

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

WP(C).No. 3106 of 2013 (K)

PETITIONER:

PRADEEP BABU AGED 50 YEARS
P.S.TO REGISTRAR
SREE SANKARACHARYA UNIVERSITY OF SANSKRIT
KALADY-683574

BY ADVS.SRI.ELVIN PETER P.J.
SRI.T.G.SUNIL (PRANAVAM)
SRI.K.R.GANESH

RESPONDENT (S) /RESPONDENTS:

1. THE VICE CHANCELLOR/
PRO-VICE CHANCELLOR-IN-CHARGE OF VICE CHANCELLOR,
SREE SANKARACHARYA UNIVERSITY OF SANSKRIT,
KALADY-683 574.

2. THE REGISTRAR
SREE SANKARACHARYA UNIVERSITY OF SANSKRIT
KALADY-683574.

Addl.3. GEORGE.C.C.
SECTION OFFICER (HIGHER GRADE)
SREE SANKARACHARYA UNIVERSITY OF SANSKRIT
KALADY -683 574.

(ADDL.R3 IS IMPEADED AS PER ORDER DATED 26/03/2013
IN IA 2586/2013.)

R BY ADV. SRI.ARUN B.VARGHESE,SC, SREE SANKARACHARYA UTY.
RADDL.R3 BY ADV. SRI.N.SUGATHAN
RADDL.R3 BY ADV. SMT.VARSHA BHASKAR
RADDL.R3 BY ADV. SRI.S.PRASANTH (AYYAPPANKAVU)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

A P P E N D I X

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF ORDER NO.SSUS/ADMN/B/SO/RMT/205/2000 DATED 10.04.2000 ISSUED BY THE UNIVERSITY.

EXT.P2: TRUE COPY OF ORDER NO.Ad.B/3394/2001/SSUS DATED 11.7.2001 ISSUED BY THE UNIVERSITY DECLARING PROBATION OF THE PETITIONER IN THE CATEGORY OF SECTION OFFICER.

EXT.P3: TRUE COPY OF THE ORDER NO.Ad.B/9951/2002/SSUS DATED 17.4.2002 ISSUED BY THE UNIVERSITY.

EXT.P4: TRUE COPY OF ORDER NO.Ad.B/6671(1)ssus/04 DATED 10.5.2005 ISSUED BY THE UNIVERSITY APPOINTING THE PETITIONER AS P.S TO REGISTRAR.

EXT.P5: TRUE COPY OF THE DECISION OF THIS HON'BLE COURT REPORTED IN 1998(1) KLT 766.

EXT.P6: TRUE COPY OF THE JUDGMENT DT.12.8.97 IN W.A.NO.689/1989 OF THIS HON'BLE COURT.

EXT.P7: TRUE COPY OF THE REPRESENTATION DATED 14.3.2011 SUBMITTED BY THE PETITIONER BEFORE THE UNIVERSITY.

EXT.P8: TRUE COPY OF THE MINUTES OF THE 119TH MEETING SYNDICATE HELD ON 7.8.2012.

EXT.P9: TRUE COPY OF THE REPRESENTATION DATED 28.1.2013 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENTS WITHOUT TRANSLATION.

EXT.P10: TRUE COPY OF THE ORDER DT.23.3.07 IN SLP NO.(c) NO.20813/2006 OF THE HONOURABLE SUPREME COURT.

2ND RESPONDENT'S EXHIBITS

EXT.R2(a):TRUE COPY OF THE ORDER DATED 4.1.07 IN SPECIAL LEAVE TO APPEAL (CIVIL) NO.20813/2006 OF THE HONOURABLE SUPREME COURT OF INDIA.

EXT.R2(b): TRUE COPY OF THE ORDER NO.Ad.B/6671(1)SSUS/04/DATED 26.05.2005.

EXT.R2(c): TRUE COPY OF THE ORDER NO.Ad.B.S.O/SSUS(2) DATED 19.04.20097.

