

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

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

WA.No. 1289 of 2015 () IN WP(C).9509/2014

AGAINST THE JUDGMENT IN WP(C) 9509/2014 of HIGH COURT OF KERALA
DATED 26-03-2015

APPELLANT(S)/RESPONDENTS 1 TO 3:

1. STATE OF KERALA
REP. BY THE SECRETARY TO GOVERNMENT
HIGHER EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM - 695 001.
2. DIRECTOR OF COLLEGIATE EDUCATION,
VIKAS BHAVAN, THIRUVANANTHAPURAM - 695 001.
3. THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION
OFFICE OF THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,
KOLLAM - 691 001.

BY SENIOR GOVERNMENT PLEADER SRI VIJU THOMAS

RESPONDENT(S)/PETITIONERS & RESPONDENTS 4 TO 7:

1. SREENISH T.V
S/O. K.KUNJIRAMAN, ASSISTANT PROFESSOR
DEPARTMENT OF POLITICAL SCIENCE
SREE NARAYANA COLLEGE, CHEMPAZHANTHY
RESIDING AT THILATHIL HOUSE
PERUVALATHU PARAMBA P.O., IRIKKUR (VIA)
KANNUR DISTRICT-670593.
2. PRADEEP S.
ASSISTANT PROFESSOR, DEPARTMENT OF POLITICAL SCIENCE
SREE NARAYANA COLLEGE, PUNALUR
RESIDING AT PRADEEP SADANAM, PANAPETTY, PORUVAZHI P.O.
KOLLAM-690 520.
3. UNIVERSITY OF KERALA
REP. BY ITS REGISTRAR, UNIVERSITY CAMPUS
THIRUVANANTHAPURAM-695 034.
4. THE PRINCIPAL,
SREE NARAYANA COLLEGE, CHEMPAZHANTHY -695 587.
5. THE PRINCIPAL,
SREE NARAYANA COLLEGE, PUNALUR - 691 305.
6. THE MANAGEMENT OF SREE NARAYANA COLLEGES
REP. BY ITS MANAGER, SREE NARAYANA TRUST
P.B.NO.63, VARKALA -695 141.

R1-R2 BY ADV. SRI.P.C.SASIDHARAN
R1-R2 BY ADV. SRI.AJAYA KUMAR. G
R4-R6 BY ADV. SRI.A.N.RAJAN BABU
R3 BY ADV. SRI.PAUL JACOB, SC, UNIVERSITY OF KERALA
R BY SRI.BECHU KURIAN THOMAS, SC, UNIVERSITY OF KERALA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
10-12-2015, THE COURT ON 22-12-2015 DELIVERED THE
FOLLOWING:

“C.R”

ANTONY DOMINIC & P.V ASHA, JJ.

W.A No.1289 of 2015

Dated this the 22nd day of December, 2015

JUDGMENT

Asha, J.

Respondents 1 to 3 in the Writ Petition, the authorities under the Collegiate Education Department of the State, have filed this appeal, aggrieved by the judgment of the learned Single Judge directing payment of salary to the writ petitioners, who were appointed by the 7th respondent-SN Trust as Assistant Professors in the Colleges within the jurisdiction of the 4th respondent-University of Kerala. Parties are referred to herein as described in the writ petition.

2. The writ petitioners were appointed as Assistant Professors in Political Science, as per Exts.P1 and P2 orders dated 1.10.2012, in the Sree Narayana College, Chembazhanchy and Sree Narayana College, Punalur respectively, which are under the management of the 7th respondent S.N Trust. The appointments of the writ petitioners were made from a rank list in which the 1st petitioner was ranked 5th and the 2nd petitioner was ranked 12th. As per Ext.P6 order dated 31.10.2013 of the University of Kerala, the 1st petitioner's appointment was approved w.e.f. 10.10.12 against a vacancy which arose on promotion of Sri L.Thulasidharan, as Principal

in SN College, Chempazhanthi, whereas the 2nd petitioner's appointment was approved w.e.f. 1.10.12 against a vacancy which arose on transfer of one Smt.Archa Arun in S.N College, Punalur.

