

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

WP(C).No. 25442 of 2009 (A)

PETITIONERS :

1. K.K.SAJU,
READER IN MECHANICAL ENGINEERING,
SCHOOL OF ENGINEERING,
COCHIN UNIVERSITY OF SCIENCE & TECHNOLOGY
KOCHI-682 022.
2. JAYADAS.N.H.,
READER IN MECHANICAL ENGINEERING,
SCHOOL OF ENGINEERING,
COCHIN UNIVERSITY OF SCIENCE & TECHNOLOGY
KOCHI-682 022.

BY ADV. SRI.RAJU JOSEPH

RESPONDENTS :

1. THE STATE OF KERALA REPRESENTED BY
SECRETARY, HIGHER EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM.
2. COCHIN UNIVERSITY OF SCIENCE &
TECHNOLOGY, COCHIN UNIVERSITY.P.O.,KOCHI-682 022
REPRESENTED BY ITS REGISTRAR.
3. THE UNIVERSITY SYNDICATE,
COCHIN UNIVERSITY OF SCIENCE & TECHNOLOGY
COCHIN UNIVERSITY.P.O, KOCHI-682 022.
4. THE REGISTRAR,
COCHIN UNIVERSITY OF SCIENCE & TECHNOLOGY
COCHIN UNIVERSITY.P.O, KOCHI-682 022.

R1 BY GOVERNMENT PLEADER SRI. K.K. SAIDALAVI
R2 TO R4 BY ADV. SRI.SURIN GEORGE IPE
BY ADV. SRI.SUNIL CYRIAC, SC,
BY SRI.S.PARAVINDAKSHAN PILLAI,SC,

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

bp

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF THE GOVERNMENT ORDER GO.(P) 68/2000/H.EDN DT 18/5/2000.
- P2: COPY OF THE LETTER ISSUED BY AICTE DT 10/9/2003.
- P3: COPY OF THE RELEVANT PORTION OF GOVERNMENT ORDER NO. G.O(P). 171/99/H.EDN DT 21.12.1999.
- P4: COPY OF THE NOTIFICATION WITH FORWARDING LETTER DT 30/12/1999.
- P5: COPY OF THE NO. AD D2/31158/85/111 DT 24/9/1993.
- P6: COPY OF THE REPRESENTATION DT 17/6/2000.
- P7: COPY OF REPRESENTATION FILED BY THE 1ST PETITIONER BEFORE THE R4 DT 11/1/2001.
- P8: COPY OF THE ORDER ISSUED BY THE DEPUTY REGISTRAR DT 14/11/2003.
- P9: COPY OF THE ORDER DT 14/11/2003 ISSUED BY THE DEPUTY REGISTRAR.
- P10: COPY OF ORDER DT 29/1/2008 ISSUED BY THE DEPUTY REGISTRAR.
- P11: COPY OF REPRESENTATION SUBMITTED BY THE 1ST PETITIONER DT 25/2/2009.
- P12: COPY OF REPRESENTATION SUBMITTED BY THE 2ND PETITIONER DT 25/2/2009.

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A.TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.25442 of 2009

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Dated this the 7th day of September, 2015

JUDGMENT

The petitioners are challenging Ext.P1 Government order and subsequent orders insofar as it restricts the counting of past service to three years for career advancement.

2. The petitioners are working as Readers in Mechanical Engineering in the Cochin University of Science and Technology having been appointed to the post of Lecturer on 11.09.1999 and 4.6.1999 respectively. They have past experience of 6 years and 10 years respectively in working industrial undertaking under the Government prior to their appointment in the university. The petitioners point out that as per AICTE norms, such experience is liable to be counted for career advancement. However, Ext.P1 order issued by the Government restricts the counting of past service to three years.

3. The petitioners further point out that in the case of diploma level technical institutions also, there is no such restriction and the respondent university itself had been giving the said benefit without any restriction as can be seen from the order dated 29.9.1993. By

Ext.P6 representation, the matter was represented before the first respondent. However, no orders were passed. Thereafter by Exts.P8 and P9 career advancement placements were given taking into account only three years of past service. The petitioners submitted Exts.P11 and P12 representations which were pending. It is with this background, the petitioners have approached this Court.

4. In the counter affidavit filed by the State, they have contended that industrial experience is not reckonable for promotions of teachers under U.G.C Career Advancement Scheme, in force with effect from 1.1.1999 as per Ext.P3. The revised guidelines and provisions are generally issued by AICTE/UGC with respect to pay scale of teachers and their Career Advancement Promotions time to time. Accordingly, such guidelines/provisions are being endorsed and obliged by the university for its teaching faculty now and then. Hence, a teacher is liable to be adjudged by such provisions/guidelines of AICTE/UGC which are in force on the date of his/her promotion and not by the rules/guidelines of AICTE which were at the time of his/her appointed as contended by the petitioners. Both the petitioners joined service on 11.1.1999 and 4.6.1999 respectively. Earlier, Ext.P5 was in force during the period 1.1.1986 to 31.12.1995. Even if the period of industrial experience

was not restricted for promotion of teachers as per the provisions vide Ext.P5, it was restricted to maximum of three years by the subsequent Government order which is effective from 1.1.1996 and the university follows it strictly.

