

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

WP(C).No. 19228 of 2013 (C)

PETITIONER:

DR.BENNO PEREIRA.F.G.,
LECTURER (SENIOR SCALE), ST.ALBERT'S COLLEGE
ERNAKULAM-682018.

BY ADVS.SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI
SRI.BRIJESH MOHAN

RESPONDENTS:

1. MAHATMA GANDHI UNIVERSITY,
PRIYADARSINI HILLS.P.O, KOTTAYAM-686560
REPRESENTED BY ITS REGISTRAR.

2. THE MANAGER,
ST.ALBERT'S COLLEGE, ERNAKULAM-682018.

R1 BY ADV. DR.P.LEELAKRISHNAN, SC, M.G.UNIVERSITY

R2 BY ADV. SRI.P.GEORGE WILLIAM

R1 BY ADV. SRI.VARUGHESE M.EASO, SC, M.G.UNIVERSITY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

P1 TRUE COPY OF THE ORDER APPROVING THE APPOINTMENT OF THE
PETITIONER AS LECTURER IN ZOOLOGY DATED 5.8.1997.

P2 TRUE COPY OF THE ORDER DATED 11.12.2002 APPROVING THE APPOINTMENT
OF PETITIONER FROM 15.6.2000 TO 14.6.2005 AS LECTURER IN ZOOLOGY.

P3 TRUE COPY OF THE ORDER DATED 21.2.2007 APPROVING THE APPOINTMENT
OF THE PETITIONER AS LECTURER FROM 21.2.2004.

P4 TRUE COPY OF THE ORDER NO.ACB V-1-269-2001 DATED 5.5.2001 ISSUED
BY THE 1ST RESPONDENT.

P5 TRUE COPY OF THE ORDER NO.UO.NO.4472/Ac.BV/80a/2011 DATED
12.8.2011 ISSUED BY THE 1ST RESPONDENT.

P6 TRUE COPY OF THE ORDER NO.Ac.BV4/4421/10 DATED 5.11.2012 ISSUED
BY THE 1ST RESPONDENT.

P7 TRUE COPY OF THE PROCEEDINGS DATED 28.1.2013 ISSUED BY THE 2ND
RESPONDENT.

P8 TRUE COPY OF THE PROPOSAL DATED 10.5.2013 OF THE 2ND RESPONDENT.

P9 TRUE COPY OF THE ORDER NO.Ac.BV/1/Defect/13 DATED 29.5.2013
ISSUED BY THE 1ST RESPONDENT.

P10 TRUE COPY OF THE JUDGMENT DATED 15.09.2006 IN W.A.197/2006 OF
THIS HON'BLE COURT.

P11 TRUE COPY OF THE JUDGMENT DATED 14.02.2007 IN WP(C)29926/2006
AND CONNECTED CASES OF THIS HON'BLE COURT.

RESPONDENT(S) ' EXHIBITS

EXT.R1(a): TRUE COPY OF THE G.O(Rt) NO.1498/2012/H.Edn. DATED
20.07.12 REGARDING GRANTING OF FIRST PLACEMENT BY COUNTING PREVIOUS
SERVICE.

EXT.R1(b): TRUE COPY OF THE CIRCULAR NO.10648/73/13/H.Edn. DATED
31.7.2013 DIRECTING THE UNIVERSITIES TO STRICTLY COMPLY WITH THE
ORDERS ISSUED IN THE GOVERNMENT ORDER.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

W.P(c) No.19228 of 2013-C

Dated this the 9th day of July, 2015

JUDGMENT

The petitioner is challenging Exts.P5, P6 and P9 orders by which the proposal for promoting him as Lecturer Senior Scale with effect from 28.03.2000 forwarded by the 2nd respondent was rejected by the University-1st respondent. He seeks a declaration for placement as Lecturer Senior Scale with effect from 28.03.2000 in terms of Ext.P4.

2. The petitioner was appointed as Lecturer in Zoology under the 2nd respondent - St.Alberts' College, Ernakulam, which is an aided college. Even though his appointment was in a leave vacancy, initially for a period of 5 years from 28.05.1995 to 14.06.2000, as per Ext.P.1, the same was extended for a further period of 5 years upto 14.06.2005 as per Ext.P2 against substantive vacancy which arose on 21.02.2004. In the meanwhile he was absorbed in a regular vacancy.

3. The Government issued orders regarding placement of Lecturer in Senior Scale, Selection Grade etc. in terms of the

UGC Scheme, 1998 under the Career Advancement Scheme. based on the orders issued by the Government in G.O(P) No.171/99/H.Edn. Dated 21.12.1999. The 1st respondent University issued Ext.P4 letter, providing for the guidelines for placement/promotion of Lecturers in Senior Scale, Selection Grade as well as Reader. From Ext.P4 it can be seen that a Lecturer who has completed 6 years of service and who has participated in one orientation course and one refresher course of approved duration or engaged in other appropriate continuing education programmes of comparable quality as specified by the UGC can be granted placement as Lecturer Senior Scale. For those who are having M.Phil. and Ph.D a relaxation of one year and 2 years respectively are granted. That means, a Lecturer with Ph.D can be placed as Senior Scale Lecturer on completion of 4 years.

