

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

WP(C).No. 28698 of 2013 (j)

PETITIONER(S):

1. **LENITHA S, REFERENCE ASSISTANT
KERALA UNIVERSITY LIBRARY THIRUVANANTHAPURAM
PIN-695 034.**
2. **SREEKUMARAN NAIR K., REFERENCE ASSISTANT
KERALA UNIVERSITY LIBRARY THIRUVANANTHAPURAM
PIN-695 034.**
3. **SUNAJA K., REFERENCE ASSISTANT
KERALA UNIVERSITY LIBRARY THIRUVANANTHAPURAM
PIN-695 034.**
4. **JAYASREE S., REFERENCE ASSISTANT
KERALA UNIVERSITY LIBRARY THIRUVANANTHAPURAM
PIN-695 034.**

**BY ADVS.SRI.S.P.PARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND
SMT.L.AMMU PILLAI**

RESPONDENT(S):

1. **UNIVERSITY OF KERALA
REPRESENTED BY ITS REGISTRAR, PALAYAM
THIRUVANANTHAPURAM, PIN - 695 034.**
2. **DR.K.G.SUDHIER
REFERENCE ASSISTANT
INSTITUTE OF DISTANCE EDUCATION UNIVERSITY OF KERALA
THIRUVANANTHAPURAM, PIN-695034**

R1 BY ADV. SRI.GEORGE POONTHOTTAM,SC,KERALA UTY.

R2 BY ADV. SRI.T.R.RAVI

R1 BY ADV. SRI.BECHU KURIAN THOMAS, SC, UNIVERSITY OF KERALA

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11-08-2015, ALONG WITH WPC. 22488/2015, THE COURT ON THE
SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 - TRUE COPY OF THE RELEVANT EXTRACT OF THE LIST OF LIBRARY STAFF ISSUED BY THE UNIVERSITY UNDER THE RIGHT TO INFORMATION ACT 2005.**
- EXT.P2 - TRUE COPY OF THE LETTER NO.AD.H.1814/2008 DATED 29-5-2008 OF THE 1ST RESPONDENT.**
- EXT.P3 - TRUE COPY OF THE JUDGMENT DATED 24-02-2011 IN WPC.NO.22438/2008 OF THIS HON'BLE COURT.**
- EXT.P4 - TRUE COPY OF THE ORDER NO.AD. AV.1.3055/11 DATED 25-8-2011 OF THE 1ST RESPONDENT.**
- EXT.P5 - TRUE COPY OF THE ORDER NO.ADV. AV1/3055/11 DATED 11-10-2011**
- EXT.P6 - TRUE COPY OF THE LETTER NO.A.P-RTI/006/2012 DATED 02-03-2012 OF THE REGISTRAR/APPELLATE AUTHORITY OF THE UNIVERSITY**
- EXT.P7 - TRUE COPY OF THE ORDER NO.AD. AV.2/516/2010 DATED 5-1-2012 OF THE 1ST RESPONDENT.**
- EXT.P8 - TRUE COPY OF THE ORDER NO.AD.AV.2/516/12 DATED 1-6-2012 OF THE 1ST RESPONDENT.**
- EXT.P9 - TRUE COPY OF THE ORDER NO.AD.AV.2/27572/12 DATED 3-1-2013 OF THE 1ST RESPONDENT.**
- EXT.P10 - TRUE COPY OF THE ORDER NO.AD.AV.2.36985/12 DATED 01-10-2012 OF THE 1ST RESPONDENT.**
- EXT.P11 - TRUE COPY OF THE REPRESENTATION DATED 12-09-2013 SUBMITTED BY THE PETITIONERS AND 12 OTHERS BEFORE THE 1ST RESPONDENT.**
- EXT.P12 - TRUE COPY OF THE REPRESENTATION DATED 24-10-2013 SUBMITTED BY THE KERALA UNIVERSITY LIBRARY STAFF ASSOCIATION BEFORE THE 1ST RESPONDENT.**
- EXT.P13 - TRUE COPY OF THE REPRESENTATION DATED 24-10-2013 SUBMITTED BY THE KERALA UNIVERSITY LIBRARY STAFF ASSOCIATION BEFORE THE HON'BLE CHANCELLOR OF THE UNIVERSITY, HIS EXCELLENCY THE GOVERNOR OF KERALA.**
- EXT.P14 - TRUE COPY OF THE LETTER NO.AD.AV.2.21970/2013 DATED 29-6-2013 OF THE UNIVERSITY ADDRESSED TO THE LOCAL FUND AUDIT DEPARTMENT.**

- EXT.P15 - TRUE COPY OF THE REPRESENTATION DATED 19-07-2012 FILED BY THE 2ND RESPONDENT BEFORE THE 1ST RESPONDENT.**
- EXT.P16 - TRUE COPY OF THE RELEVANT EXTRACT OF THE NOTE FILE DEALING WITH EXT.P15**
- EXT.P17 - TRUE COPY OF THE APPLICATION ALONG WITH THE LIST OF PUBLICATION AND THE TABULATION SHEET PREPARED BY THE UNIVERSITY**
- EXT.P18 - TRUE COPY OF THE ARTICLE IN VOL. II(1) OF KELPRO BULLETIN 2007 EDITION PUBLISHED BY THE 2ND RESPONDENT BEFORE THE UNIVERSITY**
- EXT.P18(A) - TRUE COPY OF THE ARTICLE IN VOL. II(1) OF KELPRO BULLETIN 2007 EDITION PUBLISHED BY THE 2ND RESPONDENT BEFORE THE UNIVERSITY.**
- EXT.P19 - TRUE COPY OF THE FIRST PAGE OF ARTICLE IN SRELS JOURNAL OF INFORMATION MANAGEMENT VOL.44(3) 2007**
- EXT.P20 - TRUE COPY OF THE FIRST PAGE OF ARTICLE IN ILA BULLETIN VOL.43 (3) 2007 EDITION SUBMITTED BY THE 2ND RESPONDENT BEFORE THE UNIVERSITY.**
- EXT.P21 - TRUE COPY OF THE CONTENTS PAGE OF THE KELPRO BULLETIN VOL.11(1) JUNE 2007**
- EXT.P22 - TRUE COPY OF THE CONTENTS PAGE OF THE SRELS JOURNAL VOL.44(3)SEPTEMBER 2007**
- EXT.P23 - TRUE COPY OF THE CONTENTS PAGE OF THE ILA BULLETIN NO.43(2) APRIL-JUNE 2007)**
- EXT.P24 - TRUE COPY OF THE LIST OF PUBLICATIONS DOWNLOADED FROM THE WEBSITE OF THE KERALA LIBRARY ASSOCIATION**
- EXT.P25 - TRUE COPY OF THE APPLICATION DATED 26-4-2013 SUBMITTED BY ONE SRI.HARIKUMAR S. ALONG WITH THE COVERING LETTER NO.PRO/PIO/RTI/205/2013 DATED 18-5-2013 OF THE PUBLIC INFORMATION OFFICER AND PUBLIC RELATION OFFICER OF THE UNIVERSITY.**
- EXT.P26 - TRUE COPY OF THE REPRESENTATION 23.09.2011 SUBMITTED BY DR.K.G.SUDHIER, BEFORE THE HON.VICE CHANCELLOR, UNIVERSITY OF KERALA.**
- EXT.P27 - TRUE COPY OF THE APPLICATION DATED 15.10.2011 SUBMITTED SRI.PREMLAL TO THE PUBLIC INFORMATION OFFICER OF THE UNIVERSITY.**
- EXT.P28 - TRUE COPY OF THE LETTER No.PRO/PIO/RTI/378/2011 DATED 14.11.2011 OF THE PUBLIC INFORMATION OFFICER & PUBLIC RELATIONS OFFICER.**
- EXT.P29 - TRUE COPY OF THE APPLICATION DATED 25.06.2013 SUBMITTED SRI.PREMLAL TO THE PUBLIC INFORMATION OFFICER OF THE UNIVERSITY**

**EXT.P30 - TRUE COPY OF THE LETTER No.PRO/PIO/RTI/286/2013 DATED
11.07.2013, THE PUBLIC INFORMATION OFFICER.**

RESPONDENT(S)' EXHIBITS

EXT.R2(a) TRUE COPY OF PROVL.GRADUATION LIST

// True copy //

PA to Judge

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A.K.JAYASANKARAN NAMBIAR, J.
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W.P.(C). Nos. 28698 of 2013 & 22488 of 2015
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Dated this the 11th day of August, 2015

JUDGMENT

As both these writ petitions involve a common issue, they are taken up for consideration together and disposed by this common judgment. For the sake of convenience, the reference to facts and Exhibits is from Writ Petition No.28698 of 2013.

The petitioners and the 2nd respondent entered the service of the respondent University as Library Assistants. They were later promoted as Technical Assistants and thereafter as Reference Assistants in the respondent University. Their appointment by promotion as Reference Assistants was with effect from 05.10.2007. On 26.02.2007, the respondent University notified posts of Lecturers in Library and Information Science to be filled up under the general category. The 2nd respondent applied pursuant to the said notification and was selected and appointed by Ext.P2 letter. It would appear that the selection of the 2nd respondent was challenged by certain persons in Writ Petition No.22438 of 2008 and by Ext.P3 judgment, the said writ petition was allowed quashing the appointment of the 2nd respondent as Lecturer in Library and Information Science. A writ appeal filed against Ext.P3 judgment was also dismissed. The respondent

University therefore, by Ext.P4, terminated the service of the 2nd respondent as Lecturer. Thereafter, by Ext.P5 order dated 11.10.2011 the respondent University once again appointed the 2nd respondent as Reference Assistant. It is relevant to note at this stage, that the appointment of the 2nd respondent as Lecturer by Ext.P2 order was at a time when the 2nd respondent had not completed his period of probation in the post of Reference Assistant, to which he was promoted along with the petitioners. When he was subsequently reappointed as Reference Assistant, by Ext.P5 order, he was appointed as junior to the junior most probationer in the category of Reference Assistants. This meant that vis-a-vis the petitioners in Writ Petition 28698 of 2013, the 2nd respondent was reappointed as junior to the petitioners, who were also probationers, in the category of Reference Assistants. The facts in the writ petition would reveal that, while continuing in the post of Reference Assistant on probation, by Ext.P7 order dated 05.01.2012, the 2nd respondent was reverted to the post of Technical Assistant, consequent to the rejoining on duty of the earlier incumbent to the post, who was on leave without allowance. Thereafter, by Ext.P8 order dated 01.06.2012, the 2nd respondent was promoted to a vacancy that arose in the post of

Reference Assistant and his probation in the post of Reference Assistant was declared with effect from 01.12.2012 as evidenced by Ext.P9 order. Thereafter, by Ext.P10 order dated 01.10.2012, the respondent University accorded sanction to reckon the period of service of the 2nd respondent as Lecturer, and the period of waiting for posting orders, as duty for all purposes including seniority, except for purposes of grant of increment and back wages. It is apparent, therefore, that by Ext.P10 order, the 2nd respondent regained the seniority that he initially enjoyed over the petitioners in the category of Reference Assistants and became the senior most Reference Assistant. The petitioners in the writ petition are aggrieved by Ext.P10 order, to the extent it has the effect of restoring the original seniority, that was enjoyed by the 2nd respondent over the petitioners, at the time of their initial appointment pursuant to promotion as Reference Assistants. The petitioners contend that this has been done notwithstanding the fact that the 2nd respondent had taken up an appointment to the post of Lecturer in the meanwhile and had, subsequent to his reappointment as Reference Assistant, been reverted to the post of Technical Assistant, when the person, who had a superior lien on the post rejoined on completion of the leave without allowance. In

the writ petition, reliance is placed by the petitioners on Ext.P16 file noting, that shows that the respondent University had relied on the provisions of Rule 8 Part II of KS & SSR for regularising the absence from duty of the 2nd respondent in the post of Reference Assistant. Exts.P5 and P10 are impugned in the writ petition. The writ petition was admitted on 22.11.2013 when an interim order was also passed to the effect that the 2nd respondent shall not be given promotion to the post of Assistant Librarian Gr.II, for the period of two weeks. The said interim order has been extended from time to time and continues to be force even today.

2. A counter affidavit has been filed on behalf of the 1st respondent University, wherein it is stated that the period of service as Lecturer and the period of waiting for posting on duty from 30.05.2008 to 10.10.2011, in relation to the 2nd respondent, was treated as duty for all purposes including seniority to the extent admissible as per rules in force except for earning increment and back wages arrears. It is pointed out that even without Ext.P10 order, the seniority of the 2nd respondent over the petitioners stood restored on the 2nd respondent's probation being declared by the respondent University. The respondent University

would, therefore, justify the issuance of Ext.P10 order, in favour of the 2nd respondent.

3. In the counter affidavit filed on behalf of the 2nd respondent, it is stated that, while it is true that the 2nd respondent was reappointed as Reference Assistant and junior to the junior most candidate in that cadre, that was only because the 2nd respondent had not completed his period of probation in the post of Reference Assistant, at the time when he had to leave the post for being appointed as Lecturer. It is stated that the contention, on the basis of Ext.P7 order of reversion that, the 2nd respondent would lose his seniority in the post of Reference Assistant, is unfounded. It is clarified that the reversion was done at a time when the 2nd respondent had not completed the probation and the said position was set right in the next arising vacancy. Rebutting the averments in the writ petition with regard to the erroneous application of Rule 8 of Part II KS & SSR, the 2nd respondent would point out that the seniority position vis-a-vis, the 2nd respondent and the petitioners was rearranged, not on the basis of Rule 8 of KS & SSR, but in accordance with the provisions contained in Statutes 17 of Chapter IV of Kerala University First Statutes.

