

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

WP(C).No. 19326 of 2011 (M)

PETITIONER(S):

DR.BHAGYALAKSHMI.P.V
NADUVILEVEETIL, MANTHIYIL LANE, KAPPATTIKAVU,
EROOR P.O., ERNAKULAM DISTRICT, PIN 682 306.

BY ADVS.SRI.K.RAMAKUMAR (SR.)
SRI.S.M.PRASANTH
SMT.SMITHA GEORGE

RESPONDENT(S):

1. SREE SANKARACHARYA UNIVERSITY,
SANSKRIT, KALADY, REPRESENTED BY ITS REGISTRAR.683 574

2. VICE CHANCELLOR, SREE SANKARACHARYA
UNIVERSITY OF SANSKRIT, KALADY.683574

3. KIRAN.A.U.
ASSISTANT PROFESSOR, DEPARTMENT OF SANSKRIT SAHITYA
REGIONAL CENTRE
SREE SANKARACHARYA UNIVERSITY OF SANSKRIT, THURAVOOR
ALAPPUZHA DISTRICT, PIN-688532

4. POORNIMA G., ASSISTANT PROFESSOR, DEPARTMENT OF
SANSKRIT -SAHITYA, REGIONAL CENTRE, SREE SANKARACHARYA
UNIVERSITY OF SANSKRIT, ETTUMANOOR, KOTTAYAM DISTRICT.

R1,R2 BY ADV. SRI.T.B.HOOD

R1,R2 BY ADV. SRI.ARUN B.VARGHESE,SC, SREE SANKARACHARYA
UTY.

R3 BY ADV. SRI.SAJU JOHN

RADDL.R4 BY ADV. SRI.T.R.RAVI

R BY SRI.P.K.VIJAYAMOHANAN,SC,SANKARACHA.UTY

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

WPC NO.19326/2011

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE NOTIFICATION NO.R.CELL/15332/T/SSUS/2010 DATED 23/12/2010 ISSUED BY THE 1ST RESPONDENT.

EXT.P2: COPY OF THE COVERING LETTER DATED 29/1/2011 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P3: COPY/SSUS/2011 DATED 24/1/2011 ISSUED BY THE 1ST RESPONDENT.

EXT.P4: COPY OF GO(MS) NO.18/2011/H.EDN. DATED 14/2/2011 BY THE GOVERNMENT OF KERALA.

EXT.P5: COPY OF THE MEMO NO.R.CELL/15332/T/SSUS/2010 DATED 30/6/2011 ISSUED BY THE 1ST RESPONDENT.

EXT.P6: COPY OF THE MEMO NO.R.CELL/15332/T/SSUS/2010 DATED 19/11/2007 ISSUED BY THE 1ST RESPONDENT.

EXT.P7: COPY OF THE RANK LIST OF ASSISTANT PROFESSOR IN THE DEPARTMENT OF SANSKRIT SAHTIYA

EXT.P8: COPY OF THE APPLICATION DATED 27/3/2012 MADE UNDER RIGHT TO INFORMATION ACT.

EXT.P9: COPY OF THE REPLY DATED 25/4/2012 ISSUED BY THE 1ST RESPONDENT.

EXT.P10: COPY OF PERTITIONER'S INITIAL APPOINTMENT ORDER NO. AD.A2/2670/2003/SSUS DATED 16/9/2003 ISSUED BY THE 1ST RESPONDENT.

EXT.P11: COPY OF THE AGREEMENT DATED 4/7/2011 EXECUTED BETWEEN THE PETITIOENR AND THE UNIVERSITY.

EXT.P12: COPY OF THE ORDER NO. AD.A3/2011/SSUS DATED 23/6/2011 ISSUED BY THE 1ST RESPONDENT.

EXT.P13: COPY OF THE REPRESENTATION DATED 23/7/2012 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P14: COPY OF THE APPOINTMENT ORDER NO. AD.A2/4113/SSUS/12(1) DATED 30/3/2012 ISSUED TO THE 3RD RESPONDENT.

EXT.P15: COPY OF THE APPOINTMENT ORDER NO. AD.A2/4112/SSUS/12 DATED 3-4-2012 ISSUED TO THE 4TH ESPONDENT.