4. The 2nd respondent College forwarded orders granting placement to the petitioner as Senior Scale Lecturer, w.e.f date of awarding Ph.D degree to the petitioner, ie. from 28.3.2000. But the University did not grant approval to the same. As per Ext.P5 order dated 12.08.2011, standing committee of the Syndicate on affiliation, resolved to approve the promotion of the

petitioner as Lecturer Senior Scale only w.e.f 22.02.2004. It is as against this order, to the extent it limited the placement from 22.02.2004 onwards only, that the petitioner has approached this Court.

5. Even though the petitioner took up the matter through the Principal to revise the date of effect of placement, the University as per Ext.P6 letter dated 5.11.2012 requested the Principal to submit a revised proposal for placement of the petitioner as Lecturer Senior Scale w.e.f the date of declaration of the probation as Lecturer in the substantive post.

6. Thereupon the Manager forwarded the orders declaring his probation w.e.f 28.11.1996, ie. w.e.f the date of completion of one year service as Lecturer. Even though the revised proposal along with requisite documents were forwarded to the University, it was again returned as per Ext.P9 letter dated 29.05.2013, requesting to resubmit the proposal after curing the defects. It was mentioned therein that placement cannot be granted to the petitioner with effect from 28.03.2000, since placement can be granted only after declaration of probation in substantive vacancy.

7. Relying on Ext.P10 judgment of this Court in W.A

No.197 of 2006 and Ext.P11 judgment of this Court in a batch of cases relating to placement of Lecturers under the UGC Scheme, including reckoning of previous services, the learned counsel for the petitioner seeks a direction for the placement of the petitioner in the Senior Scale w.e.f the date on which he was awarded Ph.D degree.

8. The University has filed a counter affidavit stating that the petitioner can be granted placement as Senior Scale Lecturer after his appointment in a substantive vacancy and that his service in a leave vacancy cannot be reckoned as qualifying service for placement in senior scale. It is further stated that the Deputy Director of Collegiate Education has objected to the placement of the petitioner on the ground that the petitioner has to undergo probation in the substantive post and directed the University to renew even the placement granted to the petitioner w.e.f 22.2.2004, which is the date of his substantive appointment. According to them, the Government has also issued Ext.R1(a) order – G.O(Rt) 1498/2012/H.Edn. dated 20.07.12 directing the Universities to take steps to amend the provisions in Statute/Ordinance and to see that the placement of teachers are granted only after successful declaration of

probation. They also relied on Ext.R1(a) Government Circular No.10648/F3/13/H.Edn. Dated 31.07.2013, by which Government directed the University to strictly implement the Government Order.

9. Heard the learned counsel for the petitioner and the learned Standing Counsel for the University.

10. It is seen that the petitioner has been working in the 2nd respondent College from 5.8.1997 onwards, on the basis of Ext.P1 order. He has been continuing since then. In between he was absorbed in a regular vacancy. The UGC Scheme was implemented in the case of Lecturers in Government as well as Aided Colleges as per G.O(P) No.171/99/H.Edn. dated 21.12.1999. As evident from Ext.P4, the requirement for placement as Lecturer Senior Scale was completion of 6 years of service as Lecturer. In the case of Ph.D Holders the requisite service is only 4 years. UGC Scheme has been introduced for the purpose of Career Advancement. The scheme does not provide for declaration of probation as a prerequisite for placement under the scheme. At the same time, the Government has issued orders providing for counting previous service in other institutions to be reckoned for the purpose of placement.

As per these orders it can be seen that, even service rendered in leave vacancies beyond one year duration can be taken for the purpose of placement. The issue considered in Ext.P10 judgment dated 15.09.2006 in W.A.No.197 of 2006 was in respect of counting of broken period of service for the purpose of placement. Referring to paragraph 7 of G.O(P) No.171/99 dated 21.12.1999 and paragraph 7.7 thereof, this Court held that the only restriction imposed as far as the reckoning of previous service is concerned was that appointment was not on a leave vacancy of less than one year duration. In this case the petitioner though commenced his service in a leave vacancy, it culminated in his regular appointment. The orders in implementation of UGC Scheme do not provide that service rendered in a leave vacancy cannot be considered for the purpose of placement as Senior Scale or Selection Grade Lecturer.

11. It is pertinent to note that the orders relied on by the University have been issued by the Government only in 2012-2013. Even the amendments directed therein have not been carried out so far. Even otherwise the petitioner is seeking a claim on the basis of his acquisition of qualification in the year

2000. Therefore the orders issued in 2012-13 cannot affect him in any manner, even if implemented.

Therefore there will be a declaration that the petitioner is entitled to placement as Senior Scale Lecturer with effect from the date of acquisition of Ph.D degree ie. 28.03.2000, and for all consequential benefits including further placement based on that. The orders shall be passed by the University in terms of the above declaration, within a period of two months from the date of receipt of a copy of this judgment.

This Writ Petition is allowed accordingly.

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

rtr/