3. The Deputy Director of Collegiate Education, on verification of the records found that Sri. B. Suresh kumar, a Political Science hand was the Principal of S.N College, Chembazhanthi as on 10.10.2012, the date of appointment of the 1st petitioner. Therefore, with the available workload of 58 hours, there were only 10 hours left after allocating 48 hours to 3 teachers and that, out of the remaining 10 hours, 5 hours had to be allotted to the Principal and the balance 5 hours was not sufficient to justify any more appointment. Accordingly the Deputy Director, by Ext.P7 letter dated 8.2.2014, returned the proposal sent to him, with respect to the 1st petitioner to the Principal, informing that the University was being requested to review the approval, pointing out that the details furnished by the College in the statement of workload were factually incorrect giving a different name for the Principal with English as his subject of teaching, whereas Sureshkumar, a Political Science hand was the Principal at the relevant time.

4. In May 2013, Sri B.Suresh Kumar, the Principal from S.N College, Chembazhanthi was transferred to S.N College, Punalur, where the 2nd petitioner was appointed. The Deputy Director of

Colegiate Education found that the workload available in S N College, Punalur was only 6 hours; therefore from the date of joining of Sri B.Suresh Kumar in the post of the Principal, with Political Science as subject of teaching, in S.N College, Punalur, there was no post to accommodate the 2nd petitioner, Sri.S.Pradeep, whose appointment was approved by the University from 1.10.2012. Therefore, by Ext.P8 letter dated 28.2.2014, the Director of Collegiate Education, was addressed informing that his appointment was also not liable to be approved.

5. By Ext.P9 letter dated 30.1.2014, the Director of Collegiate Education addressed the Registrar of the University, requesting to review the approval granted to the petitioners, explaining the position in the S.N college, Chembazhanthi and S.N College, Punalur with Sri B.Suresh Kumar as the Principal with Political Science as subject of teaching, continuing in either of the Colleges, when the workload available for an Assistant Professor is 16 hours. It was also pointed out that as the 1st petitioner was ranked 5th, the appointment of those ranked below him were also held up.

6. These Exts.P7 to P9 were the orders under challenge in the Writ Petition. The petitioners sought for direction to the respondents, ie, the appellants herein, to disburse them salary and other benefits.

7. When objection was raised by the 3rd respondent, 7th respondent Trust issued Ext.P10 proceedings on 11.03.2014, in which it was ordered that the service of the 1st petitioner for the period from 1.10.2012 to 13.05.2013, ie. the date on which the Principal was relieved from Chembazhanthi to Punalur, on transfer, will be treated as duty at S.N College, Nattika on working arrangement against the post of one Sri K.S.Pavithran relieved from service w.e.f 16.11.2010. Similarly in the case of the 2nd petitioner, it was ordered that, from 13.05.2013 to 31.03.2014, ie. till the date of retirement of Sri N.Shaju, Associate Professor, Sree Narayana College for Women, Kollam, the 2nd petitioner may be treated as on duty on working arrangement at S.N College, Chelannur vice Sri. C. Vinodkumar, promoted as Principal and posted at Nattika from 22.6.2012. The Manager has in the letter dated 11.3.2014 addressed to the Deputy Director of Collegiate Education, Kollam, stated that vacancies were available under the educational agency in different places during the period from 16.11.2010 onwards and requested to honour the bills in respect of the petitioners.

8. Respondents 1 to 3 as well as the 4th respondent University filed counter affidavits pointing out that there was no sanctioned post as on 11.10.12 in Chembazhanthi and from 13.5.2013 in Punalur based on the available workload, and that approval was

granted since the college misled the University by not including the name of the Principal in the list of teachers of Politics Department. However it was stated that, in a meeting held on 24.11.2014 convened by the Government, it was decided that approval can be granted to the 1st petitioner's appointment w.e.f 1.6.2013 on transfer of the Principal to the S.N.College, Punalur. The University has already withdrawn the approval already granted to appointment of the petitioners and called for revised proposals for approval.

9. The learned Single Judge disposed of the Writ Petition directing payment of salary, on the ground that the Government had sanctioned posts and University had already granted approval. Therefore, the 1st petitioner was found entitled to salary for the period from 11.10.2012 onwards. It was further observed that the agreement executed between the Government and the management shall be worked out independently as to payment of salary from 11.10.2012 to 31.05.2013. Accordingly, the 3rd respondent was directed to release the salary of the 1st petitioner from 11.10.2012 onwards within a period of 3 months. It was made clear that it will be open for the Government to recover the salary from 11.10.2012 to 31.05.2013 from the management, if so warranted.

10. As far as the 2nd petitioner is concerned, it was found that, on account of the transfer of the Principal from Chembazhanthi

to Punalur, he was treated as excess, and salary was not paid on account of that. The learned Single Judge directed that whether the 2nd petitioner has become excess or supernumerary has to be decided in appropriate manner and salary shall be paid to him from 1.10.2012. It was made clear that it was open to the Directorate of Collegiate Education to find out whether the 2nd petitioner is continuing as excess or on a supernumerary in the post, on account of transfer of the Principal. The payment of salary to the 2nd petitioner also was accordingly directed subject to the decision to be taken by the Deputy Director of Collegiate Education, and to make the payment within a period of 3 months.

11. This appeal is filed as against these directions. We heard the learned counsel appearing on either side and considered the contentions with reference to the pleadings and the relevant orders.

12. The petitioners filed the writ petitions claiming salary on the ground that their appointments were approved by the University as per Ext P6.

13. From the counter affidavit as well as Ext.R4(c) proceedings of the University, it is clear that the approval was not liable to be granted to the appointments of the petitioners and Ext.P6 proceedings approving the appointments, happened to be issued because the College misled the University without including the name

of Principal of the College in the list of teachers of Politics Department. It is relevant to note the following averments in paragraphs 8, 9 and 12 of the counter affidavit of the University:

8. xxxxxAt this juncture it is pertinent to point out the circumstances under which this respondent had initially granted approval to the appointment of the petitioners. At the time of submission of the proposal for the initial appointment of the petitioners the authorities of SN College Chempazhanthi wherein the 1st petitioner was appointed had misled the University by suppressing the name of Principal from the list of teachers in the Department of Political Science.”

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“ 9. xxxxHowever this appointment would not have been approved by the University had the college authorities furnished the name of Sri. B. Sureshkumar who was the Principal of S.N college, Chembazhanthi, along with the list of teachers. xxxx

“12. xxxx xxxx xxxx xxxx xxxx It was held in the meeting that the approval granted by the University of the st petitioner was under a mistake due to the fraud committed by the 5th respondent and hence the approval ought to be withdrawn xxxxxxxx.

14. The University has already called for a revised proposal from the 7th respondent, as post is available only with effect from 13.5.2013 and appointments are to be made on the basis of the rank in the select list and the 1st petitioner is 5th rank holder in the select list.

15. The Government’s liability to pay salary to a teacher, in a private college is subject to the condition that the appointment is to a sanctioned post, which is admissible as per the work load as well as staff pattern. Therefore, before disbursing the salary to the teachers,

Government and its officers are duty bound to examine whether there is a sanctioned post and whether there is sufficient workload justifying a fresh appointment in the College, where appointment is made. The 4th respondent University has in its counter affidavit stated that as per Note to Chapter XIII Clause 3 of the Kerala University First Ordinances, the workload shall be as provided in the regulations issued by the UGC. As per clause 15.1 of the UGC Regulations (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges) 2010, the workload of the teachers in the post of Assistant Professor is 16 hours and that of Associate Professors and Professors is 14 hours. The Principal has to be allotted 3 to 5 hours. Appointment is permissible if there is a balance of 9 hours or more. It is stated that, as at present the workload is calculated as 16 hours per week for Assistant Professors and 14 hours per week for Associate Professors and 5 hours per week for Principals. The workload assessed for Political Science Teachers in the SN College, Chembazhanthi was 58 hours at the relevant time. The list furnished by the management is produced as Ext.R4(a), which contains the name of only 4 teachers including that of the 1st petitioner. The name of the Principal was not included in it, though he was a Political Science hand.

