

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 4TH DAY OF SEPTEMBER 2015/13RD BHADRA, 1937

WP(C).No. 20099 of 2015 (J)

PETITIONER:

**DR.SHIBU SIMON, AGED 47 YEARS
MAPPILAPARAMBIL HOUSE, BEHIND BISHOPS PALACE
EAST FORT, THRISSUR (ASSISTANT PROFESSOR
DEPARTMENT OF ANIMAL REPRODUCTION
UNIVERSITY VETERINARY HOSPITAL, KOKKALAI).**

BY ADV. SMT.MARY BEENA JOSEPH

RESPONDENTS:

- 1. B.ASHOK, AGE NOT KNOWN, FATHER'S NAME NOT KNOWN
VICE CHANCELLOR
KERALA VETERINARY AND ANIMAL SCIENCES UNIVERSITY
POOKODE, WAYANAD-673 576.**
- 2. THE VICE CHANCELLOR
KERALA VETERINARY AND ANIMAL SCIENCES UNIVERSITY
POOKODE, WAYANAD-673 576.**
- 3. THE REGISTRAR
KERALA VETERINARY AND ANIMAL SCIENCES UNIVERSITY
POOKODE, WAYANAND-673 576.**

BY ADV. SRI.MILLU DANDAPANI,SC,K.V & A.S. UNIVERSITY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :-

- EXHIBIT P1 - COPY OF THE ORDER OF THE DEAN DATED 1-6-10.
- EXHIBIT P2 - COPY OF THE ORDER OF THE 3RD RESPONDENT DATED 3-4-13.
- EXHIBIT P3 - COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 28-5-15.
- EXHIBIT P4 - COPY OF THE ORDER OF THE DEAN DATED 29-5-15.
- EXHIBIT P5 - COPY OF THE GUIDELINES ISSUED BY THE UNIVERSITY.
- EXHIBIT P6 - COPY OF THE DRAFT LIST DATED 5-5-2015.
- EXHIBIT P7 - COPY OF THE JUDGMENT IN WPC NO. 16720 OF 2015 DATED 4-6-15.
- EXHIBIT P8 - COPY OF THE OBJECTION DATED 18-6-15 SUBMITTED BEFORE THE 3RD RESPONDENT.
- EXHIBIT P9 - COPY OF THE REPORT PUBLISHED IN THE MATHRUBHUMI DAILY DATED 14-4-15.
- EXHIBIT P10 - COPY OF THE REPORT PUBLISHED IN THE DESABHIMANI DATED 17-4-15.
- EXHIBIT P11 - COPY OF THE REPORT PUBLISHED IN VEEKSHANAM DAILY DATED 17-6-15.
- EXHIBIT P12 - COPY OF THE RELEVANT PAGES FROM THE KALAKOUMUDHI WEEKLY.
- EXHIBIT P13 - COPY OF THE REPORT IN THE DECCAN CRONICLE DATED 26-6-15.
- EXHIBIT P14 - COPY OF THE ORDER DATED 25-6-15 ISSUED BY THE RESPONDENTS.
- EXHIBIT P15 - COPY OF THE ORDER DATED 30-6-15 ISSUED BY THE RESPONDENTS.
- EXHIBIT P16 - COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 31.05.2008.
- EXHIBIT P17 - COPY OF THE NOTIFICATION ISSUED BY THE BOARD OF MANAGEMENT OF THE 2ND AND 3RD RESPONDENTS DATED 12.06.2014.

[CONTD..]

- EXHIBIT P18 - COPY OF THE RELEVANT PAGE FROM THE KERALA AND ANIMAL SCIENCES UNIVERSITY FRIST STATUTES 2014.
- EXHIBIT P19 - COPY OF THE RELEVANT PAGES OF THE APPROVED VACANCY POSITION ISSUED BY THE BOARD OF MANAGEMENT.
- EXHIBIT P20 - COPY OF THE ORDER DATED 03.11.2009 OF THE 3RD RESPONDENT.
- EXHIBIT P21 - COPY OF THE INTIMATION REGARDING CLOSURE OF THE PROJECT (AINWP) MADE TO THE RESPONDENTS BY THE PRINCIPAL SCIENTIST.

RESPONDENT(S)' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE

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K. VINOD CHANDRAN, J.

W.P(C). No.20099 of 2015

Dated this the 4th day of September, 2015.

JUDGMENT

The petitioner is aggrieved with the fact that the petitioner, an Assistant Professor (Animal Reproduction), has now been posted to the Livestock Farm of the University at Thiruvazhamkunnu. The petitioner contends that, the Livestock Farm does not have a post of Assistant Professor (Animal Reproduction) and there can be only cadre to cadre transfers. The petitioner, an Assistant Professor, is now directed to take charge from an Associate Professor, which is not permissible as per the norms. The petitioner relies on Ext.P5 norms, specifically Clause 5 to buttress the above contention and also points to Clause 17 of Ext.P5 to contend that he being the President of a recognized teachers' organisation, cannot be transferred and has to be accommodated at the Headquarters of the organisation or

at the place he opts to work.

2. Ext.P7 is relied on to contend that the Livestock Farm does not have a sanctioned post of an Assistant Professor in Animal Reproduction, Gynaecology and Obstetrics. It is also submitted that, Section 82 of the Statute describes the qualification of appointment of the Director of Farms, which post the petitioner cannot aspire to, since he does not have the necessary qualification and he would be prejudiced in so far as the period spent in the farm being not counted when he is considered for promotion in the clinical side.

3. With respect to the cadre to cadre transfer and the clubbing of only Professors or Assistant Professors as per Clause 5 of Ext.P5, it has to be noticed that the norms cannot be treated as laws of Euclid and the administration has to be definitely conceded an amount of elbow room in the matter of transfers. The petitioner, an Assistant Professor, is in fact posted to the farm at Thiruvazhamkunnu for the specific purpose noticed in Ext.P14. The petitioner also is taking charge from an Associate Professor, who is in the senior cadre of the petitioner. The

impugned order at Ext.P14 specifically speaks of the need for an Animal Reproduction Specialist to increase the breeding stock in the farm, which is facing problems due to transmissible reproductive diseases. The petitioner, an expert in animal reproduction, is said to have been posted at the farm at Thiruvazhamkunnu specifically to control the disease afflicting the livestock, as also increase the productivity.

4. In the circumstances explained in Ext.P14, what is to be emphasised is para 26 of Ext.P5 norms, which makes it clear that notwithstanding anything in the norms, the University can make transfers for meeting the requirements for the Veterinary Council of India, mandate of the Institution/Station and on public interest. There is a clear need projected in Ext.P14, which has necessitated the transfer of the petitioner to the farm at Thiruvazhamkunnu. It cannot at all be said that the petitioner is in a non-transferable job and that the petitioner could be continued only in the sanctioned post of a Veterinary Surgeon (Animal Reproduction). The petitioner, by his transfer to the farm at Thiruvazhamkunnu , is not prejudiced in so far as any change

in cadre or any reduction of pay.

5. The petitioner being in a transferable job and the authority, who passed Ext.P14 being conferred with the power to transfer; there could be no irregularity found thereunder. There is also no allegation of malafides. It is also to be noticed that Ext.P14 speaks of the specific requirement of the petitioner, at the farm at Thiruvazhamkunnu, which is in the interest of the institution and that would give the authority sufficient power to override the norms; which in any event are merely guidelines. In such circumstances, the fact that the petitioner having been elected as the President of the teachers' organisation is inconsequential.

6. The further contention with respect to the petitioner's present assignment, is his continuance in the farm not being reckoned for promotion. The petitioner is transferred to the farm for reason of his specialty in animal reproduction. In such circumstances, it cannot at all to be said that the petitioner's service in the farm would not be reckoned for the purpose of his promotion in the clinical side. It is to be noticed that the

petitioner has been transferred to the post at Thiruvazhamkunnu specifically considering his expertise in the clinical side and the respondent University cannot at all take up a contention that the service spent in the farm would not be reckoned as service for the purpose of promotion on the clinical side.

7. It is also made clear that the petitioner having worked in the Veterinary Hospital at Koakkalai on the basis of the interim order passed by this Court, the period spent therein has to be regularised. The petitioner is said to have been relieved, but however the petitioner approached this Court on 03.07.2015 and on 08.07.2015 this Court granted an interim stay of the transfer order. In such circumstance, the petitioner shall be deemed to have continued in the Veterinary Hospital at Koakkalai after 25.06.2015 till relieved, as a consequence of the dismissal of the writ petition. The petitioner also submits that, even at the time of the earlier litigation, there was some difficulty in the relief and the petitioner's salary for that period was also not paid. The petitioner shall submit a representation before the appropriate authority for release of the salary and the same shall be

considered sympathetically, especially since this court had by Ext.P7 judgment quashed the transfer order passed at the earlier point of time. The petitioner shall be permitted the usual joining time from today, to join in the transferred post.

With the above observations, the writ petition would stand dismissed. No costs.

**K. VINOD CHANDRAN,
JUDGE**

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