

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE C.K. ABDUL REHIM

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

WP(C).No. 2101 of 2010 (K)

PETITIONER:

T. GIRIJA DEVI,
AGED 53, W/O. LATE SUKUMARAN NAIR,
KAIVITTUVILAKOM VEEDU, ANAYARA.P.O, THIRUVANANTHAPURAM,
(PEON, ACADEMIC, STAFF COLLEGE, KARIAVATTOM).

BY ADV. SRI.D.AJITHKUMAR

RESPONDENTS:

1. VICE CHANCELLOR,
UNIVERSITY OF KERALA,
PALAYAM, THIRUVANANTHAPURAM.
2. THE REGISTRAR,
UNIVERSITY OF KERALA,
PALAYAM, THIRUVANANTHAPURAM.
3. THE DIRECTOR,
ACADEMIC STAFF COLLEGE,
KARIAVATTOM, THIRUVANANTHAPURAM.
4. THE DIRECTOR,
PLANNING AND DEVELOPMENT,
UNIVERSITY OF KERALA.
5. FINANCE OFFICER,
UNIVERSITY OF KERALA,
PALAYAM, THIRUVANANTHAPURAM.
6. UNIVERSITY GRANTS COMMISSION,
REPRESENTED BY ITS SECRETARY
BAHADUR SHAH ZAFAR MARG, NEW DELHI-110 002.

R1-R5 BY ADV. SRI.BECHU KURIAN THOMAS, SC, UTY. OF KERALA
R6 BY ADV. SRI.S.KRISHNAMOORTHY, CGC.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

APPENDIX

PETITIONERS' EXHIBITS

- EXT- P1- TRUE COPY OF THE ORDER OF THE 4TH RESPONDENT
DATED 09-11-1999.
- EXT- P2- TRUE COPY OF THE ORDER DATED 14-03-2001 OF THE
4TH RESPONDENT
- EXT- P3- TRUE COPY OF THE ORDER No.P1.F.3-3871/89 DATED 24-03-2001.
- EXT- P4- TRUE COPY OF THE ORDER No.P1.F.3/3871/87 DATED 20-06-2002.
- EXT- P5- TRUE COPY OF THE ORDER No.P1.F/ASC/09 DATED 05-05-2009
ISSUED BY THE 2ND RESPONDENT.
- EXT- P6- TRUE COPY OF THE RELEVANT PORTION OF THE GUIDELINES FOR
ACADEMIC STAFF COLLEGE.
- EXT- P7- TRUE COPY OF THE REPRESENTATION SUBMITTED BEFORE THE
1ST RESPONDENT DATED 09-06-2009
- EXT- P8- TRUE COPY OF THE APPOINTMENT ORDER DATED 15-10-2009.

RESPONDENTS' EXHIBITS

- EXT- R1 (a)- TRUE COPY OF THE GUIDELINES FOR ACADEMIC STAFF COLLEGE
TENTH PLAN.

True copy

P.A. To Judge

AMG

C.K. ABDUL REHIM, J.

W.P.(c) No. 2101 OF 2010-K

DATED THIS THE 13th DAY OF FEBRUARY, 2015.

J U D G M E N T

The petitioner was working as a Casual employee on daily wage basis at the Academic Staff College under the University of Kerala from 1988 onwards. The Syndicate of the University had taken a decision on 23-10-1999 to appoint her as Part Time Contingent Employee. Accordingly she was appointed as Part Time Contingent Sweeper/Peon/Cleaner with effect from 01-11-1999 and she was paid remuneration on that basis. In Ext.P1 proceedings issued in this regard it is mentioned that the Vice-Chancellor of the University had accorded sanction for the payment and the 3rd respondent was directed to open Service Book of the petitioner. Thereafter in the year 2001, Syndicate of the University had taken a decision to appoint the petitioner as a Full Time Employee and the Vice-Chancellor had accorded sanction to appoint her as Full Time Peon/Sweeper/Cleaner, as evidenced from Ext.P2

