

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WP(C).No.27402 of 2010 (A)

PETITIONER:

**DR.SARALA K.R.,W/O.DR.T.G.MADHAVANKUTTY,
ASSISTANT LIBRARIAN (SR. SCALE) (RETD.),
COLLEGE OF AGRICULTURE,
KERALA AGRICULTURAL UNIVERSITY,
VELLAYANI,THIRUVANANTHAPURAM,
RESIDING AT "SREE GOVINDAM",
SANTHI NIVAS,A.K.N.ROAD, NEMOM,
THIRUVANANTHAPURAM.**

**BY SRI.N.N.SUGUNAPALAN (SENIOR ADVOCATE.)
ADV.SMT.NITA.N.S.**

RESPONDENT'S:

- 1. KERALA AGRICULTURAL UNIVERSITY,
VELLANIKKARA,THRISSUR,REPRESENTED BY
ITS REGISTRAR.**
- 2. VICE-CHANCELLOR,KERALA AGRICULTURAL UNIVERSITY,
VELLANIKKARA,THRISSUR.**
- 3. STATE OF KERALA,REPRESENTED BY CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,THIRUVANANTHAPURAM.**

**R1 & R3 BY SMT.RINNY STEPHEN CHAMAPARAMBIL.
R2 BY SRI.K.P.MUJEEB, SC, KERALA AGRI. UNIVERSITY**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25-06-2015, ALONG WITH WPC.31180/2010, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

pk

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:TRUE COPY OF THE JUDGMENT DATED 1.7.2009 IN W.P(C) NO.12893/2007
OF THIS HONOURABLE COURT.

EXT.P2:TRUE COPY OF THE ORDER NO.DATED 26.6.2010 ISSUED BY THE
UNIVERTSITY.

EXT.P3:TRUE COPY OF THE REPRESENTATION DATED 15.5.2009 SUBMITTED BY
THE PETITIONER BEFORE THE UNIVERSITY.

EXT.P4:TRUE COPY OF THE LECTURE SCHEDULE ISSUED BY THE
RESPONDENT UNIVERSITY.

EXT.P5:TRUE COPY OF THE CERTIFICATE DATED 22.2.2010 ISSUED BY THE
PROFESSOR,DEPARTMENT OF AGRICULTURAL DN.

EXT.P6:TRUE COPY OF THE CERTIFICATE DATED 2.8.2010 OBTAINED BY THE
PETITIONER FROM DR.C.GEORGE THOMAS,PROF. OF AGRONOMY.

EXT.P7:TRUE COPY OF THE JUDGMENT DATED 14.3.1995 IN W.A.NO.221/1995 OF
THIS HONOURABLE COURT.

EXT.P8:TRUE COPY OF THE JUDGMENT DATED 26.9.2012 IN W.A NO.2174 OF
1999 OF THIS HONOURABLE COURT.

EXT.P9:TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER
BEFORE THE RESPONDENT UNIVERSITY.

EXT.P10:TRUE COPY OF THE ORDER NO.GA/LI/27803/2010 DATED 12.10.2010
ISSUED BY THE RESPONDENT UNIVERSITY.

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P(C).No.27402 OF 2010

&

W.P.(c).NO.31180 OF 2010
.....

Dated this the 25th day of June, 2015

JUDGMENT

Insofar as the issue involved in both these writ petitions is similar, they are taken up together for consideration and disposed by this common judgment. For the sake of convenience, the reference to facts and exhibits is from W.P.(C).No.27402 of 2010.

2. In both these writ petitions, the petitioners are persons who worked under the respondent University as Assistant Librarian, and who have since retired from the services of the University on attaining the age of superannuation of 55 years as was applicable to Assistant Librarians under the services of the respondent University. The writ petition was filed at a time when they were in service and on the verge of retirement, and the contention in the writ petition is that Assistant Librarians who had obtained the necessary qualification in Library Science ought to be treated as teachers for the purposes of computing their service benefits including the age of superannuation. In the writ petition, the petitioners mainly rely on Ext.P1 judgment of this Court wherein this Court dealing with a similar prayer, in a writ

petition filed by another employee (W.P.(C).No.12893 of 2007), found as follows:

“13. Therefore, the important question is whether the petitioner will come within the definition of teacher. In the counter affidavit filed by the University, reliance is placed only on the statutory provision to contend that the petitioner has to retire at the age of 55. The issue has not been examined in the light of the various averments made by the petitioner in the writ petition and in the light of the definition of teacher in Section 2(26) of the Agricultural University Act, 1971. The affidavit filed by the Government also does not throw much light on this aspect. The crucial question is whether as held by the Apex Court in AIR 1997 SC 3433, the duties include teaching. If the said test is satisfied, the petitioner will be entitled for the benefit of enhanced retirement age. This Court has also considered the question under various circumstances, as noticed already. These aspects have not been considered by the University or the Government at all.

Therefore, the matter will be re-examined by the University and a fresh decision will be taken. The relevant aspects pointed out as above and the test laid down by various decisions of this court and the Apex Court will be considered while taking a decision. Appropriate action shall be taken within a period of three months from the date of receipt of a copy this judgment. The petitioner will produce additional materials, if any, including the judgment of the Allahabad High Court mentioned above, before the University.”

3. It is pointed out that pursuant to Ext.P1 judgment, the respondent University had issued Ext.P2 order in favour of the petitioner in the writ petition covered by Ext.P1 judgment, and directed that the services of a Deputy Librarian would be included in the definition of teacher as defined in Section 2(26) of the Agricultural University Act, and that, the petitioner in the said writ petition could continue in the KAU service up to the age of 60 years as in the case of teachers. The facts in the writ petition would disclose that when the petitioners approached the respondent University, with a representation seeking extension of the same benefits as was given to the petitioner in Ext.P1 judgment, the respondent University by Ext.P10 order, passed on the representation preferred by the petitioner in W.P.(C).No.27402 of 2010, found that in as much as the petitioner in the instant writ petition had already retired at the age of 55, the benefit that was granted to the petitioner covered by Ext.P1 judgment, could not be extended to her. It was also stated that there were no rules in the University or in the Government that provided for reinstatement of retired employees into regular service. In the case of the petitioner in W.P.(C).No.31180 of 2010, the representation preferred by him before the respondent University, Ext.P6, was not responded to by the respondent University. It is under these

circumstances, that the petitioners have approached this Court seeking a direction to the respondent University to declare that they are teachers within the meaning of the University Act and Regulations and entitled to consequential benefits applicable to teachers.

4. I have heard the learned Senior Counsel Sri.N.N.Sugunapalan, for the petitioners in both the writ petitions and counsel for the respondents.

5. On a consideration of the facts and circumstances of the case and submissions made across the bar, I find that by Ext.P1 judgment, this Court had in the case of a person, similarly situated as the petitioners, directed the respondent University to take a decision on the issue of whether persons such as the petitioner would be entitled to be treated as teachers for the purposes of the Kerala Agricultural University Act, 1971. It is also seen that consequent to the directions of this Court in the aforementioned judgment, Ext.P2 order was passed in favour of Dr.K.S.Ambili after referring to various materials that were produced by the said person. Thereafter, when the petitioners had represented the matter before the Agricultural University, by Ext.P10 order, that was passed on the representation

preferred by the petitioner in W.P.(C).No.27402 of 2010, the stand taken by the respondent University is that the benefit granted in favour of Dr.K.S.Ambili could not be extended to the petitioners inasmuch as they had already retired at the age of 55 years whereas Dr.K.S.Ambili, who had also retired at the age of 55, had an order in her favour which made the retirement subject to the outcome of the writ petition. In my view, this distinction that is sought to be made by the respondent University between the case of Dr.K.S.Ambili and the case of the petitioners, is one that cannot be sustained. No doubt, the petitioners cannot now aspire for reinstatement since they have admittedly crossed the age of 60 years. The said fact, however, cannot prevent the respondent University from considering a parity of treatment of the petitioners with Dr.K.S.Ambili for the purposes of grant of retirement benefits to the petitioners. In otherwords, if there is a revision in the salary and other emoluments that would have been payable to the petitioners consequent to a decision in their favour taken when they were in service, then the said benefit should enure to the petitioners when it comes to computation of their retirement benefits. I therefore feel that, it was incumbent upon the respondent University to consider the case of the petitioner for the extension of similar benefits as was extended to Dr.K.S.Ambili through Ext.P2

order. If the petitioners case falls within the same parameters as govern the decision in favour of Dr.K.S.Ambili in Ext.P2 order, then the petitioners shall also be extended the same benefits, save for the direction in regard to reinstatement, and their pensionary benefits worked out accordingly. To enable the respondent University to have a fresh look into the matter based on the observations above, I quash Ext.P10 in W.P.(C).No.27402 of 2010 and direct the respondent University to pass fresh orders in the light of the observations made in this judgment in the case of the petitioners in the writ petitions referred to above. The respondent University shall take a decision within a period of two months from the date of receipt of a copy of the judgment.

The writ petitions are disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

W.P(C).No.27402 OF 2010
&
W.P.(c).NO.31180 OF 2010