EXT.R2(d): TRUE COPY OF THE JUDGMENT REPORTED IN 2001(2) KLT 891.

EXT.R2(e): TRUE COPY OF THE RELEVANT PORTION OF THE MINUTES OF THE SYNDICATE MEETING HELD ON 1.10.2011.

EXT.R2(f): TRUE COPY OF THE REPRESENTATION DATED 6.4.2012 SUBMITTED BY THE PETITIONER.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

W.P(c) No.3106 of 2013-K

Dated this the 27th day of October, 2015

JUDGMENT

The petitioner, joined the Sree Sankaracharya University of Sanskrit, Kalady (hereinafter referred to as 'University' for short), as a Section Officer on 10.04.2000, based on appointment after a regular process of selection. He was appointed as P.S to Registrar as per Ext.P4 order dated 10.05.2005. His probation was declared in the post of P.S to Registrar w.e.f 11.5.2006. By Ext.P7 representation, dated 14.03.2011 submitted to Registrar, he requested to revert him as Section Officer so as to enable him to get promoted as Assistant Registrar, which is the promotion post of Section Officer. Alleging inaction on his request he has filed this writ Petition seeking direction to the respondent University to allow his request for reversion as Section Officer and to promote him as Assistant Registrar on the basis of his seniority.

2. In Ext.P3 seniority list of Section Officers, the petitioner was rank No.15. In Ext.P7 representation, he pointed

out that, his junior got promoted as Assistant Registrar on 2.6.2011. Relying on the judgment of the Full Bench in **Balakrishnan Nair v. Ram Mohan Nair**: 1998(1) KLT 766, petitioner claims promotion as Assistant Registrar after reverting him from the post of P.S to Registrar saying that he is not confirmed so far in that post and therefore his lien continues in the post of Section Officer.

3. As per the schedule to the First Statute of Sree Sankaracharya University of Sanskrit, 1997, the post of Section Officer in the pre-revised scale of 2000-3200 comes under category No.9, P.S to Registrar in the scale of 2500-4000 comes under category No.8 and the Assistant Registrar comes under category No.5 with the scale of pay of Rs.2500-4000. The method of appointment to the post of Assistant Registrar is by promotion from the cadre of Section Officer with a minimum service of 5 years in the cadre of Section Officer based on seniority and merit and by deputation from State/Central Government Departments/Universities in the same grade/post. The method of appointment to the post of P.S to Registrar is by selection from among the University employees or by deputation and in case no suitable person is available from among the

employees, by advertisement and selection. The minimum qualification for the post of P.S to Registrar is a University Degree and experience as a Section Officer in the University or other experience in a supervisory capacity and in the case of Section Officers, they should have completed 3 years service in the cadre of Section Officer. The petitioner got appointment as P.S to Registrar after a regular process of selection on the basis of application submitted pursuant to the notification issued by the University, calling for applications from among qualified staff of the University and he has been working in that post right from 5/2005, based on his appointment as per Ext.P4.

4. The University has filed a counter affidavit, stating that the appointment as Section Officers in the University including that of petitioner was under challenge before this Court, in a batch of Writ Petitions, in which the appointments were set aside; the judgment was affirmed in Writ Appeal and It is on the basis of the interim orders passed by the Supreme Court in the SLPs that petitioner is continuing in service. It is stated that the petitioner's appointment as P.S to Registrar was based on his application pursuant to a separate process of selection for the same. Petitioner had been working in the post of

P.S to Registrar and earning a higher salary since the year 2005, At this stage it would not be proper to come back at this stage for enjoying the benefit of promotion to the post of Assistant Registrar, the scale of pay of which also is equivalent to the post of P.S to Registrar. More over, it was pointed out that none of the affected parties have been impleaded in the Writ Petition and several of his juniors have already been promoted by this time as Assistant Registrars and got further promotion as Deputy Registrars, etc. and the Writ Petition is filed without impleading any of them. However, additional 3rd respondent got himself impleaded in the Writ Petition and filed counter affidavit opposing the prayers of the petitioner.

