

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

WP(C).No. 18387 of 2014 (W)

PETITIONER(S):

1. BABURAJ C.S., AGED 53 YEARS,
S/O. SUSEELAN, CHERUPILLIL HOUSE, EDAYAPPURAM,
ALWAY, NOW WORKING AS SECTION OFFICER,
KERALA AGRICULTURAL UNIVERSITY, MANNUTHY, THRISSUR.
2. DINESAN K.V., AGED 49 YEARS,
S/O. PADMANABHAN, M.P. HOUSE, KALLAYI,
KOZHIKKODE-3,
NOW WORKING AS SECTION OFFICER HIGHER GRADE,
INTERNAL AUDIT CIRCLE (NR), VELLIMADUKKUNNU,
KOZHIKKODE.
3. S. RAVINDRANATH,
S/O. SANKARAN NAIR, T.C. 29/1272 (I), INDEEVARAM,
NEAR NSS HIGH SCHOOL, PALKULANGARA, THIRUVANANTHAPURAM,
NOW WORKING AS SECTION OFFICER,
COLLEGE OF AGRICULTURAL ENGINEERING VELLAYANI,
THIRUVANANTHAPURAM.
4. USHA R.,
W/O. K.R. NARAYANA SWAMY, FLAT NO.6,
PARUSURAM NEER APARTMENTS, PUSHPAGIRI AGRAHARAM,
PONKUNNAM, THRISSUR, NOW WORKING AS SECTION OFFICER,
KERALA AGRICULTURAL UNIVERSITY, MANNUTHY, THRISSUR.
5. AKBAR ALI K.M.,
S/O. MOHAMMED, KADAVILPARAMBIL HOUSE, MULAKKARA,
MANNUTHY,
NOW WORKING AS ADMINISTRATIVE OFFICER GR. II,
REGIONAL AGRICULTURAL RESEARCH STATION, WAYANAD.
6. SOBHA K.S.,
S/O. SWARNAKUMAR, PATTATHUPARAMBIL HOUSE,
CHITTISSERY P.O.,
NOW WORKING AS ASSISTANT SECTION OFFICER,
CASH SECTION, AGRICULTURAL UNIVERSITY, HEAD QUARTERS,
VELLANIKKARA, THRISSUR.

Msv/

WP(C).No. 18387 of 2014 (W)

7. P.J. JOHNSON, AGED 47 YEARS,
S/O. ITOOP, PUTHIYANGATH HOUSE, PANICKER ROAD,
KUNNAMKULAM, THRISSUR,
NOW WORKING AS SECTION OFFICER, KELAPPAJI COLLEGE
OF AGRICULTURAL ENGINEERING & TECHNOLOGY,
TAVANNUR, MALAPPURAM DISTRICT.

BY ADV. SMT.P.RREENA

RESPONDENT(S):

1. KERALA AGRICULTURAL UNIVERSITY,
VELLANIKKARA, THRISSUR-680 654,
REPRESENTED BY ITS REGISTRAR.
2. VICE CHANCELLOR,
KERALA AGRICULTURAL UNIVERSITY, VELLANIKKARA,
THRISSUR-680 654.
3. STATE OF KERALA,
REPRESENTED BY SECRETARY,
DEPARTMENT OF AGRICULTURAL (FARMS), SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

R1 & R2 BY ADV. SRI.BABU JOSEPH KURUVATHAZHA,SC
R3 BY GOVERNMENT PLEADER SRI.NOUSHAD THOTTATHIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04-02-2015 ALONG WITH WPC. 18645/2014, THE COURT ON
22-05-2015, DELIVERED THE FOLLOWING:

msv/

WP(C).No. 18387 of 2014 (W)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT. P1. TRUE COPY OF THE MINUTES OF THE EXECUTIVE COMMITTEE OF KERALA
AGRICULTURAL UNIVERSITY DATED 25-1-2012.**

**EXT. P2. TRUE COPY OF THE MINUTES OF THE EXECUTIVE COMMITTEE
DATED 19-6-2012.**

**EXT. P3. TRUE COPY OF THE PROCEEDING NO. GA/JI/4147/12 DATED 3-1-2013 OF THE
EXECUTIVE COMMITTEE.**

EXT. P4. TRUE COPY OF THE PROCEEDINGS OF THE UNIVERSITY DATED 17-10-2013.

**EXT. P5. TRUE COPY OF THE PROCEEDINGS OF THE VICE CHANCELLOR
DATED 13-5-2014.**

EXT. P6. TRUE COPY OF THE DECISION REPORTED IN 2012 (2) KHC 329.