RESPONDENTS EXHIBITS:

EXT.R4(A): COPY O RANK LIST ISSUED BY PSC
/TRUE COPY/ PS TO JUDGE.

A.MUHAMED MUSTAQUE, J.

W.P.(C) No. 19326 OF 2011

Dated this the 26th day of March, 2015

JUDGMENT

The petitioner is an applicant to the post notified for the Assistant Professor in Sanskrit(Sahitya) in Sree Sankaracharya University of Sanskrit, Kalady. Her application has been rejected by the University vide Ext.P5 saying that the petitioner has crossed the upper age limit prescribed for the post as per the notification. The petitioner challenged Ext.P5 in this writ petition.

2. The petitioner's case is that she is entitled for age relaxation being a member of O.B.C. It is also submitted that being a Lecturer in the respondent University, the petitioner is also entitled for age relaxation on that ground.

3. The learned Standing Counsel for the University opposed the petitioner's prayer. A detailed counter affidavit has been filed by the University. It is submitted that the petitioner, as a member of the OBC, is entitled for age relaxation only for three years. Therefore, the upper age limit

for candidates coming under the OBC category is 43 years and on the date of application submitted by the petitioner, the petitioner crossed 45 years and seven months. Therefore, the petitioner cannot be given any benefit based on the age relaxation given to the candidates coming under OBC category. In respect of the petitioner's claim that, being a lecturer in the University she is entitled for relaxation, it is submitted by the learned standing counsel that the petitioner was only a Guest Lecturer and no Guest Lecturer is entitled for age relaxation in the light of the declaration of law by this Court in the judgment in W.A. No. 2229/2006 dated 17/8/2009, which is produced as Ext.R1(a).

4. In response to the above submissions of the standing counsel, the learned counsel for the petitioner strenuously argued that the petitioner, in fact, is not a Guest Lecturer. Petitioner is discharging her duty as a lecturer on the regular role of the University. The petitioner is also drawing a UGC scale of pay. Taking note of the duties and responsibilities of the petitioner, the petitioner cannot be treated as Guest Lecturer of the University, submits the learned counsel.

5. There is no dispute that the petitioner has crossed the age of 45 years on the date of application. It is submitted that in terms of the relevant provisions in KS & SSR, the age limit application to the OBC candidates is only three years. Therefore, the petitioner is not entitled to be considered on the basis of the age relaxation given to the OBC candidates. The petitioner was appointed in the respondent University by Ext.P11 agreement. This agreement clearly indicated that the petitioner has been appointed in the University as Guest Lecturer. There is no challenge at that time regarding the appointment given to the petitioner. As the petitioner entered into the service of the University as a Guest Lecturer, any exit from the University can only be based on the designation as the Guest Lecturer. At no point of time the petitioner has been regularised in the service. The Division Bench of this Court in W.A. No. No.2229/2006 in paragraph 11 held as follows:

“11. The next point to be considered is regarding the age relaxation given to respondents 5 and 8 by reckoning their service under the University as guest lecturers. For selecting guest

lecturers, no selection process as contemplated under Statue 3 of Chapter III of the aforementioned Statutes is followed. Rules governing the reservation are also not followed. Such persons are engaged on hourly basis and paid also accordingly. They are normally engaged to teach in short time leave vacancies. The persons engaged as guest lecturers and without proper selection and without observing the Rules of reservation cannot be treated as persons in the teaching service of the University. A person can be treated as a member of service of the University, if only he is appointed substantively to a vacancy in a cadre post in the service. Normally, it should be preceded by a regular selection. Some persons were able to function as guest lecturers in the University. The same can never be treated as a ground to extend special favours to them. Going by the provisions in Statute 6 of Chapter III of the Statutes, we feel that relaxation is meant for those working on a regular basis in the University as teachers. We

notice the submission of the learned senior counsel for the contesting respondents that going by the definition of 'teacher' in Section 2 (t), no such requirement that the incumbent should be in regular service, could be inferred. Even assuming guest lecturers are teachers, still, by no stretch of imagination, they could be treated as teachers borne on the teaching service of the University. "

In the light of the above, I do not find that the petitioner is entitled for age relaxation of being a Guest Lecturer.

The writ petition is dismissed. No costs.

**Sd/-
A.MUHAMED MUSTAQUE,
Judge.**

dpk

/true copy/ PS to Judge.