5. The University as well as the additional respondent contend that the petitioner, who was appointed in a substantive post, cannot be heard to contend that his lien continues in the post of Section Officer once he was appointed as P.S to Registrar as per Ext.P4 and his probation was declared. It is further pointed out that the petitioner cannot claim the benefit of Rule 8 of Kerala State and Subordinate Service Rules, 1958 (hereinafter referred to as 'KS&SSR' for short), since he is seeking appointment in the very same service, as held by this Court in

Gracen Charles v. State of Kerala [2001 (2) KLT 891].

6. I heard the learned counsel appearing for the petitioner as well as the learned Standing Counsel for the University and the learned counsel appearing for the additional respondent.

7. The learned counsel for the petitioner relies on the Full Bench judgment of this Court reported in **Balakrishnan Nair v. Ram Mohan Nair** [1998 (1) KLT 766(FB)], which is produced as Ext.P5, and a judgment of a Division Bench of this Court in W.A No.689 of 1993-C. At the same time, the learned counsel for the 2nd respondent, relied on a Division Bench judgment of this Court in **Gracen Charles v. State of Kerala** [2001 (2) KLT 891], (which is produced as Ext.R2(d) along with their counter affidavit and pointed out that, the judgments relied on by petitioner do not apply in the circumstances of the case, since Note 2 to Rule 8 of KS&SSR was inserted in the statute only in 1986 and came into force only on 19.08.1986 and at any rate, Note 2 to Rule 8 was not brought to the notice of the Division Bench while rendering Ext.P6 judgment. The learned counsel for the additional respondent, relying on a Division Bench judgment of this Court reported in **K.Ananthan Pillai v.**

The State of Kerala and another [AIR 1968 Kerala 234], contended that there cannot be any lien on service. The lien can only be on a post. According to the learned counsel, the petitioner has not produced any order confirming him in the post of Section Officer, when he is claiming reversion to the post of Section Officer on the ground that he is not confirmed in the post of P.S to Registrar. He contends that going by the contentions of petitioner, his lien will be only in the post of Section Officer in the M.G University, where he was originally working, before his appointment in the University, as long as he is not confirmed in the present University in any of the posts; the issue is covered by the Division Bench judgment of this Court in **Gracen Charles v. State of Kerala** (supra) which affirmed the judgment of the learned Single Judge reported in **Gracen Charles v. State of Kerala** [2001(1) KLT 72] in which the issue considered was as to the repatriation to another wing of the same service in the Ayurveda Department. This Court held that the benefit of Rule 8 is not available to an officer holding a post in another class or category in the same service, by virtue of note 2 to Rule 8, which specifically provides, that the benefit is not applicable to a person holding a post in any class or category in a service if his

appointment to that post was from the same service.

8. In view of the rival contentions, it is necessary to examine the statutory provisions as well as the applicability of the judgments relied on by either side. Rule 8 of KS&SSR and the relevant note read as follows:

8. Members absent from duty.— The absence of a member of a ser from duty in such service, whether on leave, 1 [other than leave withe allowances for taking up other employment,] on foreign service or on deputatic or for any other reason and whether his lien in a post borne on the cadre of suci service is suspended or not, shall not, if he is otherwise fit, render him ineligible in his turn,—

a)for re-appointment to a substantive or officiating vacancy in the class, category, grade or post in which he may be a probationer or an approved probationer;

b)for promotion from a lower to a higher category in such service; and

c)for appointment to any substantive or officiating vacancy in another service for which he may be an approved candidate;

as the case may be, in the same manner as if he has not been absent. He shall be entitled to all the privileges in respect of appointment, seniority, probation and appointment as full member which he would have enjoyed but for his absence: 2 [*** *** *** ***]

3[Provided that subject to the provisions of rule 18 he shall satisfactorily complete the period of probation on his return;]

4[Provided further that] a member of a service who is appointed to another service and is a probationer or an approved probationer in the latter service, shall not be appointed under clause (c) to any other service for which he may be an approved candidate unless he relinquishes his membership in the latter service in which he is a probationer or an approved probationer:

Provided further that this rule shall not have retrospective effect so as to disturb the decisions taken by the Travancore-Cochin Government in respect of the Travancore-Cochin personnel:

Provided also that this rule shall not apply in the case of a member of a service whose absence from duty in such

service is by reason of his appointment to another service not being Military Service, solely on his own application, unless such appointment is made in the exigencies of public service.

Note.-(1) An appointment made in pursuance of applications invited, sponsored or recommended by Government or other competent authority shall be deemed to be an appointment made in the exigencies of Public Service for the purpose of this rule.

(2) The benefit of this rule shall not be available to a person holding a post in any class or category in a service if his appointment to that post was from a post in another class or category in the same service."

9. Statute 10 of Chapter IV of the Sreesankaracharya University of Sanskrit First Statute 1997 provides that every person appointed in class I to III shall be on probation for a period of one year from the date on which he joins duty within a continuous period of 2 years. Clause 3 of Statute 10 provides that, after declaration of satisfactory completion of probation, he shall become eligible for confirmation. Petitioner submits that he is not yet confirmed in the post of Section Officer and therefore he continues his lien in that post, until and unless his lien is terminated after giving him notice and opportunity of hearing, as provided under Rule 16 of Part 1 K.S.R.

Rule 16 Part I KSR reads as follows:

"16. Unless in any case it be otherwise provided in these rules, an officer on substantive appointment to any permanent post acquires a lien on that post and ceases to hold any lien previously acquired on any other post."

Rule 16 will in no way help the petitioner's contention that his lien continues until he is confirmed.

10. The learned counsel for the petitioner relies on **Balakrishnan Nair v. Ram Mohan Nair [1998 (1) KLT 766 (FB)]** in which a Full Bench of this court held that a member of a service continues, person in substantive appointment to another post continues in the same post unless lien is terminated by giving notice to him and he is not confirmed. Para 26 the said judgment, relied on by the learned Counsel for the petitioner reads as follows:

“26. Thus, on the basis of the above decisions and the relevant Rules in the KSR and K.S.S.R., we are of the view that the lien of a member of a service to a post in the parent Department is not lost automatically when he joins another Department. The lien can be terminated only after hearing the concerned person. By mere completion of probation it cannot be said that a person has been substantively appointed to a permanent post. Unless a person is confirmed under R. 24 of K.S.S.R., it cannot be said that the person has been substantively appointed to a permanent post. In the present case, we find that the appellants have not been confirmed in the Co-operative Department. Hence they have no lien in the Co-operative Department. Their lien in the Rural Development Department has not been terminated. In that view of the matter, sending them back to the parent Department is legal”.

The Full Bench was considering the right of employees to return to the parent department, interpreting the provisions contained in Rule 8 of Part II KS&SSR, with reference to Rules 18 to 24 of KS&SSR and Rule 16 of Part I KSR. The cases involving

application of Note 2 to Rule 8 did not come up before the Full Bench. This is clear from paragraph 8 of the judgment relevant portion of which reads as follows:

“8. xxxxxxxxxxxxxxxxxxxx “Note 2 denies the benefit to a member of a service when he is appointed to another post in the same service. **In the present case, we are not concerned with Note 2.** Learned counsel for the appellants submitted that in view of Note 1 the appellants and similarly situated persons are entitled to the benefit of R. 8, if the conditions in R. 8 are satisfied.”

