

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 22ND DAY OF JULY 2015/31ST ASHADHA, 1937

WP(C).No. 11164 of 2015 (U)

PETITIONER(S):

**DR.SERAPHI JOHN, AGED 50 YEARS,
ASSISTANT PROFESSOR, ST. CYRIL'S COLLEGE
CYRIL'S MOUNT, VADAKKATHUCAVU P.O., ADOOR**

**BY ADVS.SRI.P.C.SASIDHARAN
SRI. ARAVINDA KUMAR BABU T.K**

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
HIGHER EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM - 695 001.**
 - 2. UNIVERSITY OF KERALA,
THIRUVANANTHAPURAM, REPRESENTED BY ITS REGISTRAR.695 001**
 - 3. THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,
OFFICE OF THE DEPUTY DIRECTOR OF COLLEGIATE EDUCATION
KOLLAM. 691 001**
 - 4. THE MANAGER,
ST.CYRIL'S COLLEGE, CYRIL'S MOUNT
VADAKKADATHUCAVU P.O., ADOOR. 691 523**
 - 5. THE PRINCIPAL AND DRAWING AND DISBURSING OFFICER,
ST. CYRIL'S COLLEGE, CYRIL'S MOUNT
VADAKKATHUCAVU P.O., ADOOR. 691 523**
- R2 BY ADV.SRI.BECHU KURIAN THOMAS, SC, UNIVERSITY OF KERALA
R1 BY GOVERNMENT PLEADER SRI.RINNY STEPHEN
CHAMAPARAMPIL**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
22-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C).No. 11164 of 2015 (U)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE APPOINTMENT ORDER DATED 01/02/1990.

**EXHIBIT-P2-TRUE COPY OF THE ORDER GRANTING APPROVAL OF
APPOINTMENT OF THE PETITIONER.**

**EXHIBIT-P3-TRUE COPY OF THE ORDER OF APPOINTMENT ORDER DATED
01/06/2013.**

**EXHIBIT-P4-TRUE COPY OF THE APPROVAL OF APPOINTMENT OF THE
PETITIONER.**

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

'C.R.'

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.11164 OF 2015 (U)

Dated this the 22nd day of July, 2015

J U D G M E N T

The petitioner, who is a Doctorate holder in Malayalam, was appointed as Lecturer in Malayalam in the College under the management of the 4th respondent for a period from 1.2.1990 to 29.3.1990 in the leave vacancy that arose consequent to the then incumbent availing leave. The said appointment is stated to have been pursuant to a selection process that was conducted by the College in accordance with the University Rules, and the same was approved by the respondent University by Ext.P2 order. Thereafter, to a vacancy that arose consequent to the retirement of a teacher in Malayalam on 31.3.2013, the petitioner was appointed by placing reliance on Section 57(6)(b) of the Kerala University Act, 1974 [hereinafter referred to as the 'Act']. The said appointment, which is evidenced by Ext.P3 order dated 1.6.2013, was also approved by the University by Ext.P4 order dated 5.10.2013. When, despite the approval of the appointment of the petitioner, the 3rd respondent refused to counter sign the salary bills pertaining to the petitioner, that were forwarded by the 5th respondent, the petitioner approached this Court through the present writ petition seeking a direction to the

3rd respondent to counter sign the salary bills so that the petitioner could receive salary.

2. Counter affidavits have been filed by the 1st respondent as also the 2nd respondent University. In the counter affidavit filed by the 2nd respondent University, the appointment of the petitioner to the vacancy that resulted consequent to the retirement of a teacher on 31.3.2013, is justified on the basis of Section 57(6)(b) of the Act. It is stated that inasmuch as the petitioner had obtained preferential right to future appointments in the College, consequent to the approval accorded by the University to the earlier spell between 1.2.1990 and 29.3.1990 when the petitioner worked as a Lecturer in Malayalam, the appointment of the petitioner to the subsequent vacancy, which arose consequent to the retirement on 31.3.2013, was in order. In the counter affidavit filed by the 1st respondent, however, objection is taken to the appointment of the petitioner to the said vacancy. It is in particular pointed out that the initial appointment of the petitioner as Lecturer in Malayalam was only to a temporary vacancy, and as such, it was Section 57(6)(a) that would govern the appointment of the petitioner and not Section 57(6)(b) of the Act. Alternatively, it is contended that even in terms of Section 57(6)(b) of the Act, the right obtained by the petitioner consequent to the earlier spell is only a

right to preference in the matter of future appointments in the College and not a right to get appointed as such. It is contended that, by virtue of the right obtained under Section 57(6)(b), the petitioner would be entitled to a preference over other candidates in a selection process that had to be necessarily conducted for determining the candidate who would be appointed to the post in question. A reply affidavit has also been filed by the petitioner refuting or traversing the averments in the counter affidavit filed by the 1st respondent.

2. I have heard the learned counsel for the petitioner, the learned Standing counsel for the respondent University as also the learned Government Pleader for the official respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that it is not in dispute that while appointing the petitioner as a Lecturer in Malayalam to the leave vacancy that arose between 1.2.1990 and 29.3.1990, the respondent had complied with a selection process as mandated by the provisions of the Kerala University Act, Rules and First Statutes for selecting a candidate, and it was in that selection that the petitioner was selected and appointed to the leave vacancy. Section 57(6)(b) of the K.U.Act reads as follows:

57. Appointment of teachers in private colleges:

(6) Notwithstanding anything contained in this Act, the Statutes, Ordinances and Regulations made thereunder:-

(a)

(b) a teacher relieved from a private college on or after the 14th day of March, 1974, due to the abolition of a course of study in that private college or the cessation of the period for which he was appointed or for any other reason except disciplinary action against him, shall be given preference in the matter of, future appointments in the private college or, as the case may be, any of the private colleges under the management of the educational agency within the University area.

It will be clear from a reading of Section 57(6)(b) of the Act that the right that is conferred on a teacher, who was relieved from the College due to cessation of the period for which he was appointed, is one that gives him a preference in the matter of future appointments in the private college. It is relevant to note that the right that is conferred is not one that entitles him to a preferential consideration for appointment. The distinction is of importance because a selection process can have meaning only in a case where there are many persons applying for a post and they all have a right to be considered for appointment to the post in question. If, on the other hand, as in the instant case, there is only one person who has been given a preferential right to appointment to a future post, then there cannot

be a selection process envisaged for the purposes of giving effect to the right of that person. Thus, it cannot be said that, prior to giving effect to the right that accrued to the petitioner by virtue of Section 57(6)(b) of the Act, the petitioner had to undergo a fresh selection process for appointment to the post in question.

There is yet another aspect of the matter. It is settled that once the University approves the appointment of a member of the teaching staff in a college, then the 3rd respondent has no option, but to effect payment of salary to the teacher in question by deferring to the decision of the respondent University to approve the appointment of the teacher in question. No doubt, if the 3rd respondent has a case that there was no sanctioned post to which the teacher could be appointed, or that the appointment of the teacher was to a post that could not have been sanctioned taking into account the work load recognised by the respondent University, it would have been open to the 3rd respondent to approach the respondent University with the said objection and await a decision of the respondent University on the same (See **Cherian Mathew v. Principal S.B. College, Changanassery [1998 (2) KLT 144]** and **State of Kerala and Others v. Dr. Sina A.R. and Others [2007 (3) KHC 96]**). In the instant case, it is not in dispute that the 3rd respondent had not raised

any objection with regard to the approval of the appointment of the petitioner, and in that sense, it was not open to the 3rd respondent to refuse to counter sign the salary bills pertaining to the petitioner without first having raised any objection before the respondent University. Thus, in any view of the matter, the action of the 3rd respondent, in refusing to counter sign the salary bills forwarded to him by the 5th respondent, is improper. Resultantly, I allow the writ petition directing the 3rd respondent to counter sign the salary bills forwarded to him by the 5th respondent, insofar as it pertains to the salary payable to the petitioner, and disburse all consequential monetary benefits flowing from the said counter signature, within a period of two months from the date of receipt of a copy of this judgment.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp