

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 20TH DAY OF AUGUST 2015/29TH SRAVANA, 1937

WP(C).No. 19107 of 2014 (K)

PETITIONER(S):

**DR. K. GOPAKUMAR
ASSOCIATE PROFESSOR OF ENGLISH
SCHOOL OF DISTANCE EDUCATION, UNIVERSITY OF KERALA
PALAYAM CAMPUS, THIRUVANANTHPAURAM-695 034.**

BY ADV. SRI.BASANT BALAJI

RESPONDENT(S):

- 1. UNIVERSITY OF KERALA
REPRESENTED BY THE REGISTRAR, PALAYAM CAMPUS
THIRUVANANTHAPURAM.**
- 2. THE REGISTRAR
UNIVERSITY OF KERALA, PALAYAM CAMPUS
THIRUVANANTHAPURAM.**
- 3. THE VICE CHANCELLOR
UNIVERSITY OF KERALA, PALAYAM CAMPUS
THIRUVANANTHAPURAM.**
- 4. DR.V.ASHA, DIRECTOR, SCHOOL OF DISTANCE EDUCATION
UNIVERSITY OF KERALA, PALAYAM CAMPUS
THIRUVANANTHAPURAM.**

**Addl.5. DR.ZEENATH K.S
W/O AJMAL, ASSOCIATE PROFESSOR/READER
SCHOOL OF DISTANCE EDUCATION, UNIVERSITY OF KERALA
THIRUVANANTHAPURAM, PIN - 695 034
RESIDING AT PARAYIL HOUSE, CHEKKAKONAM PO., KARAKULAM
THIRUVANANTHAPURAM - 695 564.**

ADDL.R5 IS IMPEADED AS PER ORDER DATED 23.07.2015 IN IA 9938/15.

**R4 BY ADV. SRI.K.JAJU BABU (SR.)
R4 BY ADV. SMT.M.U.VIJAYALAKSHMI
R4 BY ADV. SRI.BRIJESH MOHAN
R1-R3 BY ADV. SRI.BECHU KURIAN THOMAS, SC, UNIVERSITY OF KERALA
RADDL. BY ADV. SMT.SREEDEVI KYLASANATH
RADDL. BY ADV. SRI.M.JAYAKRISHNAN
RADDL. BY ADV. SRI.ACHUTH KYLAS**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
20-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1. TRUE COPY OF THE APPOINTMENT ORDER NO.AD.A1.2.159/79 DATED 2/7/1980 OF THE PETITIONER
- EXT.P2. TRUE COPY OF THE ORDER NO.AD.DII.3.3811/92 DATED 3/7/1992 PLACING THE PETITIONER IN SENIOR SCALE.
- EXT.P3. TRUE COPY OF THE ORDER NO.DII.3.4737/95 DATED 15/2/2005 ISSUED BY THE 2ND RESPONDENT
- EXT.P4. TRUE COPY OF THE PROVISIONAL SENIORITY LIST OF TEACHERS OF THE INSTITUTE OF DISTANCE EDUCATION, KARIAVATTOM
- EXT.P5. TRUE COPY OF THE LETTER DATED 6/1/2014 SENT BY THE FINANCE OFFICER TO THE DIRECTOR
- EXT.P6. TRUE COPY OF THE MEMO DATED 30/5/2014 SENT BY THE 2ND RESPONDENT
- EXT.P7. TRUE COPY OF THE LETTER DATED 12/5/2014 SENT BY THE PETITIONER TO THE 3RD RESPONDENT
- EXT.P8. TRUE COPY OF THE ORDER NO.AD.BII.2/1723/2014 DATED 10/6/2014 OF THE 1ST RESPONDENT
- EXT.P9. TRUE COPY OF THE LETTER DATED 23/6/2014 SENT BY THE PETITIONER TO THE 3RD RESPONDENT
- EXT.P9(A). TRUE COPY OF THE ACKNOWLEDGEMENT CARD
- EXT.P10. TRUE COPY OF THE LETTER DATED 14/7/2014 SENT BY THE PETITIONER TO THE 2ND RESPONDENT
- EXT.P11. TRUE COPY OF THE ORDER NO.AD.DII.3.3862/92 DATED 4/5/1994 OF THE 2ND RESPONDENT
- EXT.P12. TRUE COPY OF THE UGC SCHEME REVISION ORDER No.FIN.III.1.1050/2010 DATED 01.06.2010
- EXT.P13. TRUE COPY OF THE PAY ORDER OF THE PETITIONER ISSUED BY THE FINANCE OFFICER.