proceedings dated 14-03-2001. Pursuant to the above decision sanction was accorded to fix her pay in the scale of Rs.2,010-3,680, as evidenced from Ext.P3 proceedings. On the basis of the implementation of revised guidelines issued by the University Grants Commission (UGC) with respect to Academic Staff College, the Syndicate in its meeting held on 20-04-2002 had re-designated the full time post held by the petitioner as 'Peon'. Exhibit P4 is the relevant proceedings issued in this regard. Evidently the petitioner had continued in the regular service in the Academic Staff College with effect from 14-03-2001 and had drawn salary in the pay scale fixed as mentioned above. During the year 2009 the University had issued Ext.P5 proceedings cancelling the regular appointment of the petitioner stating that certain remarks were made by the Finance Department to the effect that the appointment was not on the basis of any selection procedure or after ascertaining suitability or merit. It is contended that cancellation of appointment of the petitioner was made without issuing any notice or

without affording any opportunity to object such action. On receipt of Ext.P5 the petitioner had submitted a representation before the Vice-Chancellor as evidenced from Ext.P7 requesting to permit her to continue in the post of Peon in the Academic Staff College. But in Ext.P8 order the 2nd respondent had informed that on the basis of recommendations of the Standing committee concerned, the Syndicate has taken a decision to permit the petitioner to continue as a casual employee on daily wage basis for a period of 89 days. It is aggrieved by Exts.P5 & P8, this writ petition is filed.

2. In the counter affidavit filed on behalf of respondents 1 to 5 it is stated that the Academic Staff College is not a Department or establishment of the University and the University is only posting staff in the Academic Staff College under the guidelines issued by the UGC. However it is admitted that, the Vice-Chancellor of the posting University has got power to make appointment of Peon in the Academic Staff College. It is further admitted

that the appointment of the petitioner as Peon was made on the basis of recommendations of the Syndicate of the University, which was convened for discussing implementation of the revised guidelines of UGC for the 10th plan period. But it is pointed that under the guidelines there was a specific clause to the effect that, daily wage staff cannot be regularised and they should be engaged as per Rule. Copy of the guidelines with respect to 10th plan period is produced as Ext.R1 (a). According to the respondents since Ext.R1 (c) does not permit regularisation of daily wage staff. The appointment of the petitioner as Full Time Sweeper/Peon/Cleaner effected based on the decision of the Syndicate which met on 20-04-2002 was not regular and proper because such selection was not made on the basis of any proper procedure for ascertaining suitability or merit.

3. Going by Ext.R1 (a) guidelines for establishment of Academic Staff College formulated by the UGC, structure of the Academic Staff Council is provided which

include one post of Peon. It is true that qualification with respect to various posts as well as the method of appointment was prescribed in the guidelines. With respect to the post of Professor, Lecturer, Reader etc., it is mentioned that daily wage staff cannot be regularised. But the guidelines does not prescribe any particular qualification or method of appointment with respect to the post of Peon. In the case at hand it is mentioned that the petitioner was employed as a casual labourer (daily wage employee) in the Academic Staff College from 1988 onwards. Subsequently she was absorbed as Part Time Contingent Employee during 1999. Thereafter she was absorbed as a regular staff in the year 2001. The regular appointment was approved at all levels and pay was sanctioned on a particular pay scale. The petitioner continued as such from the year 2001 onwards till 2009. There is no justification at all on the part of the University to cancel the appointment made 8 years back, on the basis that the Finance Department had pointed out some

irregularity with respect to regularisation of daily wage employee. More over this court is convinced that there is no specific guidelines prescribed with respect to qualification and method of appointment to the post of Peon. An appointment made or regularisation effected by an employer cannot be cancelled after a very long period putting the employee to severe prejudice, merely on the basis that at the time of appointment the authority had failed in following the exact procedure prescribed or that the employee had failed in complying with all procedural formalities with respect to the selection. Further it is evident that the cancellation of the appointment was made without issuing any notice to the petitioner and without affording her any opportunity to object such action. It is noticed that pursuant to Ext.P5 the service of the petitioner was terminated and she was allowed to continue only on daily wage basis. Learned counsel for the petitioner fairly conceded that the petitioner had attained the age of superannuation.

4. Under the above mentioned circumstances the writ petition is allowed and Ext.P5 is hereby quashed. However it is made clear that the petitioner shall not be entitled for pay and allowances on a regular basis for the period between Ext.P5 and the date of superannuation. But at the same time it is made clear that she will be entitled for all terminal benefits reckoning such period as notional regular service. Consequential steps for payment of benefits due to the petitioner shall be taken by the respondents without any further delay. At any rate the benefits shall be worked out and paid to the petitioner within a period of 3 months from the date of receipt of a copy of this judgment.

Sd/-
C.K. ABDUL REHIM
JUDGE

AMG

True copy

P.A. to Judge