

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

WP(C).No. 32076 of 2009 (D)

PETITIONER:

**M.P. VASUDEVAN NAMPOODIRY, AGED 47 YEARS
S/O. M.N. PARAMESWARAN NAMBOODIRI, B-16, FACT
TOWNSHIP, UDYOGAMANDAL P.O., ELOOR
NOW WORKING AS LECTURER IN PHYSICS SREESANKARA
VIDYAPEEDOM COLLEGE, PERUMBAVOOR.**

BY ADV. SRI.RAJEEV V.KURUP

RESPONDENTS:

- 1. STATE OF KERALA, REPRESENTED BY THE
PRINCIPAL SECRETARY TO GOVERNMENT
HIGHER EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2. THE DIRECTOR OF COLLEGIATE EDUCATION,
THIRUVANANTHAPURAM.**
- 3. THE DEPUTY DIRECTOR OF COLLEGIATE
EDUCATION, ERNAKULAM.**
- 4. THE MAHATMA GANDHI UNIVERSITY,
REPRESENTED BY ITS REGISTRAR, PRIYADARSHINI HILLS
ATHIRAMPUZHA, KOTTAYAM.**
- 5. THE MANAGER, SREE SANKARA
VIDYAPEETOM COLLEGE, SREESANKARAPURAM
VALAYANCHIRANGARA, PERUMBAVOOR.**

**BY GOVERNMENT PLEADER SRI. S. JAMAL
SRI.VARUGHESE M.EASO, SC, M.G. UNIVERSITY**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:-

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| EXT. P1 | - | COPY OF THE PROCEEDINGS DATED 01.06.1995 PASSED BY THE 5TH RESPONDENT. |
| EXT. P2 | - | COPY OF THE ORDER DATED 17.01.1996 PASSED BY THE 4TH RESPONDENT. |
| EXT. P3 | - | COPY OF THE G.O. DATED 23.03.1990. |
| EXT. P4 | - | COPY OF THE RELEVANT PAGES OF THE SCHEME OF REVISION OF PAY SCALE OF TEACHERS IN UNIVERSITIES AFFILIATED COLLEGES IN KERALA. |
| EXT. P5 | - | COPY OF THE G.O. DATED 24.12.1996. |
| EXT. P6 | - | COPY OF THE LETTER ISSUED BY THE 3RD RESPONDENT. |
| EXT. P7 | - | COPY OF THE LETTER DATED 26.05.2000 ISSUED BY THE 4TH RESPONDENT TO THE 3RD RESPONDENT. |
| EXT. P8 | - | COPY OF THE REPRESENTATION DATED 18.08.2001 FILED BY THE PETITIONER TO HON'BLE MINISTER OF EDUCATION. |
| EXT. P9 | - | COPY OF THE JUDGMENT DATED 20.02.2002 BEFORE THIS HON'BLE COURT. |
| EXT. P10 | - | COPY OF THE ORDER DATED 27.12.2005 PASSED BY THE 4TH RESPONDENT. |
| EXT. P11 | - | COPY OF THE LETTER DATED 04.10.2007 ISSUED TO THE PETITIONER TO 3RD RESPONDENT. |
| EXT. P12 | - | COPY OF THE COMMUNICATION DATED 30.06.2008. |

RESPONDENTS' EXHIBITS:- NIL

//TRUE COPY//

P.A. TO JUDGE

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K. VINOD CHANDRAN, J.

W.P(C). No.32076 of 2009

Dated this the 3rd day of September, 2015.

JUDGMENT

The petitioner is a Lecturer in Physics, appointed under the 5th respondent College affiliated to the 4th respondent University. The petitioner was originally appointed as a Junior Lecturer in Physics in the respondent College on a leave vacancy with effect from 11.03.1985. While so, the respondent College was granted an additional B.Sc. Physics course from the academic year 1993-1994 and two vacancies arose in the post of Lecturer in Physics. The petitioner was absorbed in the regular vacancy with effect from 01.06.1995.

2. The petitioner's regular appointment is evidenced by Ext.P1, the approval of which has been granted by the respondent University as per Ext.P2. The petitioner's grievance is in so far as the petitioner being fixed in the UGC scale only since

01.06.1995, the date of regular appointment and not from 11.03.1993. The petitioner was granted the senior scale with effect from 11.03.1993, from which date he is entitled to UGC scale. However, the Government declined to grant the scale contending that the petitioner would be entitled to UGC scale only with effect from 01.06.1995, on which date he was regularly appointed to the sanctioned post. However, Ext.P7 issued by the University clearly approved the petitioner's promotion as Lecturer Senior Scale with effect from 11.03.1993, as per Government Orders cited therein, by which Teachers, who were appointed on temporary vacancies prior to 13.03.1990 and who were regularised in permanent vacancies thereafter, could be considered for UGC benefits, reckoning their previous service, including broken service.

3. In such circumstances, the petitioner, who was originally appointed temporarily on 11.03.1985 was entitled to UGC scale on 11.03.1993, being the date on which 8 years' service was completed. Though the petitioner was appointed to a leave vacancy, such appointment was to a permanent vacancy, the incumbent in which had proceed on leave. The petitioner was also

before this Court claiming approval from 11.03.1993, which OP was disposed of by Ext.P9. This Court specifically noticed that the point raised by the petitioner was covered by various decisions of this Court. It was also held that once the University approved the promotion/placement, the Deputy Director is bound to respect the same and release the pay and allowance to the incumbent.

4. However, considering the objection raised by the State, it was directed that if the Deputy Director is so advised, he could move the University to get the matter reviewed. The Deputy Director after Ext.P9 judgment, moved the University for a review, which was rejected by Ext.P10. A further application for review has also been rejected by Ext.P12. In such circumstances, the University having approved the promotion of the petitioner, to Lecturer-Senior Scale under the UGC scheme from 11.03.1993, the same has to be respected by the State.

5. The decisions of this Court in ***Cherian Mathew v. Principal S.B. College, Changanacherry [1998 (2) KLT 144]*** and ***The State of Kerala v. Sina A.R. [2007 (3) ILR (Kerala) 122]*** clearly finds that, once the University sanctions the post and grants approval; the approval being within the staff pattern

and work load, Government is obliged to pay salary in accordance with the same.

6. In such circumstances, following the above binding precedents, the writ petition is allowed declaring the petitioner to be entitled to UGC scales with effect from 11.03.1993 and directing the petitioner to be granted such scale of pay with subsequent revisions, if any sanctioned. The determination and reckoning of which shall be done within a period of three months from the date of receipt of a certified copy of this judgment. The payment shall also be made within four months from such determination. The petitioner definitely shall be entitled to be continue in the UGC scale subject to any revision made in the scales as also due promotions granted to the petitioner, in accordance with law.

The writ petition is allowed. No costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE**

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