

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

W.P.(C).No.15736 of 2004 (W)

PETITIONER(S):-

K.ALPHI JOSEPH, AGED 51 YEARS, S/O. N.V. JOSEPH KUTTIKKAT,
[PART TIME LAW LECTURER, UNIVERSITY OF CALICUT],
NEYYAN HOUSE,
IRINJALAKUDA (DESOM) VILLAGE, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT, KERALA.

BY ADVS.SRI.G.SREEKUMAR (CHELUR)
SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.FRANCO T.J.

RESPONDENT(S):-

1. THE SECRETARY,
HIGHER EDUCATION DEPARTMENT, GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM.
2. THE DIRECTOR OF COLLEGIATE EDUCATION,
THIRUVANANTHAPURAM.
3. THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,
THRISSUR.
4. THE PRINCIPAL,
ST.JOSEPH'S COLLEGE, IRINJALAKUDA.
5. THE REGISTRAR
UNIVERSITY OF CALICUT, CALICUT UNIVERSITY.P.O.
MALAPPURAM (DT.).

* Addl.R6. UNIVERSITY GRANTS COMMISSION,
REPRESENTED BY ITS SECRETARY,
OFFICE OF THE UNIVERSITY GRANTS COMMISSION,
BAHADUR SHAH ZAFAR MARG, NEW DELHI - 110 001.

* [ADDITIONAL 6TH RESPONDENT IS IMPEADED AS PER ORDER
DATED 28/02/2013 IN IA 2706/2013].

R1 TO R3 BY GOVERNMENT PLEADER SRI.S. JAMAL.

R4 BY ADV.SRI.K.J.GEORGE.

R5 BY STANDING COUNSEL SRI.SANTHOSH MATHEW.

R6 BY CENTRAL GOVERNMENT COUNSEL SRI.S.KRISHNAMOORTHY.

R5 BY ADV. DR.S.GOPAKUMARAN NAIR, SC, CALICUT UT.

R5 BY ADV. SRI.E.S.ASHRAF, SC, CALICUT UNIVERSITY.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
13-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:-

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|---------|---|
| EXT.P1 | TRUE COPY OF PROCEEDINGS OF SELECTION OF THE PETITIONER DATED 24.8.1978 ISSUED FROM ST.JOSEPH'S COLLEGE, IRINJALAKUDA. |
| EXT.P2 | TRUE COPY OF APPOINTMENT ORDER DATED 18.10.1978 ISSUED TO THE PETITIONER BY PRESIDENT OF THE MANAGING BOARD, ST.JOSEPH'S COLLEGE, IRINJALAKUDA. |
| EXT.P3 | TRUE COPY OF ORDER NO.GA/A5/7919/78 DATED 23.11.1978 ISSUED BY 5TH RESPONDENT. |
| EXT.P4 | TRUE COPY OF G.O.(P) NO.171/99/H.EDN. DATED 21.12.1999. |
| EXT.P5 | TRUE COPY OF GOVERNMENT ORDER DATED 4.7.2000. |
| EXT.P6 | TRUE COPY OF STATEMENT OF FIXATION DATED 30.04.2002 FILED BY PETITIONER BEFORE THE 3RD RESPONDENT. |
| EXT.P7 | TRUE COPY OF UNDERTAKING DTD.30.4.2002 FILED BY -DO- BEFORE THE -DO-. |
| EXT.P8 | TRUE COPY OF FORM OF OPTION DATED 30.04.2002 FILED BY -DO- BEFORE THE -DO-. |
| EXT.P9 | TRUE COPY OF ORDER VIDE NO.E1/2090/02 DATED 13.3.2002, ISSUED BY 3RD RESPONDENT. |
| EXT.P10 | TRUE COPY OF COMMUNICATION ISSUED BY 4TH RESPONDENT TO THE PETITIONER VIDE INTIMATION NUMBER A-64/2000. |
| EXT.P11 | TRUE COPY OF G.O.(MS) NO.66/66/90/H.EDN. DATED 13.03.90. |
| EXT.P12 | TRUE COPY OF APPEAL DATED 19.09.2002 FILED BY PETITIONER BEFORE THE 2ND RESPONDENT. |
| EXT.P13 | TRUE COPY OF REPRESENTATION DATED 28.11.2002 SUBMITTED BY PETITIONER BEFORE THE MINISTER OF EDUCATION, KERALA. |
| EXT.P14 | TRUE COPY OF NO.4174/D2/2003/H.EDN. DATED 4.12.2003 ISSUED BY DEPUTY SECRETARY, FOR PRINCIPAL SECRETARY, FOR PRINCIPAL SECRETARY TO GOVERNMENT. |