**EXT. P7. TRUE COPY OF THE RELEVANT EXTRACT OF RESOLUTION IN
116TH GENERAL COUNCIL MEETING DATED 23-3-2013.**

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) Nos.18387 & 18645 of 2014

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Dated this the 22nd day of May, 2015

JUDGMENT

The order No.GA/J1/4652/14 dated 13.5.2014 of the Vice Chancellor of the respondent university is under challenge in this writ petition.

W.P(C) No.18387/2014

2. In this writ petition, the petitioners are aggrieved by the aforesaid order which is marked as Ext.P5 by which, the Vice Chancellor has cancelled the decision of the executive committee by abolishing two sanctioned posts of Assistant Register as per Ext.P3. The petitioners point out that after trifurcation of the Kerala Agricultural University into the Kerala Veterinary and Animal Science University, Wayanad and Kerala University for Fisheries and Oceanic Sciences as well as Kerala Agricultural University, large number of posts of the university were shifted to the aforesaid

universities. This resulted in administrative crises in the first respondent university, which was discussed in the 488th executive committee meeting dated 25.1.2012. In the said meeting, it was resolved to create two posts of Assistant Registrar for the purpose of dealing with the matters under the Right to Information Act, legal issues, disciplinary action, general council meeting, executive committee, academic council etc. It was also resolved that in order to avoid financial commitment, the said two posts can be created by converting the existing posts. In the 492nd meeting held on 19.6.2012, it was decided to create two posts of Assistant Registrar after abolishing certain posts to ensure that there is no fresh financial burden by creation of said posts.

3. By order No. GA/J1/4147/12 dated 3.1.2013, the university issued proceedings. According to the petitioners, under the scheme of Kerala Agricultural University Act, the power to create posts is vested with the executive committee and the executive committee

taking into account the actual necessity and without any new financial commitment had taken a decision. However, by Ext.P5, the Vice Chancellor has abolished the two posts of Assistant Registrar on the basis of which, the first petitioner was reverted back to the Section Officer (Hr.Gr) from the cadre of Assistant Registrar. The promotion avenue and transfer possibility of other petitioner are also adversely affected by the said order. It is with this background, the petitioners have approached this Court.

W.P(C) No.18645/2014

4. In this writ petition, the petitioners point out that when the Kerala Agricultural University was trifurcated into the Kerala Veterinary and Animal Science University, Wayanad and Kerala University for Fisheries and Oceanic Science as well as Kerala Agricultural University, the institutions coming under the faculties of veterinary and fisheries respectively were transferred to new universities along with the posts attached thereto. Afterwards as per

G.O(Rt) No.369/12/F & PF dated 27.4.2012, 14 more non-teaching posts were transferred from the Kerala Agricultural University to the Kerala University of Fisheries and Oceanic Studies for the purpose of accommodating persons who have opted to the said university, but cannot be transferred for want of post in the fisheries university.

5. After shifting the above said 14 posts, the executive committee of the Kerala Agricultural University, in its 941st meeting held on 9.5.2012, resolved to explore the possibility of converting non-teaching posts lying vacant for long period for ensuring that the 14 posts that was shifted to the Fisheries University is restored. According to the petitioners, it was directed that the said conversion should be without any further financial commitment to the university. Accordingly, after the report of the then Vice Chancellor, the executive committee of the university held on 19.6.2012 decided to convert 22 non teaching posts lying vacant for long periods into 14 posts, transferred to the fisheries university without any additional

financial commitment to the university and to strictly abide by the instruction of the Government while undertaking such conversions/re-designations.

6. In accordance with the decision of the 492nd meeting of the Agricultural University, the first respondent issued order No. GA/J1/14220/12 dated 22.11.2012 abolishing the 22 posts and converting the said post into 14 posts which was transferred from the university to the fisheries university. The petitioners allege that 14 posts were created by abolishing 22 posts mentioned in table A of Ext.P1 and without any new financial commitment to the university. This was to ensure the smooth functioning of the university. The grievance of the petitioners is that without any statutory authority, the Vice Chancellor, without implementing Ext.P1 issued proceedings to keep Ext.P1 in abeyance by order dated 27.11.2012 and later he has gone a step ahead and has issued proceedings cancelling Ext.p1 order, which according to the petitioner is incompetent. It is with this

background, the petitioners have approached this Court.

7. In the counter affidavit filed by the respondent university, they justified the stand taken by the Vice Chancellor. The respondents relied on Ext.R1(a) Government order dated 2.5.2014 wherein the Government had accorded sanction for the release of an amount of ₹17,402/- crores as non plan grant-in-aid to the university on condition that the release of the next instalment would be only after reverting any benefits given/post created/promotions given earlier without the concurrence of the Government. Therefore, according to the respondent university, for getting further relief, the reversion as well as the cancellation of the post were quite necessary.