16. Thus it is clear that a fresh appointment in the post of

Assistant Professor in Politics was not permissible in SN College Chembazhanthi as on 10.10.2012, as there were only 10 hours after allocating 16 hours each for 3 teachers and as against the remaining 10 hours there was the Principal who had to take 5 hours and the remaining 5 hours were not sufficient for a fresh appointment.

17. Similarly, in the case of the 2nd petitioner, it is stated that the work load available in S.N College, Punalur was only 6 hours and on transfer of the Principal who is qualified to teach Political Science, from Chembazhanthi to Punalur, there was no justification for another teaching post for the subject Politics. Therefore, the 2nd petitioner has to be ousted from his post for want of sufficient workload to accommodate him, as soon as the Principal joined duty in May 2013.

18. The University has in its counter affidavit pointed out that Ext.P10 is the proceedings by which the 7th respondent accommodated the 1st petitioner on working arrangement from 10.10.2012 to 13.5.2013 in S.N College, Nattika. The 7th respondent does not have any authority to post the teachers on working arrangement with retrospective effect, in order to claim approval or salary to the teachers.

19. As per Section 57(1) of the Kerala University Act, appointment to posts eligible for payment of salary by the Government shall be made only against posts sanctioned by the

Government. The conditions of service of teachers in Private Colleges are governed by Chapter 2 of the Kerala University First Statutes, 1979. Statutes 4(3) to (5) provide for the constitution of selection committee and preparation of select list for appointment of teachers in educational agencies which have entered into agreement with the Government for direct payment of salary to teachers. Statute 10 provides for the method of selection of teachers. As per Statute 10(3), the selection committee is to prepare select list only on the basis of merit, and appointments are to be made only in the order of merit as indicated in the list. In this case, the 1st petitioner is ranked 5th and 2nd petitioner is ranked 12th.

20. As per Statute 14 of the University 1st Statute, the University is to approve the appointment after verifying whether it is in accordance with the staff pattern, and whether the appointee is duly qualified. The Deputy Director of Collegeate Education is to verify whether the appointment is made to a post which is in accordance with the staff pattern and workload fixed by the University, before honouring the claims for salary.

21. After appointing the 1st petitioner in a college, knowing fully well that there was no post available, and after furnishing a false list of teachers for the purpose of approval, the 7th respondent cannot be permitted to adopt such illegal methods of retrospective posting of

teachers at their convenience. At any rate, the Government is not liable to pay the salary to the teachers, on the basis of such working arrangement with retrospective effect, that too, in colleges outside the jurisdiction of the Kerala University, without the knowledge or consent of the University and the educational authorities. In case post was available there at the relevant time in SN College, Nattika, it was upto the 7th respondent to post him at the appropriate time in Schools/ colleges where posts are available. That liability cannot be fastened on the Government. The University has issued revised orders on staff fixation as per Ext.R4(d), according to which, the permissible number of teachers for the subject Political Science is, 3+Principal.

22. Thus from Ext.R4(c) as well as Ext.R4(d), it can be seen that the workload in SN College, Chembazhanthi was 58 hours and the 4th post of Assistant Professor in Political Science became available for appointment in the S.N College, Chembazhanthi, only from 13.5.2013 onwards, on transfer of the Principal to Punalur. The University has called for revised proposal from the 7th respondent for approval of appointment of the 1st petitioner from 13.5.2013. In terms of the provisions contained in Statute 10, the appointments of the candidates ranked below him are also to be revised and re-arranged on the basis of the date of appointment of the 1st petitioner, as appointments are to be made in the order of merit.

23. It is relevant to note that under Section 57(1) of the Kerala University Act, salary is payable by the Government only when appointment is made against posts sanctioned by the Government. Going by Ext.R4(c) and (d), there will not be any post for the 1st petitioner till the transfer of the Principal to S.N College, Punalur. Therefore, his appointment in S.N College, Chempazhanthi could not have been approved w.e.f 11.10.2012, as done in Ext.P6, which is withdrawn. On account of the illegalities committed by the management, the 2nd petitioner who was ranked 12th could work in the S.N College, Punalur, against a sanctioned post till the transfer of the Principal on 13.5.2013. In the above circumstances, since the provisions in the Kerala University Act provide that appointment shall be made in accordance with the rank in the select list, it is for the management to see that candidates are appointed in accordance with their rank in the sanctioned posts in preference to those ranked below them. It is incumbent on the authorities to avoid situations where candidates lower in rank are permitted to work while meritorious candidates are kept waiting. It is also incumbent on the management to see that the teachers who had to work on account of the illegal appointments made by them do not suffer. Therefore, as far as the 1st petitioner is concerned, it is for the management to see that he is paid salary for the period from 1.10.2012 to 13.5.2013. It is the

callousness of the management that led to the appointment of the 1st petitioner in a college where there was no post till 13.5.2013 and the availability of a post for the 2nd petitioner in another College where there was a post available from 1. 10.2012 till 13.5.2013. It is for the management to see that the appointments are made in Colleges where there are sufficient workload and against sanctioned posts, instead of adopting fraudulent means, as explained in the counter affidavit of the 4th respondent.

24. The responsibility of the Government-the appellants herein, for payment of salary comes only when the appointment is made against sanctioned post as provided in Section 57(1) of the Kerala University Act. Therefore, the Government is not bound to pay salary to the petitioners, unless and until there is sufficient workload and the approval is granted on the basis of such workload. Now that there is no approval for the appointments of the petitioners, as Ext.P6 is withdrawn/found liable to be withdrawn by the University, the payment can be made only on fresh orders of approval.

25. The learned counsel appearing for respondents 1 and 2 argued that the workload is to be assessed on the basis of the ordinance issued by the University and going by the provisions in the ordinance, there was sufficient workload justifying the appointment of the petitioners. As far as the 1st petitioner is concerned, according to

the learned counsel, vacancy is available w.e.f 10.10.2012 and on the basis of the original approval he was entitled to get salary. At any rate, there is a vacancy for the period from 11.05.2013 onwards consequent to the transfer of the Principal.

26. As far as the 2nd petitioner is concerned, according to the learned counsel, there was justification for his appointment upto the transfer of the Principal on 11.05.2013 and there is no reason for not paying salary to him. The further contention is that when the Principal joined the S.N College, Punalur, he became supernumerary and therefore he is entitled to salary till his absorption against a future vacancy. But we do not find any provisions in the Kerala University Act, statute or ordinance to treat a teacher as supernumerary when he is rendered surplus, based on the the workload as per the staff fixation proceedings for the college, and to continue payment of salary. As provided in Section 57 as well as in the statutes, in order to appoint a teacher, there should be sufficient workload in the college and in order to retain him in the college also, the workload should be sufficient to accommodate him. For want of vacancy, the juniormost teacher has to be thrown out. It is for the management to see that he is accomodated in a vacancy if any available in any of the colleges under it or in the next arising vacancy. In this context, it is also relevant to note that initial appointment itself has to be in accordance

with law and proper, in order to avail the benefit of the provisions for being treated as a discharged probationer eligible for re-appointment against the next arising vacancy, as provided in the statute.