(emphasis supplied)

11. Much reliance was placed by the learned counsel for the petitioner on Ext.P6 judgment, ie. the judgment dated 12.08.1997 in W.A No.689 of 1989. It was a case where the writ petition was filed by a UD Clerk challenging the order rejecting her request for permission to re-join as Typist. The writ petitioner therein - K.Chandrika Amma, while working as L.D Typist, requested for a category change as U.D Clerk. While so, the Government issued orders sanctioning the post of Senior Grade Typist. Based on this, some of the U.D Typists, who were juniors to the Chandrika Amma, got promoted as Senior Grade Typists. But Chandrika Amma had to continue as U.D Clerk. In those circumstances, she again requested for a category change. That request was rejected and it was the refusal to permit

category change, that was challenged and considered in that Writ Petition. The original petition challenging the rejection was allowed declaring that she was entitled to come back to the category of Senior Grade Typist. That judgment was challenged in the Writ Appeal by a third party, whose opportunity for promotion as Senior Grade Typist was affected on account of the judgment, ie. on account of the re-joining of Smt.Chandrika Amma.

12. There was yet another reason that Smt.Chandrika Amma's request for category change from the category Typist to U.D.C was on 21.04.1986. The Government issued orders sanctioning the post of Senior Grade Typist on 06.10.1986 with retrospective effect from 16.09.1985, her juniors got promotion as Senior Grade Typist w.e.f 16.09.1985, ie. at a time when she did not even submit a request for category change. In fact, Smt.Chandrika Amma had joined service as L.D Typist on 07.11.1975. She was allowed category change w.e.f 21.04.1986 and thereafter the Department in its proceedings dated 18.11.1986, refixed the cadre strength of Senior Grade/U.D/L.D Typist w.e.f 16.09.1985. Accordingly, Chandrika Amma was provisionally promoted as Senior Grade Typist w.e.f 16.09.1985.

The Division Bench found that it was under those circumstances that, she requested for the second category change from U.D Clerk to Typist, which the department rejected saying that it was in the same service. The Division Bench found that the Chandrika Amma was entitled to be promoted to the cadre of Senior Grade Typist, well before she was granted category change as U.D.C and that benefit was also given to her as per the proceedings issued on 18.11.1986 with retrospective effect. But she could not enjoy it because she had, by that time, joined as U.D.C. In the above circumstances, Ext.P6 judgment will not in any way help the petitioner. Moreover in paragraph 20 of the judgment in Balakrishnan Nair (supra) it was held as follows.

“20. Another judgment relied on was the judgment in W.A. No.486/89. But it is a case of transfer in the same service. According to Note 2 of R. 8 of K.S.S.R., which came into force from 19.8.1986, the benefit of R. 8 is not available to a person holding a post in any class or category in a service if his appointment to that post was from a post in another class or category in the same service. The Division Bench held that the conditions in Note 2 of R. 8 were satisfied. We approve the judgment only to that extent. The other observations in the above judgment regarding R. 8, with great respect, it is submitted, are not correct.”

13. Now in the case of the petitioner herein, he opted to apply for the post of P.S to Registrar. As can be seen from the schedule to the first Statute, the method of appointment to the

post of P.S to Registrar is by appointment from among qualified hands including that of Section Officers. It was not a category change as in the case of Ext.P6 judgment. He got appointment on the basis of a regular process of selection conducted, based on his application for the same when applications were called for and after subjecting him to the process of selection, in accordance with the provisions contained in the first statute. It is after enjoying the benefit of higher post since 2005, he requested for reversion in the year 2011, which is not legally sustainable. Therefore the petitioner is not entitled to get a reversion or repatriation in view of Note 2 to Rule 8 of KS&SSR.

14. There is no provision which enables the petitioner to get a reversion after more than 8-9 years of his appointment in the present post.

In the above circumstances, there is no merit in the contentions and accordingly, the Writ Petition is dismissed.

rtr/

Sd/-
(P.V.ASHA, JUDGE)

/true copy/

P.S to Judge