

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

WP(C).No. 16252 of 2012 (F)

PETITIONER:

**DR. SOSAMMA CHERIAN,
PROFESSOR & HEAD,
AGRICULTURAL RESEARCH STATION,
KALLUNKAL P.O., THIRUVALLA, RESIDING AT
AYKARAYIL, KUNNAMTHANAM P.O.,
THIRUVALLA, 689481.**

BY ADV. SRI.P.V.JAYACHANDRAN

RESPONDENT(S):

- 1. KERALA AGRICULTURAL UNIVERSITY,
REPRESENTED BY ITS REGISTRAR,
KERALA AGRICULTURAL UNIVERSITY POST,
VELLANIKKARA, TRISSUR-680654.**
- 2. THE DEPUTY COMPTROLLER,
INTERNAL AUDIT CIRCLE,
COLLEGE OF AGRICULTURE,
VELLAYANI-680654.**

BY ADV. SRI.BABU JOSEPH KURUVATHAZHA,SC

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-03-2015, THE COURT ON 26-05-2015 DELIVERED THE
FOLLOWING:**

mbr/

WP(C).No. 16252 of 2012 (F)

APPENDIX

PETITIONER(S) EXHIBITS:

- EXHIBIT-P1. TRUE COPY OF THE PROCEEDING NO.GA/C2/23346/99 (523)
DATED 25.8.2007.
- EXHIBIT-P2. TRUE COPY OF THE PAY SLIP NO.AC.V/(3) 115/86 DATED 6.11.09.
- EXHIBIT-P3. TRUE COPY OF THE STATEMENT OF FIXATION OF PAY
DATED 10.12.2010.
- EXHIBIT-P4. TRUE COPY OF THE PAY SLIP DATED 13.12.2011.
- EXHIBIT-P5. TRUE COPY OF THE MINUTES OF THE MEETING HELD ON 19.11.2010
WITH THE COVERING LETTER DATED 6.1.2011.

RESPONDENTS' EXHIBITS:

- NIL

/TRUE COPY/

P.S. TO JUDGE

mbr/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 16252 of 2012

Dated this the 26th day of May, 2015

J U D G M E N T

The petitioner, who was appointed to the post of Assistant Professor (Biochemistry) in the faculty of Agriculture in the respondent university, has approached this Court seeking the following reliefs;

- "a) Issue a Writ of Mandamus or appropriate writs directions or orders directing the 2nd respondent to enhance the scale of pay of the Petitioner to that of Dr.K.G.Padmakumar,
- b) Direct the 2nd respondent to issue revised pay slips after enhancing the scale of pay of the petitioner to that of Dr.K.G. Padmakumar as in Ext.P4 and disburse the consequential arrears of salary forth with.
- c) Grant such other relief as this Hon'ble Court deem fit to grant in the interest of justice."

2. The petitioner alleges that he, who is senior in service to one Dr.K.G.Padmakumar, was authorized to draw ₹12,420/- as on 01.01.1996, ₹16,400/- as on 19.09.2001 and ₹53,390/- as on 01.01.2006 as evident from Exts.P2 and P3. His grievance is that Dr.K.G.Padmakumar, who is admittedly a junior to him in service, was authorized to draw ₹14,940/- as on

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01.01.1996, ₹18,650/- as on 27.11.2011 and ₹56,050/- as on 01.01.2006 as evident from Ext.P4. The petitioner alleges that in view of Rule 28A of KSR, his pay has to be enhanced to that of Dr.K.G.Padmakumar.

3. In the counter affidavit filed by the respondent university, they would admit that the petitioner and Dr.K.G.Padmakumar were brought under UGC with effect from 01.01.1986 as Assistant Professor in the pay of ₹3000-5000 and the pay has been fixed at ₹3,000/- (minimum) with effect from 01.01.1986 for both officers. According to them, the normal date of next increment of Dr.K.G.Padmakumar was 01.09.1986 and he has been authorized with the next increment on 01.09.1986. However, the normal date of increment of the petitioner was 01.11.1986, which is a later date than the date of next increment of Dr.K.G.Padmakumar. Therefore, according to the respondent, the difference in pay arose on account of the fixation of normal date of next increment. According to them, there is no provision in

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the UGC scheme for stepping up the pay of a senior to that of a junior.

4. Arguments have been heard.

5. The petitioner was directly recruited to the post of Junior Assistant Professor in the Kerala Agricultural University with effect from 19.09.1980. PhD was awarded to him on 21.3.1985. He was given selection to the post of Assistant Professor with effect from 24.11.83. He was granted Career Advancement Promotion to the post of Associate Professor with effect from 19.09.1993 and inducted in 1996 UGC Scheme in ₹12,420/- pay scale as Associate Professor with effect from 01.01.1996. He was granted Career Advancement Promotion to the post of Professor with effect from 19.9.2001 in ₹16,400/- pay as evident from Ext.P2. He was further inducted to 2006 UGC Scheme in Rs.53,390/- with effect from 01.01.2006 as evident from Ext.P3.

6. Dr.K.G.Padmakumar, who is junior in service to the petitioner, was originally appointed to the post of

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Junior Assistant Professor on 27.11.1980, was selected to the post of Assistant Professor on 29.9.84 and was awarded PhD on 06.03.1986. He was granted Career Advancement Promotions to the post of Associate Professor with effect from 21.11.93 and to the post of Professor with effect from 27.11.2001 under 1996 UGC Scheme. Consequently, Exhibit P4 pay slip dated 13.12.2011 under 1996 and 2006 UGC Schemes was issued by the 2nd respondent. It is evident from Ext.P4 that the salary as on 01.01.1996 was fixed at ₹14,940/- in 1996 UGC Scheme and ₹56,050/- as on 01.01.2006 in 2006 UGC Scheme in favour of Dr.K.G. Padmakumar.

7. It can be seen from Ext.P4 that Dr.K.G.Padmakumar, who is junior to the petitioner, is drawing higher salary as evident from Ext.P4 than the petitioner, which is against Rule 28A of Part 1 KSR. A senior cannot be paid lesser salary than a junior in service. Such anomaly cannot be allowed to continue and ought to have been rectified by enhancing

the pay of the senior to that of the junior. Exactly, the same situation was considered by the apex court in **Gurucharan Singh Grewal & Others v. Punjab State Electricity Board & Others** [2009 (3) SCC 94], wherein it was observed that a senior cannot be paid lesser salary than the junior and such anomaly cannot be allowed to continue and ought to have been rectified by enhancing the pay of the senior to that of the junior. It is also relevant to note that the 4th Redressal Committee of the Kerala Agricultural University, in its meeting held on 19.11.2010, decided to grant 28A fixation and to restore the normal date of increment after the grant of two advance increments as per Ext.P5 minutes. Taking into account all the relevant facts and circumstances, this Court is of the view that the petitioner is entitled to get the reliefs as prayed for.

In the result, the writ petition is allowed.

The 2nd respondent is directed to enhance the pay of the petitioner to that of Dr.K.G.Padmakumar and to issue

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revised pay slips after enhancing the scale of pay of the petitioner as per Ext.P4 and disburse the consequential arrears of salary forthwith.

Formal orders to this effect shall be issued within a period of one month from the date of receipt of a copy of this judgment.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-