RESPONDENT'S EXHIBITS:-

EXT.R2(a) G.O.MS.NO.141/74/H.EDN. DATED 24.9.74.

vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.15736 of 2004-W

Dated this the 13th day of October, 2015

JUDGMENT

The petitioner is aggrieved with the fact that the petitioner has not been fixed in the UGC scale as per the UGC Scheme and granted the revision of scales effected by Exhibit P4.

2. The petitioner, admittedly, is a graduate in Law, who has been appointed in pursuance to a proper selection conducted by the Staff Selection Committee, as is indicated at Exhibit P1. The petitioner has been appointed to the post of Part-time Law Lecturer under the University for imparting training to Commerce students by Exhibit P2 on 18.10.1978. The petitioner has the minimum qualification for such appointment as sanctioned by the University and the petitioner is being paid the salary and allowances as admitted by the Government. The petitioner's contention

herein is that, the petitioner has to be accommodated in the UGC scale as a Part-time Teacher.

3. The provision in Exhibit P4 with respect to Part-time Teacher at paragraph 10.1 specifically indicates that the minimum qualification for appointment of Part-time Lecturer should be the same as that of regular Lecturer and selected by regularly constituted Selection Committees. Though the petitioner is selected by a regularly constituted Selection Committee, the petitioner admittedly is not having the qualification for appointment as a Lecturer as indicated in the UGC Scheme.

4. Though the entire UGC Scheme has not been produced at Exhibit P4, the learned counsel for the petitioner hands over, across the Bar, a copy of the same. The prescription is indicated in clause 6.1.2 of the Scheme, which is extracted hereunder:

“6.12 LECTURER

Humanities, Social Sciences, Sciences,
Commerce, Education, Physical Education, foreign
Languages and Law.

Good academic record with at least 55% of the marks or, an equivalent grade of B in the 7 point scale with latter grades O, A, B, C, D, E & F at Master's degree level, in the relevant subject from an Indian University, or, an equivalent degree from a foreign University.

Besides fulfilling the above qualifications, candidates should have cleared the eligibility test (NET) for lecturers conducted by the UGC, CSIR or similar test accredited by the UGC”.

Hence, necessarily a person to be appointed as Lecturer has to have the post-graduate qualification and in such circumstance, a Part-time Teacher who does not have a qualification, cannot be accommodated in the UGC Scheme. The petitioner's continuance, however, would have no difficulty, since the Government Order adopted by the University permits the same and the Government also pays the pay and allowances at the scales applicable to such appointments. However, the liability for Government to pay the scales under the UGC Scheme would be there only if the person is qualified to be appointed as a Permanent Part-time

Lecturer and is continued as such. The petitioner, lacking the qualification to be appointed as a regular Lecturer, cannot be fixed in the Permanent Part-time Lecturer's scale as applicable in the UGC Scheme.

5. The petitioner obviously was appointed as a Part-time Lecturer under G.O.(MS) No.141/74/H.Edn. Dated 24.09.1974, under a consolidated remuneration, excluding vacation. The issue also stands covered by the unreported decision of this Court in **W.P.(C).No.32047 of 2009** dated 30.11.2012 ***[T.S.Rajasenan v. Secretary, Higher Education Department and others]***. The learned counsel for the petitioner would draw a distinction that therein the teacher was appointed specifically on 'contract basis' and herein no such deduction could be made. However it is to be noticed that the decision cited also refers to the above referred G.O. and though Exhibit P2 does not contain a recital as to the appointment being on contract, necessarily the terms of the G.O. under which the appointment was made would indicate it to be so. Exhibit R2(a) also would

clearly indicate the terms of appointment of the petitioner, which persuades this Court further to hold that the aforesaid decision is squarely applicable here too.

The writ petition, hence, would stand dismissed.

No costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]