RESPONDENT(S)' EXHIBITS

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- EXT.R4(a) TRUE COPY OF THE ORDER No.AD.D.11.3/8088/2000 DATED 20.01.2005
ISSUED BY THE 2ND RESPONDENT.
- EXT.R4(b) TRUE COPY OF THE RELEVANT EXTRACT OF THE ORDER
No.FIN.IV/9001/UGC/2000 DATED 03.03.2000 ISSUED BY THE 1ST
RESPONDENT.
- EXT.R4(c) TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT DATED
25.01.2006 IN WP(C) No.3773/2004
- EXT.R1(a) TRUE COPY OF THE UNIVERSITY NOTIFICATION (RELEVANT PORTION)
No ACAD/L/S/2446/2001 DATED 04.05.2013 PUBLISHED IN THE KERALA
GAZETTE DATED 07.05.2013
- EXT.R1(b) TRUE COPY OF THE UO No. (RELEVANT PORTION) IV/9001/UGC/2000
DATED 03.02.2000
- EXT.R1(c) TRUE COPY OF THE UO No.Ad.D II 3/8088/2000 DATED 21.1.2005.
- EXT.R5(a) TRUE COPY OF THE RELEVANT PART OF THE UNIVERSITY FIRST
STATUTES 1977.
- EXT.R5(b) TRUE COPY OF THE UNIVERSITY ORDER DATED 10.08.2010 RE-
DESIGNATING ADDL.5TH RESPONDENT AS READER W.E.F. 01.01.2006.
- EXT.R5(c) TRUE COPY OF THE REPRESENTATION DATED 30.06.2015 TO
NOMINATE ADDL.5TH RESPONDENT AS DIRECTOR OF SCHOOL OF
DISTANCE EDUCATION.
- EXT.R5(d) TRUE COPY OF THE RELEVANT PART OF THE KERALA UNIVERSITY
REGULATIONS RELATING TO QUALIFICATION OF THE TEACHERS FOR
PROMOTION TO THE POST OF READER.
- EXT.R5(e) TRUE COPY OF THE JUDGMENT DATED 20.02.2015 IN WP(C)
No.30244/2014
- EXT.R5(f) TRUE COPY OF THE ORDER DATED 26.06.2015 IN WP(C) No.19170/2014

// True copy //

PA to Judge

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A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 19107 of 2014

Dated this the 20th day of August, 2015

JUDGMENT

The petitioner joined the service of the Institute of Distance Education under the 1st respondent University on 25.06.1980 as a Lecturer. On completion of eight years service as Lecturer, he was placed in the senior scale with effect from 25.06.1988. Still later, on completion of a further period of eight years as Lecturer in senior scale, he was placed as a Selection Grade Lecturer with effect from 25.06.1996. The grievance of the petitioner in the writ petition pertains to the non consideration of his candidature for the post of Director/Head of the Department of the Institute of Distance Education. The criteria for nomination of a person as Head of the Department under the respondent University is to be found in Statute 18 of Chapter III of the Kerala University First Statutes 1977, which was substituted by an amendment dated 04.04.2013 as follows:

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Head of a Department - The Professor, Associate Professor/Reader or Assistant Professor incharge of a Department shall be Head of the Department. The Head of the Department shall be nominated on a rotation basis for three years starting with the seniormost teacher of the Department. The Syndicate shall nominate the seniormost Professor shall be nominated. After all the Professors are given a turn, the rotation shall then be implemented among Associate Professors/ Readers as per seniority. To become eligible for considering for Headship, a teacher should possess a **Ph.D Degree** and has to put in atleast two years of service in the Department concerned, except in cases where there is no senior

teacher in the Department. A teacher shall be eligible to take up Headship only if he/she has a minimum of 6 months of service remaining till retirement. In the Departments where there are no Professors or Associate Professors/Readers, eligible for the Headship, it shall be rotated among the Assistant Professors. It shall however be open to the teacher who has been nominated as the Head of the Department to make a request that he/she shall be relieved of such responsibility for academic reasons. In such cases, the next seniormost teacher shall be the Head of the Department. The other members of the teaching staff shall work under the direction of the Head of the Department and shall assist him in the performance of his/her duties.”

2. It is the specific contention of the petitioner that, while his candidature could have been considered for selection to the post of Head of Department, the respondents proceeded to designate the 4th respondent as the Head of the Department as borne out by Ext.P8 order. In the writ petition Ext.P8 order is impugned, inter alia, on the ground that as per Ext.P11 order dated 04.05.1994 of the respondent University, the criteria for fixing the seniority of teachers in the University is stipulated as based on the date of entry into University service in the respective cadre and, as between the petitioner and the 4th & 5th respondents, it was the petitioner who joined the service as Lecturer under the respondent University earlier in point of time. It is also the case of the petitioner that, by virtue of the specific provisions of Ext.P12 order dated 01.06.2010, by which the respondent University had implemented the 6th UGC scheme including revision of pay scales

to teachers in the State with effect from 01.01.2006, it is envisaged that incumbent Readers and Lecturers (Selection Grade), who have completed three years in the current pay scale of Rs.12,000-18,300 on 01.01.2006 shall be placed in the pay band of Rs.37,400-67,000 with AGP of Rs.9,000/- and shall be re-designated as Associate Professor. The contention of the petitioner, therefore, is that insofar as the both the petitioner, in his capacity as a Selection Grade Lecturer having completed three years in the prescribed pay scale, and the 4th respondent, who was promoted as a Reader, were both re-designated as Associate Professors by virtue of Ext.P12 order, the inter se seniority between the petitioner and the 4th respondent should be determined based on the length of service put in, in the University. It is the stand of the petitioner that, by applying the said yardstick, the petitioner who had joined the services of the University earlier in point of time than either the 4th respondent and the 5th respondent, would have to be treated as a Senior Associate Professor for the purposes of implementing the criteria fixed for designation as Head of the Department.

3. Counter affidavits have been filed on behalf of respondents 1 to 3, 4th respondent and 5th respondent. In the

counter affidavit filed on behalf of the respondent University, Ext.R1(A) notification, that amended the Kerala University First Statutes, is produced to show the criteria that was fixed for nomination as Head of the Department. The contents of this notification have already been noticed above. It is the stand of the respondent University, as also the stand of the 4th and 5th respondents in their counter affidavits that, both the 4th & 5th respondents were promoted to the substantive post of Reader and the said promotion was pursuant to a selection process that was undertaken in accordance with the Kerala University Regulations relating to qualifications of teachers. It is the stand of the respondents therefore, that the interpretation to be placed on the criteria for designation as Head of Department, in the particular context of determining the inter se seniority between a Selection Grade Lecturer and a Reader, both of whom would qualify for a designation as an Associate Professor, in terms of Ext.P12 order, would necessarily have to recognise the higher post that was occupied by the 4th & 5th respondents. In other words, the stand of the respondents is that, while determining the inter se eligibility of the petitioners and the 4th & 5th respondents for designation as Head of the Department, the 4th & 5th respondents who occupy the post of Reader would have to be given preference over the

petitioner, who occupied the substantive post of Lecturer, which was a lower post in the hierarchy of posts in the University service.

4. I have heard Sri. Basant Balaji, the learned counsel appearing for the petitioner, Sri. Jaju Babu, learned Senior Counsel appearing for the 4th respondent, Sri. Bechu Kurian Thomas, the learned Standing Counsel appearing for the respondent University, as also Smt.Sreedevi Kailasnath, the learned counsel appearing for the additional 5th respondent.

5. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find force in the contention of the respondents with regard to the interpretation to be placed on the criteria prescribed in the amended Statute 18 in Chapter III of the Kerala University First Statutes 1977. A reading of the said provision clearly indicates that a preference is to be given for the incumbent of a higher post, while considering the candidature for designation as Head of Department. It is accordingly, that the candidates are chosen from the order of Professor, Associate Professors/Readers and Assistant Professor in charge of a Department, for designation as Head of Department. Since, the hierarchy of posts is recognised as one of the criteria,

necessarily this factor would have to be reckoned while determining the inter se seniority between a Lecturer (Selection Grade) and a Reader, both of whom would fall within the category of “Associate Professors/Readers” for the purposes of the aforementioned provision. Viewed in that manner, one cannot but arrive at a conclusion that a person promoted to the post of Reader would get a priority in the matter of consideration for the post of Head of Department as compared to a Selection Grade Lecturer, who occupies a lower post in the hierarchy of posts in the department. Accordingly, I find that as between the petitioner and the 4th & 5th respondents, it would be the senior among the 4th & 5th respondents, who would get a prior claim for designation as the Head of the Department of the Institute of Distance Education under the 1st respondent University, before the Petitioner.

Resultantly, the writ petition in its challenge against Ext.P8 order fails and is accordingly, dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE