

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

WP(C).No. 21420 of 2010 (B)

PETITIONER :

**DR.G.MURALEEDHARAN KURUP, FORMER PROFESSOR OF
BIO CHEMISTRY, SCHOOL OF BIO SCIENCES, M.G.UNIVERSITY,
PRESENTLY WORKING AS PROFESSOR, DEPARTMENT OF
BIO CHEMISTRY, UNIVERSITY OF KERALA, RESIDING AT
T.C.NO.2/279(3), MRA 77A, DOCTORS GARDENS ULLOOR,
MEDICAL COLLEGE P.O., THIRUVANANTHAPURAM**

BY ADV. SRI.M.RAJAGOPALAN NAIR

RESPONDENTS :

**1. M.G.UNIVERSITY, REP. BY ITS REGISTRAR,
PRIYADASHINI HILLS, ATHIRAMPUZHA, KOTTAYAM.**

**2. THE VICE CHANCELLOR, M.G.UNIVERSITY,
PRIYADARSINI HILLS, THIRAMPUZHA, KOTTAYAM.**

**R1 & R2 BY ADV. SRI.VARUGHESE M.EASO, SC, M.G. UNIVERSITY
BY ADV. SRI.VIVEK VARGHESE P.J., SC, M.G. UNIVERSITY
BY ADV. DR.PLEELAKRISHNAN, SC, M.G.UNIVERSITY
BY ADV. SRI. T.A. SHAJI, SC, M.G.UNIVERSITY.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23-03-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

bp

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF THE U.O. NO. 934/A11(1) 2010/ADMN. DT 17/2/2010.**
- P2: COPY OF THE SYNDICATE DECISION DT 28/8/1993 & 15.9.1993.**
- P3: COPY OF THE LETTER DT 13/5/94 SENT BY R1 TO ITS STANDING COUNSEL.**
- P4: COPY OF THE SYNDICATE DECISION DT 3/1/94.**
- P5: COPY OF REPORT DT 21.4.94 OF THE SUB-COMMITTEE.**
- P6: COPY OF THE DECISION DT 26/7/94 OF THE SYNDICATE.**
- P7: COPY OF THE DECISION OF THE STANDING COMMITTEE DT 23/2/95.**
- P8: COPY OF THE RESOLUTION DT 21/2/95 OF THE STANDING COMMITTEE.**
- P9: COPY OF THE UNIVERSITY ORDER NO. AD ALL (1)/1726/89/ADMN.**
- P10: COPY OF THE ORDER DT 2/5/96 OF THE R1.**
- P11: COPY OF THE MINUTES OF THE MEETING HELD BY SYNDICATE
DT 29/10/1999.**
- P12: COPY OF THE ORDER DT 10/5/2000 OF MAHATMA GANDHI UNIVERSITY.**
- P13: COY OF THE JUDGMENT DT 1/8/2007 IN WPC NO. 21749/2003.**

RESPONDENT'S EXHIBITS :

- EXT.R1(a): COPY OF JUDGMENT DT 2/8/2007 IN OP NO. 22033/02 OF THIS
HON'BLE COURT.**

//TRUE COPY//

P.A. TO JUDGE

bp

C.K. ABDUL REHIM, J.

W.P.(C)No.21420 of 2010

Dated this the 23rd day of March, 2015

JUDGMENT

The petitioner was a Professor in the subject of Bio Chemistry in the 'School of Bio-Sciences' under the 1st respondent University. He joined service of the University as Lecturer on 20/02/1988. He applied for the post of Reader in the year 1991 and participated in the selection process. According to the petitioner, even though he was the only candidate found eligible for appointment, one Dr.P.Harikumar was appointed to the post, in violation of the statutory provisions. Petitioner challenged the appointment of Dr.P.Harikumar before this court in OP No.3080/1991. The said writ petition was closed when Dr.P.Harikumar had expressed his non-willingness to join the post. Subsequently, by virtue of Ext.P6 the Syndicate took decision to approve recommendations of the selection committee to appoint the petitioner to the post of Reader, with effect from