27. The conduct of the management, as projected in the counter affidavit of the University in furnishing false list of teachers so as to make appointments in non-existent posts is highly objectionable. As the University has withdrawn the approval granted to the appointments, the learned Single Judge was not right in directing disbursement of salary to the petitioners. It is true that there is a post available for the 1st petitioner for the period from 13.5.2013 and he would be entitled to salary for the said period, provided there is a revised order of appointment, duly approved by the University. It is for the management to furnish revised proposal to the University at the earliest, as directed in Ext R3(c).

28. Further we found that there was no reason for the learned Single Judge to direct/grant liberty to determine whether the 2nd petitioner became excess or supernumerary when the University as well as the Directorate of Collegiate Education have already found that the 2nd petitioner had become excess in the college at Punalur with effect from 13.5.2013. It is upto the management to post him in a college where there is sufficient workload. The first appointment of the 2nd petitioner cannot have effect from a date earlier to the date of

appointment of the 1st petitioner and others ranked above him. In order to have the right of discharged teachers, the initial appointment should be valid with approval. Now that the University has withdrawn the approval, there is no basis for the claim of the 2nd petitioner, as against the appellants herein. It is for the 7th respondent management to honour his claims. At any rate, there is no right available for a teacher rendered excess to be treated as supernumerary and to get salary till his absorption in a regular vacancy, as contented on behalf of the 2nd petitioner, relying on Statute 14(3). Statute 14 of the 1st statute 1979, read as follows:

“14. Approval of appointment- (1) Approval of every appointment to the teaching post shall be made by the Syndicate subject to the conditions that the appointment is in accordance with the staff pattern fixed by the University and that the person so appointed is fully qualified for the post.

(2) The Deputy Director of Collegiate Education concerned shall verify before making direct payment of salaries as to whether the post for which payment is claimed is in accordance with the staff pattern and workload fixed by the University. Doubtful cases shall be referred to the University for clarification and the correctness of direct payment ensured.

(3) In the case of those private colleges coming under the Direct Payment Scheme, the Director of Collegiate Education or the Officer authorised by him in this behalf shall verify in consultation with the University as to whether the teaching posts in private colleges are in excess of the post sanctioned by the University. However, in the case of incumbents declared as supernumeraries by the University, the controlling officers shall ensure that no fresh appointment is made against future vacancies until all the supernumeraries are absorbed against those vacancies. The direct payment of salaries shall not be made to the persons appointed against fresh vacancies, before the absorption of supernumeraries.”

29. We find that there is no circumstance for declaring the 2nd

petitioner as supernumerary and to allow him to continue in a college where there is no workload and to fasten the liability to pay the salary on the Government by allowing him to continue in such non-existent posts. It is the duty of the 7th respondent management to make appointments in accordance with rules in Colleges where there are sufficient workload and to process the papers for approval accordingly with correct details instead of adopting fraudulent methods.

30. In these circumstances, we are of the view that it is for the management to pay salary to the petitioners for the period from the date of their appointment till the date of effect of approval which is to be granted by the University, on the basis of the revised proposal to be submitted by the 7th respondent, since the 7th respondent has posted them in non-existent posts.

In the circumstances of the case, we direct that:

(i) the 7th respondent shall forward revised proposal of appointment of petitioners and others as directed in Ext.R4(c) proceedings within a period of one month from the date of receipt of a copy of this judgment;

(ii) the 4th respondent shall consider the revised proposal for approval in accordance with law, and pass orders on it within a further period of one month of the receipt of revised proposal;

(iii) Respondents 2 and 3 shall disburse the salary due to the petitioners on the basis of the orders of approval to be passed by the 4th respondent within a period of 1 month from the date of receipt of such orders from the University;

(iv) The 7th respondent shall disburse the salary to the petitioners for the period from 1.10.12 upto the date from which the University grants approval to their appointment on the basis of directions (1) and (2) above, within a period of 3 months from the date of receipt of a copy of this judgment.

The Writ Appeal is allowed with the above directions.

Sd/-
ANTONY DOMINIC
Judge

Sd/-
P.V.ASHA
Judge

rtr/

/true copy/

P.S to Judge