5. It was further stated that as per clause 3.11(3) of the GO(P) No.68/00/H.Edn. dated 18.5.2000, experience in a scientific and industrial organisation under Government of Kerala or Government of India service subject to a maximum of three years, provided the post is comparable, would be considered for placing the teacher in senior/selection grade. In Ext.P6, the Secretary, Cochin University teachers forum has requested to withdraw the decision to limit the past service in industrial organisation for placement in senior/selection grade.

6. It was further contended that the experience in a scientific and industrial organisation for career advancement is given only as an incentive for the experience they have gained from it. It is not to be taken as a claim of financial advantage for the service rendered by them in some other organisation and for which they have already earned their remuneration. Therefore, according to the State, this incentive cannot be unlimited and there has to be a ceiling for that. It is because of this, that a cap has been fixed on the service in

industries for being reckoned for the purpose of career advancement. Any change in this would be unfair to the teaching fraternity and would cause much financial burden to Government.

7. Arguments have been heard.

8. Both the petitioners have previous experience in industrial organisation under Government of Kerala and Government of India respectively. They have resigned their job only to go to academic field. The first petitioner has service experience of more than 6 years and the second petitioner has service experience of about 10 year. However, as per Ext.P1 Government order only three years of past experience alone could be counted whereas for teaching experience, there is no such restriction.

9. The learned Senior Counsel for the petitioners points out that the said restriction is against the scheme of revision of pay scales laid down by the AICTE. The State Government is bound to adopt the scheme in toto, more especially because the All India Council for Technical Education Act, 1987 visualises proper planning and co-ordinated development of technical education system through out the country in a uniform manner. The learned Senior Counsel also invited my attention to Ext.P2 which is the true copy of the letter issued by the AICTE dated 10.9.2003 which states that the

AICTE would follow the same rules and regulations which are being followed by UGC in similar type of cases.

10. The Government as per Ext.P3 order dated 21.12.1999 accepted the proposal of the Central Government to continue to provide financial assistance to the State Governments, who wish to adopt and implement UGC Scheme, 1998 subject to the conditions made therein. Paragraph (7) of the said Government Order deals with the continuance of past service. It was pointed out that in Ext.P3 nowhere it was stated that the past service for any particular duration alone would be counted for career advancement. Even in Ext.P1, there is no restriction regarding the length of past service in the case of teaching rendered within the State. The restriction within the State was deleted by this Court as per judgment dated 3.12.2008 in W.P(C) No.33042 of 2007. A copy of the said judgment was made available for my perusal during the course of argument. In that case, the effect of clause (1) of para 3.11 of G.O(P) No.68/2000/H.Edn. dated 18.5.2000 was considered. The effect of clause was that the period of service as Lecturer in AICTE approved engineering colleges in the State alone would be given credit for placing teachers in the Senior/Selection Grade.

11. As far as the petitioners in the aforesaid case were

concerned, prior to their appointment into service of the respondent university, they had rendered service for various periods outside the State and that too, in AICTE approved engineering colleges and universities. This Court found that by confining the benefit of past service only to lecturers in AICTE approved Engineering Colleges in the State, what the first respondent has done is to classify lecturers in the AICTE approved Engineering Colleges into two classes viz., those who have rendered service within the State and those who have rendered service outside the State. It was argued by the learned Senior Counsel for the petitioners that the industrial service was considered to be superior to the teaching service as more talented and meritorious hands were working in the industry.

12. As rightly pointed out by the learned Senior Counsel for the petitioners, Ext.P1 scheme envisages attracting qualified and talented people from industry to teaching so that the quality of academic institutions is improved. The learned Senior Counsel for the petitioner also invited my attention to Ext.P4 (para 9.2) which is the true copy of the notification dated 30.12.1999 issued by the AICTE. It was on the revision of pay scales and service conditions for Diploma Level Technical Institutions. The aforesaid clause deals with counting of service outside the institution. As per the said

paragraph, previous continuous service in any public sector industrial undertaking as such was counted for career advancement. Reference was also made to Ext.P5 order dated 29.9.1993 by which the respondent university has issued guidelines in relation to higher grade placements under the career advancement.

13. Clause IV(3) of Ext.P5 deals with the qualifying period of service. In the said order also the previous industrial service as such is counted for career advancement. The Cochin University Teachers Forum, which is an association of teachers under the said university, have represented the matter before the Government as per Ext.P6. However, it could not evoke any positive response. The net effect is that the entire past experience of the petitioners in the field of industry has not been counted for career advancement. As it was to attract more talented and meritorious hands for teaching, the AICTE has formulated norms to count the past industrial service as such for the purpose of career advancement. The learned Senior Counsel for the petitioners would submit that there is no justification on the part of the State in restricting previous service to three years for career advancement. I see valid force in the said submission. Therefore, this Court is of the definite view that the petitioners are entitled to the relief prayed for.

In the result, the writ petition is allowed. Ext.P1 Government order to the extent the same restricts the counting of past service to three years and all subsequent orders passed by the respondent university, including Exts.P8, P9, and P10 insofar as it is against the petitioners are quashed. It is hereby declared that the industrial experience gained by the petitioners shall be counted for career advancement as per AICTE norms. The respondents are directed to pass fresh orders in the matter taking into account the entire length of past industrial experience rendered by the petitioners and give career advancement placement accordingly. This shall be done within two months from the date of receipt of a copy of this judgment.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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