28/07/1994. Accordingly the petitioner was appointed as Reader in the subject of Bio-Chemistry. Subsequently, by virtue of Ext.P9 proceedings, the University had taken decision to grant retrospectivity to the appointment of the petitioner as Reader with effect from 18/03/1991, without there being any financial commitment. The said order was issued on 06/06/1995. Based on Ext.P9, Syndicate of the 1st respondent University had resolved to promote the petitioner as 'Professor' under the University Merit Promotion Scheme, with effect from 30/07/1996, as evidenced from Ext.P11. Accordingly, the University had issued Ext.P12 proceedings promoting the petitioner as 'Professor' with effect from 30/07/1996. When the petitioner was working as Professor, one Dr.P.K.Radhakrishnan filed WP(C)No.21749/2003 before this court claiming seniority over the petitioner, in the cadre of Reader and Professor. Dr.P.K.Radhakrishnan was promoted to the post of Reader on 01/11/1991 and to the post of Professor on 24/03/1998, whereas the

petitioner joined post of Reader only with effect from 28/07/1994. In Ext.P13 judgment this court found that any benefit given to the petitioner by virtue of Ext.P9, granting retrospectivity in the post of Reader cannot work to the disadvantage of Dr.P.K.Radhakrishnan, while determining the inter-se seniority between them. Therefore it was held that, seniority between the petitioner and Dr.P.K.Radhakrishnan has to be determined based on placement of the petitioner in the category of Reader with effect from 27/08/1994 and the retrospectivity given to the appointment of the petitioner shall not in any manner affect claim of Dr.P.K.Radhakrishnan as senior to the petitioner in the category of Professor.

2. Based on Ext.P13 judgment another Writ Petition filed by the petitioner, in which seniority assigned to four other persons in the category of Professor was challenged, was also dismissed by this court, as per Ext.R1(a). This court observed that since the

retrospective placement given to the petitioner in the post of Reader and in the post of Professor had been found against, his placement as Professor can only be with effect from 29/10/1999. This court categorically found that the date of placement of the petitioner in the post of Professor would only be on 29/10/1999. Presumably based on Ext.P13 and Ext.R1(a) judgment, the University had now issued Ext.P1 impugned order, refixing the date of promotion of the petitioner to the post of Professor as 29/10/1999 and according sanction to revise and refix pay of the petitioner with effect from 30/07/1996, and to recover excess amount already drawn by the petitioner for the period from 30/07/1996 to 28/10/1999. It is aggrieved by Ext.P1, this writ petition is filed.

3. Contention of the petitioner is that Ext.P1 was issued without notice to him and without affording him any opportunity of personal hearing. It is further contended that the Syndicate of the 1st respondent University alone is competent to make appointment and

to effect promotions of University Teachers and no Officer of the University including the Vice Chancellor has got any authority to cancel the decision taken by the Syndicate. Hence it is contended that Ext.P1 order issued based on sanction accorded by the Vice Chancellor, cannot be sustained. It is also contended that Ext.P1 was issued based on a wrong understanding of Ext.P13 judgment, because this court held the date of promotion of the petitioner as 29/10/1999 only for the limited purpose of assigning seniority to Dr.P.K.Radhakrishnan.

4. Heard; counsel for the petitioner and Standing Counsel appearing for the 1st respondent University. Categorical findings contained in Ext.P13 judgment is to the effect that the retrospectivity given to the promotion of the petitioner to the post of Reader shall not in any way affect claim of Dr.P.K.Radhakrishnan, as senior to the petitioner. It was ordered that for the purpose of *inter-se* seniority between the petitioner and Dr.P.K.Radhakrishnan in the category of Professor, it has

to be done on the basis that the petitioner was placed in the category of Reader only with effect from 27/08/1994. Evidently, based on Ext.P13 judgment, this court in Ext.R1(a) judgment observed that, claim of the petitioner with respect to appointment as Professor with effect from 30/07/1996 does not hold good, and such placement could only be from 29/10/1999. It was further found that the 3rd respondent in Ext.R1(a) judgment should be placed in the post of Professor with effect from 20/11/1995 and the date of placement of petitioner in the post of Professor would only be from 29/10/1999. Admittedly the above said two judgments have attained finality. The petitioner being a party to those judgments, it is binding upon him. As such the petitioner cannot raise any successful challenge against Ext.P1 order issued by the 1st respondent University to the effect of revising the date of promotion as Professor with effect from 29/10/1999.

5. The contention regarding non decision by the

Syndicate has no relevance in this context, because the University was only implementing a decision rendered by this court. For such implementation there need not be any sanction of the Syndicate. On the otherhand, the University or the Syndicate cannot take any decision contrary to the findings contained in Ext.P13 and Ext.R1 (a) judgments. Therefore this court is of the considered opinion that re-fixation of the date of promotion effected through Ext.P1 order of the University does not suffer from any illegality or infirmity and interference to that extent by this court is to be declined.

