, Ernakulam. While so, she, who was then 53 years old, submitted Ext.R1(a) request dated 19.9.1994 to the then Vice Chancellor of the first respondent University stating that she aspired to have a deputation to the University from her college. Based on the request made by the appellant and ignoring that the maximum age limit for appointments as per the UGC norms was 45 years, the Vice Chancellor of the University issued Ext.P1 order dated 8.10.1994 appointing her as 'Reader' in the Department of Education. Appellant continued in that post and by Ext.P2 order dated 7.5.1996, she was promoted to the post of Professor with effect from 1.5.1996. This order makes reference to the minutes of the syndicate meeting held on 4.5.1996. By this order, along with the appellant, 15 others were also promoted to the post of professor.

4. While the appellant was thus continuing in service, a Division Bench of this Court rendered judgment dated 18.7.1996 in Sree Sankaracharya University of Sanskrit v. State [1996 (2) KLT 378] confirming the

judgment of the learned single Judge in O.P.16586/94 and connected cases and holding that appointments made by the Vice Chancellor were illegal. Acting upon the judgment of this Court, the University issued Ext.P3 order dated 26.3.1997, terminating the appointment of the appellant with effect from 29.3.1997. By this order, she was also directed to report in the parent institution to re-join duty with effect from 31.3.1997.

5.From the counter affidavit filed by the University, we notice that on 31.3.1997, the appellant attained the age of superannuation in her parent institution. Subsequently, by Ext.P4 order dated 22.4.1997, the Registrar accorded sanction to engage her on contract appointment as Professor of Education on re-employment terms for a period not exceeding three years with effect from 1.4.1997. The order also provided that "she will be paid a consolidated monthly salary of Rs.9,400/- which will be regularised later upon receipt of her LPC and pension details". The appointment was accepted and on the

basis of this order issued by the Registrar of the University, the appellant joined the post and continued in service as a contract employee. Ext.P5 proceedings of the University dated 8.12.2003 shows that the University accorded sanction to effect payment of its pension contribution of Rs.25,126/-, treating the period of her service from 18.10.1994 to 29.3.1997 as deputation.

6.Exts.P6, P9 and P11 are the orders of the University dated 23.1.2004, 17.6.2008 and 23.5.2011 respectively and Ext.p10 is an order of the Government dated 28.3.2011. These orders show that the University and the Government turned down her requests for regularising her service in the University. It is thereafter that she filed the writ petition with the prayers mentioned above, which came to be dismissed.

7.First contention raised by the learned senior counsel for the appellant is that the appellant is entitled to be deemed to be in service as a duly appointed Professor of the University from 1.5.1996. This

claim of the appellant is based on Ext.P2 order dated 7.5.1996, whereby, she was promoted to the post of Professor with effect from 1.5.1996, though her initial appointment as Reader was by Ext.P1 order dated 8.10.1994. As we have already stated, acting upon the judgment of this Court in Sree Sankaracharya University of Sanskrit (supra), her services were terminated by Ext.P3 order dated 26.3.1997. It was thereafter that she was appointed on contract basis by Ext.P4 order dated 22.4.1997 and by that time, she had already attained the age of superannuation in her parent institution on 31.3.1997. So far, the appellant has not challenged Ext.P3 order and that order of termination, in so far as she is concerned, has become final and binding. If that be so, it is impermissible for the appellant to claim any benefit on the basis of Ext.P1 order of appointment or Ext.P2 order of promotion as Professor with effect from 1.5.1996. Therefore, the first prayer of the appellant made in the writ petition and that too, at this distance of time, deserves only to be rejected for the reasons that Ext.P3 has become final and as

the challenge now raised is highly belated and stale.

8.The second part of the argument raised by the learned counsel for the appellant is based on Ext.P4. According to the learned counsel, Ext.P4 reflects a promise to regularise her service and it was acting upon that promise, the appellant altered her position and accepted the employment on contract basis. On this basis, counsel contends that the University cannot be permitted to resile from its promise to regularise her service.

9.In so far as this contention is concerned, what is relied on by the appellant to spell out a case of promise is the statement in Ext.P4 order of the Registrar that “she will be paid a consolidated monthly salary of Rs.9,400/- which will be regularised later upon receipt of her LPC and pension details”. Making repeated reference to this sentence in Ext.P4, learned counsel wanted us to understand this sentence as containing a promise to regularise her service in the University.

10. Law is settled that promissory estoppel being a principle of equity, the promise should be an unequivocal one and only if such promises are acted upon by the promisee to their detriment, the promisor will be estopped from resiling from the promise. We have read and re-read Ext.P4 in its entirety and to our mind, what is offered to be regularised in Ext.P4 is the monthly salary to be paid to the appellant and there is no promise whatsoever to regularise her service in the University. This is all the more so for the reason that the appellant joined the service of the college while she was working as a Professor in St. Joseph's Training College for Women, Ernakulam. When she joined the service of the University as Reader, she had already attained 53 years of age. She attained the age of superannuation on 31.3.1997. It is thereafter that she was appointed on contract basis by Ext.P4 order dated 22.4.1997 which means that at the time when the appellant was appointed on contract basis in the University, she was a teacher who had already retired from the service of an aided

college, entitling her all consequential benefits. Such a retired person cannot again claim status of a regular employee of the University and no rule entitling a retired person for regular employment was also shown to us.

11. Even if it is assumed that Ext.P4 contained a promise as contended by the learned counsel for the appellant, we were not in a position to accept the contention that the alleged promise is an enforceable one. By the time Ext.P4 was issued, the University had already framed statutes under the Sree Sankaracharya University of Sanskrit Act, 1994. The statutes provided for appointment and also the eligibility conditions. Therefore, nobody, including the Registrar or the Vice Chancellor, could have made a promise that irrespective of the University Act and the statutes and bypassing all the regulations made by itself, a person who was appointed on contract basis would be regularised in service. We are also not shown any law empowering the Registrar to make such a promise. In that view of the matter, we are

unable to see any promise in Ext.P4 which is enforceable.

12.Learned counsel for the appellant referred to Ext.P12, an order of regularisation, whereby services of certain other teachers were regularised by the University and pleaded for parity. In our view, the case of the beneficiaries of Ext.P12 and the case of appellant stand on a totally different factual basis. Ext.p12 is regarding persons who joined the service satisfying all eligibility criteria. Their services were terminated following the judgment of this Court referred to above. It was thereafter that such persons were appointed on contract basis and were later regularised. That case is totally incomparable to the case of the appellant who joined the very service at the fag end of her career at 53 years of age and obtained contract appointment after she attained the age of superannuation. Therefore, we are unable to accept the case of parity pleaded by the appellant.

13. Apart from all this, we also find that the claim of regularisation made by the appellant was repeatedly turned down by the University and the Government as per Exts.P6, P9, P10 and P11. None of these orders are challenged even in the writ petition now under consideration.

14. For all the aforesaid reasons, we are of the view that the learned single Judge is fully justified in dismissing the writ petition.

Appeal fails and is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
SHAJI P. CHALY, Judge.

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PS to Judge