8. I have heard Mr.Ranjith Thampan, the learned senior counsel for the petitioners, Mr.Babu Joseph Kuruvathaza, the learned standing counsel for the respondent university and Mr.Noushad Thottathil, the learned Government Pleader in the matter.

9. By the impugned order, the Vice Chancellor has abolished

two posts of Assistant Register which was created without any fresh financial liability as can be seen from Exts.P1 to P3 produced in W.P (C) No.18387 of 2014. By the same order, the Vice Chancellor has cancelled the university order No. GA/J1/14220/12 dated 22.11.2012 which converted 22 vacant post of non-teaching of Kerala Agricultural University into 14 posts shifted/transferred to the Kerala University for Fisheries and Oceanic Science.

10. The learned senior counsel would argue that the Vice Chancellor is incompetent to issue the impugned order as he has no authority. It virtually brushes aside the decision taken by the executive committee. The definite stand taken by the respondent university is that the abolition of the posts was on the basis of the alleged direction given by the Government. It can be seen from Exts.P1 and P3 produced in W.P(C) No.18387 of 2014 that the two posts of Assistant Registrar were created without any fresh financial liability. Similarly, the conversion of 22 non-teaching posts lying

vacant for long periods into 14 posts transferred to the fisheries university was without any additional financial commitment. This can be seen from table A of Ext.P1 produced in W.P(C) No.18645 of 2014. The aforesaid posts were created in order to ensure the sooth functioning of the respondent university.

11. As rightly pointed out by the learned senior counsel, the Vice Chancellor has no authority to cancel the decision of the executive committee of the respondent university which was duly taken under Section 16(h) of the Agricultural University Act. Therefore, the abolition of the two posts of Assistant registrar by the impugned order is *void ab initio* and without jurisdiction.

12. Though it was strenuously argued by the learned standing counsel for the respondent university that the impugned order was passed as directed by the Government, it is crucial to note that the Government cannot direct the respondent university or Vice Chancellor to cancel any post, the creation of which is the statutory

authority of the executive committee under Section 16(h) of the Act.

It is also relevant to note that no financial commitment would be created by the creation of the post of Assistant Register as evidenced by Exts.P1 and P3 produced in W.P(C) No.18387 of 2014.

13. The learned senior counsel points out that there are ten posts of Associate Director of Research created without Government concurrence and which is having extra financial burden. Likewise, there are five posts of Overseer Grade I, Electrical created by the university which has also no concurrence of the Government and is having fresh financial liability.

14. As per Section 12 of the Kerala Agricultural University Act the General Council shall be supreme authority of the respondent university and the executive powers of the university, including the general superintendence and control over the institutions of the university shall be vested with the executive committee as per Section 16. As per Section 16(h) of the Act, the powers to create

administrative ministerial and other necessary posts is solely vested with the executive committee and as per clause 16(p), the executive committee can delegate its powers to the Vice Chancellor or to a committee appointed from among its members.

15. As rightly pointed out by the learned senior counsel for the petitioners, the respondent university has no case that the executive committee has delegated any of its powers vested under Section 16 (h) to the Vice Chancellor. Section 21 read with 16(p) makes it clear that the university has the power to appoint committees which may unless otherwise provided in the Act or statutes, consisting of the members of the authority and such other persons as it thinks fit. The decisions were taken in the presence of the highest representatives of the Government viz., the Secretary, Agricultural (Farms), Department and Finance Secretary and abiding the standing instructions issued by the Government in such cases. The wisdom of such decisions has never been questioned by the Government till date.

16. The learned senior counsel pointed out that none of the aforementioned administrative posts come under the purview of the university order dated 17.2.2012 and there is no existing anomaly in respect of these posts in 2009 pay revision. The Vice Chancellor, without referring to the said direction of the executive committee, who is the only authority in the university competent to create/abolish the posts, issued the impugned order abolishing the posts. As already pointed out, there are posts in the respondent university which have not received Government concurrence at all.

17. On a consideration of the entire materials now placed on record, this Court is of the view that the petitioners are entitled to succeed.

Therefore, the writ petitions are allowed. The impugned order (Ext.P5 in W.P(C) No.18387 of 2014/Ext.P3 in W.P(C) No.18645 of 2014) is quashed. The respondent university is directed to ensure that the posts of Assistant Register sanctioned as per

Exts.P1 to P3 in W.P(C) No.18387 of 2014 and the 14 posts sanctioned as per Ext.P1 in W.P(C) No.18645 of 2014 are not abolished without the concurrence of the executive committee.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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