6. Learned counsel for the petitioner raised a contention that the recovery of salary ordered in Ext.P1 cannot be sustained. It is pointed out that the petitioner was promoted to the post of Professor by virtue of Ext.P12 order of the University, which was issued as early as on 10/05/2000. It is stated that the petitioner continued in the said post since that date onwards and he had relieved from service of the 1st respondent University

on 26/12/2007, for accepting the post of Professor in the Kerala University. Ext.P1 order giving effect to the judgments in question was issued only on 17/02/2010, long after the petitioner was relieved from the post of Professor in the 1st respondent University. It is pointed out that salary and other benefits drawn by the petitioner in the post of Professor with effect from 30/07/1996 is now sought to be recovered based on the fact that promotion given to the petitioner with effect from the said date was subsequently found to be incorrect. Even assuming that the assignment of promotion granted to the petitioner on an earlier date was by way of a mistake, the petitioner had not in any manner contributed for such mistake. It was not due to any misrepresentation or false representation made by the petitioner that such a mistake was committed by the University. The alleged excess payments were made at a time which was about 10 years back. It is not in dispute that the petitioner had discharged duties of the Professor during the period in

question. It is also pointed out that the petitioner is due to retire from the post in which he is presently working at Kerala University, with effect from 31/03/2015. It is contended that, the recovery sought under Ext.P1 if effected would result in serious harshness and inequitous position to the petitioner. Therefore it is appealed that it is only just and proper to quash Ext.P1 to the extent it ordered recovery of the alleged excess payment.

7. In this regard learned counsel for the petitioner had placed much reliance on a latest decision of the hon'ble Supreme Court in **State of Punjab v. Rafiq Masih (White Washer) [2015 (1)KLT 429 SC]**. The hon'ble apex Court held that it is not possible to postulates all situations of hardship which would govern the employees on the issue of recovery, where payments have been mistakenly made by the employer in excess of their entitlement. The hon'ble apex Court had summarised certain situations wherein recoveries by the employers would become impermissible. The situations

postulated by the hon'ble Supreme court are as follows;

(i) Recovery from employees belonging to Class-III and Class-IV service(or Group 'C' and Group 'D' service)

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to

recover.

8. Learned counsel for the petitioner specifically pointed out that, the factual situations prevailing in the case at hand would squarely fall in within the category mentioned as item (ii), (iii) and (iv) enumerated above. The claim in this regard was vehemently opposed by learned Standing Counsel appearing for the respondent University. It is contended that when it is evident that the excess payment drawn by the employee was not his actual entitlement and when the same was happened to be paid on a mistake in fixing the seniority, the employer is entitled to recover the excess payments. He had placed reliance on a decision of the hon'ble Supreme Court in **Chandi Prasad Uniyal and Others v. State of Uttarakhand and Others [2012 (8)SCC 417]**. But it is pertinent to note that the decision in **Rafiq Masih's** case (supra) was rendered by the hon'ble Supreme Court after taking note of the decision in **Chandi Prasad's** case (supra).

9. This court is of the considered opinion that whether the recovery sought for is justified or not in the given circumstances prevailing on the issue, is a matter which need to be decided by the 1st respondent University at the first instance. Interest of justice would be achieved by permitting the petitioner to make a representation against the recovery sought for in Ext.P1, before the Vice Chancellor of the 2nd respondent. It is for the 2nd respondent to consider the aspect taking note of such representation with due advertence to the settled legal precedents cited above. It is for the 2nd respondent to take a decision in the matter either by himself or by referring the matter to the decision of the Syndicate.

10. Hence the above writ petition is hereby disposed of by upholding Ext.P1 to the extent which it refixed the date of promotion of the petitioner as Professor as on 29/10/1999. With respect to recovery of the alleged excess payments sought for in Ext.P1, the petitioner is permitted to make a representation before the 2nd

respondent as mentioned above. If any such representation is received by the 2nd respondent within two weeks from the date of receipt of a certified copy of this judgment, the 2nd respondent shall consider the same and shall take an appropriate decision in accordance with the observations contained herein above. Such decision shall be taken at the earliest possible at any rate within a period of three months from the date of receipt of copy of such representation.

11. Till such time a decision is taken as directed above, no recovery shall be effected based on Ext.P1 proceedings.

**Sd/-C.K. ABDUL REHIM
JUDGE**

MJL