Ext.P10 order issued by the University is sought to be justified on the aforesaid contentions. A reply affidavit has been filed on behalf of the petitioners, traversing the averments in the counter affidavit filed on behalf of the 1st and 2nd respondents.

4. Writ petition 22488 of 2015 is preferred by yet another Reference Assistant, who like the petitioners in Writ Petition No.28698 of 2013, seeks a clarification with regard to his seniority position vis-a-vis, the 2nd respondent (the 3rd respondent in Writ Petition No.22488 of 2015), in the cadre of Reference Assistants. The petitioners essentially seek a clarification with regard to the inter se seniority between them and the 2nd respondent in the cadre of Reference Assistant, because there are now six vacancies stated to exist in the post of Assistant Librarian Gr.II, which is a promotion post for Reference Assistants.

5. I have heard the learned counsel for the petitioners in both the writ petitions and also the learned Counsel appearing for the respondents in both the writ petitions.

6. On a consideration of the facts and circumstances of

the case as also the submissions made across the bar, I find force in the contention of the 2nd respondent with regard to the issuance of Ext.P10 order of the respondent University based on Statute 17 of Chapter IV of Kerala University First Statutes. The said provision of Statute 17 of Chapter IV of Kerala University First Statutes reads thus:

“Members absent from duty:- The absence of a member of the University service from duty, whether on leave, on foreign service or on deputation or for any other reason and whether his lien in a post borne on the cadre of the service is suspended or not, shall not, if he is otherwise eligible, render him ineligible in his turn.

(a) for reappointment to a substantive or officiating vacancy in the class, category, grade or post in which he may be a probationer or an approved probationer;

(b) for promotion from a lower to a higher category in the service as the case may be, in the same manner as if he had not been absent. He shall be entitled to all the privileges in respect of appointment, seniority, probation and confirmation to which he would have enjoyed but for his absence, subject to his completing satisfactorily the period of probation on his return.”

7. It is clear from a reading of Statute 17 that the respondent University is empowered to find that the absence of a member of the University service from duty, whether on leave, on foreign service or on deputation or for any other reason, shall not, if he is otherwise eligible, render him ineligible in his turn for

reappointment to a substantive vacancy in the class, category, grade or post in which he may be a probationer or an approved probationer. Thus if the respondent University chose to reappoint the petitioner as Reference Assistant, consequent to his selection as a Lecturer being set aside by this Court, then it had to be in accordance with Statute 17 of Chapter IV of Kerala University First Statutes, 1977 that the University regularised the period of absence for the purposes of ensuring a continuity in service of the 2nd respondent, and the grant of consequential benefits as envisaged under Statute 17 (b) of the aforesaid Statute. The contention of the petitioners that the power, if any, had to be exercised only in accordance with Rule 8 of Part II KS & SSR does not appeal to me as convincing. I do, however, find force in the contention of the petitioners with regard to the commencement of the period of service for the purposes of seniority of the 2nd respondent in the cadre of Reference Assistants. It is not in dispute that consequent to the reappointment of the 2nd respondent as Reference Assistant, pursuant to Ext.P5 order dated 11.10.2011, the 2nd respondent was reverted to the post of Technical Assistant consequent to rejoining on duty of a person, who was on leave without allowance. The said reversion was

effected by Ext.P7 order dated 05.11.2012. It is clear therefore, that although the 2nd respondent was, at the time of passing of Ext.P7 order of reversion, a probationer in the post of Reference Assistant, the reversion had the effect of appointing him to a substantive post in the lower category of Technical Assistant. It is trite that when a person is appointed to a substantive post, from a post that he was substantively occupying earlier, then his lien in the earlier post ceases on his substantive appointment in the subsequent post. The fact that the petitioner had lost his lien in the post of Reference Assistant on his being reverted pursuant to Ext.P7 order is also fortified by Ext.P8 order dated 01.06.2012 where the 2nd respondent is seen promoted again to the substantive post of Reference Assistant. A promotion to the substantive post of Reference Assistant would not have been necessary, if the lien of the 2nd respondent in the post of Reference Assistant had merely been suspended, and therefore, the factual situation in the instant case requires to hold that during the period between 05.01.2012, when the 2nd respondent was reverted to the post of Technical Assistant, and 01.06.2012 when the 2nd respondent was promoted back to the substantive post of Reference Assistant, the 2nd respondent did not retain any lien in

the post of Reference Assistant. This intervening period, therefore, amounted to a break in service in the cadre of Reference Assistant which would be prejudicial to the 2nd respondent, while determining the inter se seniority between the petitioners and the 2nd respondent, for the purposes of promotion to the post of Assistant Librarian Gr.II.

