

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

WP(C).No. 28567 of 2012 (U)

PETITIONER(S):

**DR.MANU AGED 48 YEARS
ASSOCIATE PROFESSOR, DEPARTMENT OF HINDI
REGIONAL MCENTRE
SREE SANKARACHARAYA UNIVERSITY OF SANSKRIT
PAYYANNOOR EDATTU P.O, KANNUR DISTRICT**

BY ADV. SRI.JOSHI N.THOMAS

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESNETED BY ITS PRINCIPAL SECRETARY
HIGHER EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM 695001**
- 2. SREE SANKARACHARYA UNIVERSITY OF SANSKRIT,
PB NO 14, KALADY,
ERNAKULAM DISTIRCT 683574,
REPRESENTED BY ITS REGISTRAR**
- 3. THE VICE CHANCELLRO AND CHAIRMAN,
SELECTION COMMITTEE
SREE SANKARACHARYA UNIVERSITY OF SANSKRIT, PB NO 14
KALADY, ERNAKULAM DISTRICT 682574**
- 4. THE DIRECTOR,
REGIONAL CENTRE
SREE SANKARACHARYA UNIVERSITY OF SANSKRIT
PAYYANNOOR, EDATTU P.O, KANNUR DISTRICT**

**R2-R4 BY ADV. SRI.ARUN B.VARGHESE,SC, SREE SANKARACHARYA UTY.
R1 BY ADV. GOVERNMENT PLEADER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

avk

APPENDIX

PETITIONER(S) EXHIBITS

- EXT. P1 PHOTO COPY OF THE LETTER NO 2769/ AD. A3/ 2001 DATED 11-04-2001 OF THE 2ND RESPONDENT
- EXT. P2 PHOTO COPY OF THE ORDER NO SPL CELL F.P 04 SSUS (95) DATED KALADY 25-11-2004
- EXT. P3 PHOTO COPY OF THE LETTER NO 9777/ AD. A3 /06/ SSUS DATED 26-05-2007 OF THE 2ND RESPONDENT
- EXT. P4 PHOTO COPY OF THE REPRESENTATION DATED 10-08-2007 SUBMITTED BY THE PETITIONER TO THE ADDITIONAL SECRETARY HIGHER EDUCATION DEPARTMENT, THIRUVANANTHAPURAM
- EXT. P5 PHOTO COPY ORDER NO AD. A2/ 8925(B)/ CAS IV/ SSUS/07(2) DATED KALADY 20-10-2011 ISSUED BY THE 2ND RESPONDENT
- EXT. P6 PHOTO COPY OF THE ORDER NO AD. A2/ 8925(B) CAS IV/ SSUS/07 (25) DATED KALADY 12-1-2012 ISSUED BY THE 2ND RESPONDENT

RESPONDENTS' EXHIBITS

NIL

//TRUE COPY//

PA TO JUDGE

avk

A.M.SHAFFIQUE, J.

W.P.(C).No. 28567 of 2012

Dated this the 13th day of October, 2015

JUDGMENT

The petitioner joined the 2nd respondent University as Lecturer in Hindi on regular basis with effect from 14.7.1999. The claim in the writ petition is with reference to the grant of two advance increments at the time of placement in Selection Grade as per Ext.P5 order. Reference is made to Clause 6.18 of G.O. dated 21.12.1999 which has been adopted by the Government. As per the Government order, Clause 6.18 reads as under:-

“A lecturer with Ph.D will be eligible for two advance increments when she/he moves in to selection grade/Reader.”

2. The submission made by the petitioner is that despite such directions in the Government Order of 21.12.1999, the petitioner was not paid the two advance increments when he was posted as Selection Grade Lecturer with effect from 22.12.1999. It is

also stated that he is entitled for the monetary benefit which he was eligible to get. The petitioner also challenged Ext.P5 and P6 by which sanction has been granted to promote the petitioner as Selection Grade Lecturer with effect from 14.7.2000. Ext.P6 is the order by which the pay has been fixed taking into account the fact that he was only notionally placed in the post of Selection Grade Lecturer on 22.12.1999.

3. The counter affidavit has been filed by the respondent inter alia stating that G.O.(P).No.171/99 dated 21.12.1999 has been modified in terms of G.O. (P). No. 44/2001 dated 29.3.2001(Ext.R2(b))by which Clause 6.18 has been substantially modified and it was indicated that teachers who have got the benefit of advance increments for having Ph.d will not be eligible for advance increments at the time of their placement in the Selection Grade.

4. It is also contented that since the petitioner was given selection grade taking into consideration his earlier service in the previous institution whereas

the Government was of the opinion that he can be placed in the selection grade only after completion of probation period of one year which is in accordance with Rule 28 (a) of KS & SSR.

5. Having regard to the aforesaid factual and situation, I do not think that there is any necessity to consider the validity of Ext.P5 and Ext.P6 in this writ petition. In short question, the only consideration that is required is with reference to the entitlement of the petitioner for two advance increments which was denied to him only on the account of the fact that the subsequent Government order Ext.R2 (b) has come into effect.

6. Perusal of Ext.R2 (b) indicates that its that the earlier Government Order stands modified to the extent of what is mentioned in Ext.R2 (b). The learned counsel for the petitioner relied upon the judgment of Supreme Court in **K.C.Arora v. State of Haryana & others 1984 (3)SCC 281** by which the Apex Court held that an amendment cannot be made

with retrospective effect unless specifically stated to be so. Perusal of Ext.R2 (b) also does not indicate that it is having retrospective operation. In such circumstances, when the petitioner had been placed in the position of Selection Grade Lecturer even though notionally with effect from 22.12.1999 definitely he will be entitled to the benefit of Clause 6.18 of the Government Order dated 21.12.1999.

7. In such circumstances, this writ petition is partly allowed and there will be direction to the respondent University to pay the petitioner the two advance increments in terms of Clause 6.18 of the Government Order dated 22.12.1999. Other reliefs sought for by the petitioner is left open to be decided in appropriate proceedings.

Sd/-
A.M.SHAFFIQUE
JUDGE

//TRUE COPY//

PA TO JUDGE