8. It would be profitable at this stage to refer to the decision of the Hon'ble Supreme Court in **K.V.Subba Rao and Others** v. **Government of A.P. and Others** [1988 (2)SCC 201], wherein, interpreting a similar provision as of Rule 27 (a) of Part II KS & SSR governing seniority, it was held as follows in Paragraphs 5 and 6:

“5. The cadre does not have a prescribed strength and temporary appointments seem to have become the rule as the history of the service shows. Even though the ratio of 1 : 1 is prescribed in regard to the substantive vacancies, direct recruitments were made only in the years 1963, 1964, 1965 and 1966 and for a decade to follow there was no direct recruitment. When demand for more hands in the category of Deputy Tehsildars became pressing supernumerary posts were created from time to time and such posts were filled up by promotion. R.33(a) of the General Rules dealing with seniority, as far as relevant, provides:

“The seniority of a person in service, class, category or grade shall, unless he has been reduced to a lower rank as a punishment, be determined by the date of his first appointment to such service, class category or grade.....”

Relying upon this provision, seniority was being determined of promotees without taking into account the fact that there had been intervening reversions to the lower posts from which promotion to the post of Deputy Tehsildar had been granted.

6. The legal position is well settled that the State is entitled to prescribe the manner of computing inter se seniority and in the absence of such prescription length of service is the basis. A series of recent decisions of this Court has made that position certain. R.33 of the General Rules contains prescription regarding seniority and has different provisions to meet varying situations. Sub-rule (a) which provides that seniority of a person is to be determined "by the date of his first appointment to such service" has obviously been misinterpreted on account of the presence of the words 'unless he has been reduced to a lower rank as a punishment'. It could not be the intention of R.33(a) to compute seniority from the date of first appointment even though it was not a continuous one. For instance, a person is appointed to the post of Deputy Tehsildar on promotion on 1st of January, 1970 and is reverted to the lower post, not by way of punishment but on account of exigencies of service or otherwise, on 31st of March, 1970. He is again promoted to that post on 1st January, 1980 and continues to hold that promotional post. Another person is promoted to the post of Deputy Tehsildar on 1st April, 1970 and continues to hold that post without break. If the interpretation adopted by the State Government of R.33(a) is accepted, it would mean that the first person on account of having been first appointed, on an earlier date to the promotional post would rank senior to the second person. This obviously could not have been the intention of the rule. It is appropriate to interpret that rule to mean that the date of first appointment is intended to refer to continuous appointment only and the words 'unless he has been reduced to a lower rank by way of punishment' are really redundant. We are aware of the fact that this rule has been widely applied for determining inter se seniority and in case challenge to fixation of inter se seniority is permitted to be raised on what we have stated above, limitless litigation would crop up. We would, therefore, make it clear that the interpretation which was now given of this rule shall have prospective application and unless

there be any litigation already pending challenging the interpretation of this rule no new litigation would be permitted on that score.”

9. It can be seen from the above extracted portion of the Hon'ble Supreme Court judgment that the provisions of a rule governing seniority cannot be interpreted to compute a seniority from the date of first appointment to a post especially in a situation where the service in that post was not a continuous one. It was held that the correct method of interpretation of the Rule would be to interpret the date of first appointment as referring to the period of continuous service pursuant to appointment. Taking cue from the said decision, I find that in the instant case also, the continuous service of the 2nd respondent in the category of Reference Assistant would have to be taken as commencing from 01.06.2012 when by Ext.P8 order, he was promoted as Reference Assistant, from the post of Technical Assistant to which he was earlier reverted. Accordingly, I allow these writ petitions by quashing Ext.P10 order in the Writ Petition No.28698 of 2013, and Ext.P8 order in Writ Petition No.22488 of 2015, and declare that the inter se seniority between the petitioners and the 2nd respondent in the cadre of Reference Assistants shall be

determined by taking the continuous service of the 2nd respondent in the said cadre as commencing from 01.06.2012. I make it clear that Ext.P10 order in the Writ Petition No.28698 of 2013 and Ext.P8 order in Writ Petition No.22488 of 2015 are quashed only to the extent that they deem the date of continuous service of the 2nd respondent in the post of Reference Assistant as commencing from 05.10.2007 and not from 01.06.2012. The said orders are not interfered with, insofar as they confer other benefits on the 2nd respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE